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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

The PRESIDENT pro tempore. The Reverend Charles V. Antonicelli, of St. Joseph's Roman Catholic Church in Washington, DC, is, once again, our guest Chaplain.

PRAYER

The guest Chaplain offered the following prayer:

Let us pray.

Almighty God, we give You thanks and praise at the start of this day. Help us to know Your will. In the words of the Psalmist we pray, ''Lord, make me know Your ways. Lord, teach me Your paths. Make me walk in Your truth, and teach me: for You are God my Savior.''

Help us Lord, to be as generous with each other as You are with us. Help us to respect and care for all people, even those who are different from us.

Bless and protect Your humble servants in this Senate. Watch over them, their families and their staffs. Keep them from harm and guide them in the ways of Your peace.

We ask this in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The President pro tempore 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.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, the Senate will resume consideration of S. 1, the prescription drug benefits bill first thing this morning. There are two amendments currently pending to the bill: an Enzi amendment relating to pharmacies and mail-order prescriptions, and a Bingaman amendment regarding asset tests. These amendments are being reviewed, and we will have one of those votes some time early today. The other we will be voting on over the course of today. In addition, of course, we will be considering other amendments both today and tomorrow.

The chairman and ranking member will continue to work together to try to get Senators to come forth and offer their amendments, or to let them know what those amendments will be so we can establish a queue for those amendments to be considered today, tomorrow, and, indeed, into next week.

I do encourage, as I did yesterday morning, all Members to come forward and let the managers know what amendments they are considering offering. It is important to do so. For example, today we are waiting on one of the amendments to get an official scoring back from the Congressional Budget Office, so even after we hear about the amendments, it takes some time to process them. So it is absolutely critical that we hear from our colleagues in terms of what amendments they intend to offer.

We will have rollcall votes throughout today's session. We will be voting tomorrow as well.

(Ms. MURKOWSKI assumed the Chair.)

JUNETEENTH OBSERVANCE

Mr. FRIST. Madam President, I will comment very briefly on two issues, the first is on the Juneteenth observance.

Madam President, Juneteenth, which is also known as Freedom Day, is the date on which 250,000 slaves living in Texas finally learned of their emancipation. And that occurred nearly 3 years after President Lincoln's historic Emancipation Proclamation.

It was in 1865, on June 19, that Union General Gordon Granger led 2,000 troops into Galveston, TX, with news that the war had ended and that slavery had been abolished. He told the people of Texas:

[T]hat in accordance with a Proclamation from the Executive of the United States, all slaves are free. This involves an absolute equality of rights and rights of property between former masters and slaves, and the connection heretofore existing between them becomes that between employer and free laborer.

The celebrations that followed began a 140-year tradition. Today, all across the country, Americans of all races will celebrate with prayer, and picnics, food, family, and friends.

We join them, here on the Senate floor, to celebrate the struggle for freedom and to honor the profound contributions of African Americans to our Nation's culture and history.

MEDICARE REFORM

Mr. FRIST. Madam President, one last issue I wish to speak about now is one we will be talking about today and tomorrow on the floor of this Senate, and that is this whole issue of strengthening and improving Medicare.

Over the last several days, we have used terms such as ''actuarial value,'' and ''asset tests.'' We hear those terms again and again. We use acronyms so often. We talk about PPOs and HMOs and waiting on CBO for scoring. All these are important issues and vital issues, technical issues that are critical to our decisions that must be made, that we are obligated to make and should make to serve seniors in a better way with regard to their health care.

But I do want to step back, just for a second, to set the stage for today's debate, to talk to seniors who might be either watching on C–SPAN or listening on the radio, and try to describe

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

what, from a big picture, from sort of 30,000 feet, what this bill is all about.

When I am back in Tennessee, traveling through the State talking to seniors, the questions that I receive are not about reform or private competition or a market-based approach, and how all that is going to work in the bill. It is not how many stand-alone drug provider plans will be on the table. It is not what we have to think about here, what the 10-year cost is, or even the 20-year cost of the benefits we are discussing. Those are critical issues, issues that we must address as we address this historic legislation at this very important time, given the demographics, given the fact that we are talking about a health care system that has not kept up with the great advances in the delivery system and the technology and the medical science that have occurred over the last 30 years.

What they ask in these town meetings or in drugstores or when I am walking along on a sidewalk is: How is this going to affect me? I am a senior. I am concerned about my future. I am concerned about if I get sick. I am concerned about the fact that if I have an illness now, how is it going to affect me?

Very quickly, the first thing that will happen is in about 6 months, maybe 7 months after the President signs this legislation and makes it law of the land, every senior and individual with a disability on Medicare—every senior—will have the opportunity to get a little card, a Medicare prescription drug card. Every senior will be able to benefit from this little Medicare prescription drug card.

When I am talking to a senior, I tell them: You will be able to use this card similar to the way you might have a card for discounts at the grocery store, which is becoming increasingly popular today. We estimate that by using that little card—a card you do not have today; you cannot have today because the law does not allow it, but in 6 or 7 months after this bill is signed into law, you will have a card that will give you a discount of somewhere between 10 and 20 percent, by using that card, compared to the way you are getting your drugs today.

That is important to the senior because the senior knows that, yes, this will benefit me. Yes, Government, in a bipartisan way, has addressed the fact that the burden before me is huge.

Why can we do that? Because by using the combined purchasing power of up to 40 million people—instead of an individual senior going into a retail store and paying retail dollars for that—all of a sudden that senior, by having that card, becomes part of a huge purchasing group of as many as 40 million people.

If you are living alone and your income is less than $12,000 or if you are married and you and your spouse bring in less than $16,000, on that little card will be $600 of value you can use each year right off the top. In other words, you not only get a drug discount, but you will get an additional subsidy to help offset the cost of those medicines.

A senior asks me, How am I going to benefit? You take care of the details up in Washington, and do it right. But how is it going to benefit me?

Second, beginning in the year 2006, all seniors and individuals with disabilities covered by Medicare will be offered comprehensive prescription drug coverage. They will have access to a plan that offers more comprehensive coverage, when they ask how it is going to benefit them in the future.

Third—and this is what I am most excited about in the entire bill—we have also taken steps to offer seniors and that next generation of seniors a strengthened and improved overall Medicare Program. Seniors will have new choices they don't have now to get better coverage that meets their individual needs. They will be able to choose the type of coverage that best suits their needs.

They get immediate help, and we do it in a way with a benefit they don't have access to today, and, in addition to that, we expand choice. They will have an opportunity to choose a plan that better meets their needs. This is an exciting improvement in the Medicare Program which really brings it up to a modern type of health care delivery similar to—not exactly but similar to—the options we have as Federal employees and that I have as a Member of the Congress.

It used to be ''Mediscare.'' The last time we tried, 2 or 3 years ago, it was ''Mediscare.'' They said, ''Don't change.'' People will try to force you into HMOs. Do not trust Government. They are going to strip things away from you.

Actually the President mentioned this in a bipartisan meeting with Senators yesterday. It is no longer ''Mediscare,'' thank goodness. It is Medicare. That is really what we are trying to do in a bipartisan way.

People say, You want to have your choice of doctors and not be forced into HMOs. That is simply not true. In this bill, if you want to—for seniors listening to me—you can keep exactly what you have today in terms of your traditional Medicare coverage. You don't have to do anything to take advantage of the best choices. You can keep exactly what you have today. If you stick with what you have, you can get the prescription drug benefit along with everybody else, if you want to. In other words, keep what you have but take advantage of only prescription drugs. But if you are dissatisfied with your coverage today—and you realize that Medicare really doesn't cover preventive care, it covers very little in the way of chronic disease and management, it does not today, except Medicare+Choice, an organized, coordinated way of getting your health care—you don't have to, but you will be able to choose the expanded, the more flexible, and the more coordinated kind of coverage that today we clearly have as Federal employees and which also most working people have today, that sort of coordinated care plan.

But in Medicare today, you don't have that option. You will have the option to get things that are not currently covered by Medicare, such as preventive care.

I mentioned the programs of chronic disease management. There are also programs that promote wellness. Annual physical exams we know are so important. Again, whether it is annual or every 18 months, it probably doesn't matter that much. But right now, it is not covered under Medicare. That would be covered in the new program. You will be able to have a nurse call you or stay in touch with chronic disease management to remind you in case you have forgotten about who it is taking your weight or checking your blood pressure or looking for fluid retention and blood pressure, all of which are important. If you pick those up early, it keeps you from being hospitalized or getting sick. That heart is beating. If fluid is building up in your lungs, the heart beats harder and harder. You will have to be admitted to the hospital, and you will be trying to catch up. If they pick it up earlier and you stay healthy through appropriate management, you will not have to be hospitalized.

These are the kinds of coordinated benefits most working people have today and, as I mentioned, which Federal employees have today. It is the sort of benefit we want to make available—not forcing people but making it available to seniors as well.

Our goal in this bill is to allow you to have options so you can choose the kind of coverage and the kinds of doctors and hospitals that are most consistent with your needs. That is our goal, to make sure those choices are available for you.

In the days to come, we will have a lot of discussion and amendments as to how this plan will evolve. That is the whole purpose of having the debate and amendments.

As all of us know, the House of Representatives is going full steam ahead doing exactly the same thing we are doing and developing a plan, after which we will go to conference.

This bill represents the largest expansion of the Medicare Program in its history. We are going to be spending an additional $400 billion, which is a hefty sum, in providing this new benefit and strengthening the Medicare Program, and $400 billion is a lot. But the fact is that seniors over the next 10 years are going to be spending about $2 trillion on medicines and prescription drugs.

We are trying to target the resources of $400 billion in a way that makes the most sense so we can have appropriate benefits for seniors who are less well off and seniors who have very high drug costs so they get the most help.

I am looking forward to the debate. I want America's seniors to be able to come back to this picture I have just painted, and I want them to understand really these three things.

No. 1, if you want to, you can stick with what you have.

No. 2, you can, if you want to, stick with what you have but also get help with your prescription drugs.

And, No. 3, you will have for the first time in our Medicare Program the option, the opportunity of choosing a comprehensive, coordinated health care plan that keeps up with medical advances, with advances in technology and with advances in health care delivery systems.

When we finish this bill, and when we are successful, you will have a plan that offers real health security.

Madam President, I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, leadership time is reserved.

PRESCRIPTION DRUG AND MEDICARE IMPROVEMENT ACT OF 2003

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 1, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1) to amend title XVIII of the Social Security Act to make improvements in the Medicare Program, to provide prescription drug coverage under the Medicare Program, and for other purposes.

Pending:

Enzi/Reed Amendment No. 932, to improve disclosure requirements and to increase beneficiary choices.

Bingaman Amendment No. 933, to eliminate the application of an asset test for purposes of eligibility for premium and cost-sharing subsidies for low-income beneficiaries.

The PRESIDING OFFICER. The Senator from Maine.

AMENDMENT NO. 933

Ms. SNOWE. Madam President, I rise to address the pending Bingaman amendment because I believe it is important to provide some of the background as to how we arrived at the asset test that is included in the pending bill before the Senate regarding prescription drug coverage and the overall Medicare Program.

We learned a lot, as I said initially, from the debate and the tripartisan plan we had offered last year. We had included an asset test. That asset test did present a number of problems to colleagues on the other side of the political aisle. We attempted to work it out, but obviously it was not to their satisfaction. We had a number of meetings during the course of the debate last fall on the pending legislation, but we were not able to resolve the differences.

One of the key contentious issues was the fact that we had an asset test they believed was too encompassing, that it would deny many low-income individuals the ability to have access to the overall drug coverage and the type of subsidy we had included. So we learned from that debate, we learned from the discussions, and we took a far different approach this time in this legislation to incorporate the lessons that had been learned in developing an asset test.

We understand Senator BINGAMAN's desire to do more for low-income beneficiaries, but we have to keep in mind that we have crafted the legislation within the $400 billion parameter included in the budget resolution. We have come a long way in terms of how much we are providing for a prescription drug benefit. Can we do more? Absolutely. But obviously we have to live within the confines of our ability to finance this and so many other obligations.

Just 5 years ago we started at $28 billion with then-President Clinton's proposal. We increased it to $40 billion, to $300 billion, to $370 billion. Now we are up to $400 billion as proposed by President Bush. That is almost $200 billion more than he had originally proposed last year. We have come a long way in this debate.

How do we design the best, most effective, fairest low-income subsidy assistance? We decided it would be important to provide a universal benefit in the Medicare Program when it came to prescription drug coverage. But also we wanted to ensure that we targeted those who were most in need. That was one of the other principles that was so essential in developing the program. That is why we decided to use various low-income Medicare and Medicaid beneficiary programs that are already enacted and have been part of law, consistent across the board with respect to formulas, and have been used by senior citizens so it is something familiar to them.

We used the qualified Medicare beneficiaries program, otherwise known as QMBs, the select low-income immediate beneficiaries, SLIMBs, and qualified individuals, the QI–1 program, to send the highest level of assistance with cost premiums, deductibles, and copayments to those most in need. As it exists in current law, we target the assistance to beneficiaries based on both their income and asset level to make sure we are capturing those who truly have the most need.

We drop the asset test that was included in the previous tripartisan legislation that would have prevented 40 percent of low-income beneficiaries from receiving coverage. We really address some of the inequities and the problems with our previous asset test by including, this time, in this legislation, programs that have already worked for seniors who have a very limited asset test.

For those in the lowest income categories, we are talking $2,000 for individuals, $3,000 for couples. For those from 73 percent to 100 percent, we are talking about asset tests between $4,000 for individuals and $6,000 for couples. The same is true for those between 100 and 135 percent of the poverty level; then for those between 135 percent and 160 percent of poverty level, assets again at $4,000 and $6,000 for a couple.

We think that by establishing consistency with other programs that have worked, we are able to design a fairer approach to the issue in terms of eligibility for the low-income subsidy. Also, we are utilizing existing government infrastructure so that we do not divert scarce dollars away from beneficiaries to create new Federal or State bureaucracies.

In developing S. 1, we did look to the lessons we learned from last summer's debate and the negotiations that progressed into the fall. We realized that in constructing the tripartisan plan, we were excluding millions of seniors and disabled Americans from eligibility for the low-income assistance subsidy because their income or assets did not meet the strict guidelines. Obviously, we did that because we were then living within the confines of $370 billion.

So we created the new categories for low-income assistance. It goes up to 160 percent of poverty level. Again, that is also a change from the tripartisan plan where we put the maximum subsidies up to 150 percent of poverty level. So we increased it from 150 to 160 percent of poverty level. For an individual that means $15,472 and for a couple that is $20,881, regardless of an individual's assets. We are not even using an asset test for another category below 160 percent of poverty level so that we are ensured we are capturing everybody who comes within those poverty guidelines in order to ensure they get the maximum subsidy possible.

This new category that we are capturing under the 160 percent and not requiring an asset test will include 8.5 million additional Medicare beneficiaries in 2006 and provide them with very generous assistance. They will not be subject as well to the gap in coverage where they are responsible for 100 percent of the cost of the prescription drugs.

This new benefit only requires a $15 deductible compared to the $275 for those above 160 percent of poverty. They have a much more generous cost sharing starting at 10 percent, from $51 to the benefit cap of $4,500; and from $4,500 until they spend $3,700, they pay a 20 percent copayment. Once they reach the catastrophic cap, the Government will pay 90 percent of the cost.

We clearly did design a program that provides the most assistance to those in most need. I know we always could do more, but obviously we had to stay within the parameters of the $400 billion in designing this program. There are those on my side of the political aisle who believe we have gone too far in providing the types of subsidies we do. But we have copayments that obviously do help to reduce utilization and

overutilization of the benefit. At the same time, we also understand if these individuals don't have access to any type of prescription drug coverage, then they are going to be denied the ability to have access to the most innovative therapies and medications now available to treat so many illnesses. If they don't have access to these types of therapy, they can become sicker, which then results in hospitalization, and then, of course, we have a more expensive form of care that does impose additional and exorbitant costs on the Medicare system.

So I think in the final analysis we are going to see, by the type of benefit we have provided to the low-income, that they have the ability to have access to a prescription drug benefit so that ultimately we can realize savings to the Medicare Program. It is absolutely vital that this benefit be available to those individuals most in need.

It is also vital that we have a universal drug benefit, and that is why we designed the program from that standpoint, embracing the universal tenet of the Medicare Program. It is important that we do all we can to maintain consistency with the basic tenets and principles of the Medicare Program.

Madam President, I believe we have designed a very fair, effective, generous assistance to those in the low-income category. As I said, we even increased it from the tripartisan bill of last year, from 150 percent up to 160 percent of poverty level. We essentially removed the asset test for those in the categories from 160 percent of income levels and below. We have created consistency by using other low-income programs in the Medicaid and Medicare areas that will not result in any confusion or contradictions among different eligibility standards. So we have really made considerable progress in designing, I think, the best, most effective type of program.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Madam President, I see the Senator from Missouri in the Chamber. He wants to speak next. For the information of all Senators, I think we are going to get an amendment offered on the floor shortly. But the sponsor of the amendment has only a very short time that he can be in the Chamber. I urge my friend from Missouri to remember that brevity is the soul of not only wit but sometimes persuasion.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. TALENT. Madam President, I appreciate the Senator's comments. I remind him that I have only recently come over from the House and am used to speaking in 3-, 4-, and 5-minute bites where necessary. I will try to adhere to the old standard. I know many people want to speak on this important bill. Many have important amendments they want to offer. I will not delay the Senate very long.

I wanted to come down and speak about this, in part, because this is a problem which has existed for a long time and has hurt a lot of people, and which I am just very encouraged and pleased to say I believe this Congress will finally solve.

I went into the House of Representatives in 1992 and, as many Members do, I often went to parades in the communities I represented. I enjoyed walking in them and shaking hands with folks. There was one couple with whom I got to shake hands virtually every parade in the city of Hazelwood. They would sit in the garage watching the parade. I would run up the driveway and visit with them. Every year, we would visit about this issue. They would take a minute—not too long because the parade was going by—and tell me of the struggles they were going through because there was no prescription drug feature to their Medicare coverage. They were making the choice that many senior citizens in the State of Missouri have to make every day between the cost of their prescription drugs and the cost of other necessities of life.

That choice hurts all of us. It hurts them, hurts their families who worry about them, and it hurts all of us because they often resolve that dilemma against buying the prescription drugs. Those drugs are often medicine they need to stay healthy. It is one of the things that is so self-defeating about our current policy because if folks cannot take the drugs they need, they get sick, and then Medicare covers the treatment and it costs a lot more than if we had simply helped them stay healthy in the first place.

We should not interpret any of this as a slap at Medicare. Medicare is a program which has provided important medical care for tens of millions of people for a generation. But it was devised in 1965 when nobody had prescription drug coverage. Prescription drugs were not a major feature of ongoing medical care in those days. Since then, it has become a very common feature of health insurance to have some kind of prescription drug coverage. But we have not updated Medicare to keep pace with those changes. We have not strengthened and improved Medicare as we should have. But now we are going to. That is the good news.

That is really the message I wanted to come down here and deliver. To me, the legislation is all about the principles and, yes, of course, it is about the details, but first you have to try to do the right thing, and then you have to check the details to make certain you are trying to do the right thing.

We need coverage that goes into effect, at least partially, right away. Seniors have waited long enough. We have been promising long enough, and now we need to deliver. We need coverage that is permanent, not one that sunsets a few years from now. We need voluntary coverage in the sense that you don't have to change your coverage if you have another method you like better. This bill qualifies on that count. We need coverage that targets the bulk of its relief for the people who need it the most. This is something that in townhall meetings all over Missouri seniors have said this to me. The folks with the lowest income and the highest prescription drug costs should get the most relief. This bill makes efforts to achieve that, and I think it largely does.

We need legislation that has a reasonable system of copays and deductibles for those who can afford them because that is the way we control overutilization, and overutilization can be bad for everybody. If too much money that we don't need to spend has to be spent in the prescription drug area, that is less money for care for heart patients or kidney patients or maintaining the standards at our teaching hospitals, which is so important to the quality of Medicare.

We need a bill that provides choices for people, one that competes for the business of these seniors, to make certain they are getting the highest quality at the lowest cost that we are capable of providing.

There are going to be many amendments offered to this bill. I am going to vote for some of them. There is one I believe we will see today that will help make certain that local pharmacies are able to participate. I think that is a great idea. I will vote for that amendment. I will vote against some. Some will undoubtedly carry and some will fail.

It is my intention to vote for this bill on final passage—almost no matter what. I don't want to sign a complete blank check here, but I cannot imagine changes that would be made to the bill that would keep me from voting to send this bill on, to move this process forward, to begin keeping the promise we have made over and over and over again in the last few years to that generation of Americans who won the Second World War, who set up the architecture of containment that won the cold war, and built this country by their work, faith, sweat and, effort. That is what this bill represents to me.

I congratulate the Finance Committee, the chairman, and the ranking member for producing this bill. It is, at minimum, a noble effort, a good first step. I think it is probably better than that, but, at minimum, it is that. We cannot get to the end if we don't take the first step. That is what this bill represents. I am pleased to be here supporting it. I hope we can strengthen and improve the bill as we strengthen and improve Medicare, and I am grateful for the opportunity to say a few words on the floor.

I yield the floor at this time.

Mr. BAUCUS. Madam President, I apologize to my good friend from Missouri. It turns out that the Senator who is going to offer the amendment is not able to do so at this time.

Mr. TALENT. Perhaps I should want to do another 30 minutes or so. I am

kidding. I had all the time I needed, and I appreciate the suggestion.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. I thank the Chair. Madam President, I wish to take a few minutes to speak about a feature of this prescription drug bill which I believe is particularly noteworthy, and that is help for low-income seniors.

The subsidies provided for low-income seniors and disabled people are far more generous and much more humanitarian than many of the proposals the Senate has considered in the past. We know that most seniors who signed up for this new drug program will benefit from assistance with their prescription drug costs.

Many seniors today pay thousands of dollars a year for drugs. That is common knowledge, and that is a substantial expense to them. It is to everybody, but particularly seniors and particularly low-income seniors.

For 40 percent of our seniors who make less than $15,000 per year, the prescription drug coverage provided by this bill will be truly lifesaving. That is, 40 percent of our seniors make less than $15,000 a year.

We have all heard stories about poor seniors who eat less so they can pay for their prescription drugs or who take only half the dosage the doctor recommends. I have seen that. I worked at a drugstore one day. I was really quite taken aback by the number of times the elderly would walk up to the pharmacist and quietly ask the pharmacist whether they could cut back on their prescription because they could not pay for it all, and they and the pharmacist would go into a little huddle as to which drugs to take and which ones not to take. I have seen it firsthand. A lot of us have heard a lot about this. We have heard about patients with disabling illnesses who cannot afford the expensive drugs that might slow the progression of a dangerous and unpredictable disease. It is clear, 40 percent of our seniors are making less than $15,000. That has to tell us it is a huge problem we have to address.

This bill will give some hope to those folks. The bill is an improvement, as I mentioned, over last year's bill. Last year, that bill gave seniors generous assistance with cost sharing but up to a point. Once the low-income senior hit the so-called benefit gap—that is the donut we are talking about—the bottom fell out of the low-income safety net.

Seniors who could hardly afford food and rent would have to be responsible under that bill for half the cost of their drugs, a cost that most obviously could not be assumed. By some estimates, 30 percent of low-income seniors would fall into this gap.

In the bill before us, low-income seniors remain much better protected in this so-called gap. They pay higher cost sharing in the benefit gap, but their out-of-pocket expense would never go more than 20 percent above the cost of drugs, and for the lowest income seniors who are not eligible for full Medicaid benefits, cost sharing would not go above 10 percent. I think this is a good improvement.

I am also proud the chairman of the committee, Senator GRASSLEY, and I have been able to increase the number of low-income seniors who will benefit from the extra subsidies. Our bill will provide assistance for Medicaid beneficiaries up to 160 percent of the Federal poverty level. An amendment was offered in committee to raise the poverty level to 160 percent. I wish it could go higher, but we are somewhat limited by the $400 billion we are working with in the entire bill. But at least we are up to 160 percent of the Federal poverty level. That means beneficiaries with an annual income of barely over $14,000—that is because they are not within 160 percent, just slightly over—are still struggling to provide for life's basics.

Perhaps one of the most important improvements in this bill is the assistance it provides for low-income seniors without subjecting them to assets tests.

Asset levels for elderly Medicaid beneficiaries and so-called QMBs and SLMBs are very low. Those are categories depending upon the percentage of poverty, so that if an individual has accountable assets of over $4,000, they are not eligible for assistance. A couple with assets over $6,000 is not eligible for assistance. These asset levels, which are based on SSI eligibility standards, have not been adjusted since 1989.

Asset tests exclude millions of poor Americans from Medicaid, and they would have excluded millions of poor seniors from many of last year's prescription drug subsidies. Think of it, an 80-year-old man with $800 a month in income might not be eligible for any assistance if his brother left him, say, a $10,000 car in his will. If he is married and he has paid life insurance premiums his whole life, the policy could prevent him from getting help with prescription drug benefits.

This proposal includes a subsidy category that is based only on income, not on assets. It is not as generous as the asset-tested categories, and I wish we could improve that, but it takes an important step toward covering more needy seniors and allowing them the dignity of keeping a car or a single precious heirloom.

We could do more if we had more money, but we do not have more money. We could eliminate the asset test altogether. We could provide better subsidies in the donut. We could provide more help to people who are still in need but who make $15,000 or $18,000 per year and have high drug costs.

Nevertheless, I am proud of the progress we have made over last year's low-income proposals, and I suspect with each new chapter in this prescription drug/Medicare book, we are going to be able to make improvements along the way.

This bill is a major improvement over current law. It is a major improvement over the low-income provisions in last year's bill. I urge this body to adopt this proposal.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. Madam President, the ranking member, Senator BAUCUS, raised a number of valid issues as to how we were able to improve upon the lessons we learned last year from our debate on this most important issue regarding asset tests. That was, obviously, one of the areas we had difficulties addressing in a way that would satisfy most of our colleagues in the Senate.

This year, having drawn upon those lessons, we did craft a proposal that ultimately maximizes the ability of those low-income individuals of participating in this program in the fairest way possible, and that is not to exclude those who certainly are in need of this type of benefit and certainly are in need of some type of assistance because they do have low incomes. Therefore, I think the asset test is a much more fairer approach, much more equitable, without excluding those who certainly have the need for this type of program.

We have come a long way in designing a system that, for the most part, will satisfy those who had concerns with the previous provision in the tripartisan plan.

In fact, Families USA supported our legislation with respect to this provision. I quote from it:

> We congratulate the U.S. Senate for making major improvements in the prescription drug coverage for America's 14 million Medicare beneficiaries below 160 percent of poverty.

They felt it was essential to assist the most vulnerable Medicare beneficiaries, and they, obviously, supported our efforts and thought we should not take any steps to minimize the improvements that have been made in this legislation with respect to the subsidies included in the pending legislation.

I raise another issue I was unable to address yesterday, and that is with respect to the Government fallback provision that is included in the pending legislation. I know there was an amendment that was offered by the Senator from Michigan that would provide for a permanent fallback because those who argue we should have a permanent option to Government fallback so seniors can choose under the standalone prescription drug benefit say it will offer more stability and more choices to seniors.

As we worked last year, again drawing upon the lessons with respect to a Government fallback, we learned two things. Obviously the provision and the way we addressed it in the tripartisan plan was not satisfactory. We did have

language that ensured it guaranteed a seamless approach so seniors would not lose their coverage in the event the private delivery mechanism did not work to provide the prescription drug benefit, but that did not satisfy many of the critics with respect to our legislation last fall.

On the other hand, we saw how much a Government-run program can cost. CBO estimated a Government-run program could cost at least $600 billion, at least based on the bill that had been introduced in the Senate, and that we debated with several versions, up to a trillion dollars or more. It also sunset in order to mask the true costs because again a Government-run system that has no competition, has no choices, does not do anything to maximize the efficiency or increase the innovative ways in which the private sector could provide those plans.

When one is competing against a Government-run program that has no risk, then the cost goes up. That is at least the way the Congressional Budget Office assigned the score to that program. So we had a $600 billion to $1 trillion cost with a Government-run program, because there were no risks involved in that program in implementing that type of an approach. It was all performance based, and so therefore it was going to be much more costly. Then again, it was sunset. After 7 years, the prescription drug benefit under that approach would have been sunsetted.

It also statutorily limited the number of drugs a senior could purchase to two in any therapeutic class. So, again, not only did the benefit sunset but it also limited the choices available to seniors with respect to the types of medications that would be covered under that approach because it was too costly, because it was a Government-run program.

On the other hand, we understood it was absolutely essential that seniors, regardless of where they lived in America, whether it was in a rural area or in an urban area, should have the ability to have a prescription drug benefit that was of equal value, that was in the bill that became law. So we did include a Government fallback provision.

There were those who felt it did not go far enough or was not sufficient to prevent a seamless, uninterrupted approach in terms of coverage.

This year, having drawn upon that experience, we designed a different approach, and we included a Government fallback. We think the Government fallback should be the last resort, not the first resort. So, therefore, there have to be two participating in the program with a drug benefit. If that fails, then the Government would step in. If only one plan participated, the Government would step in and provide a fallback. We think this maximizes the approaches in terms of enhancing competition and choices but at the same time ensuring seniors that no matter what happens, if private plans do not participate in some part of the country, they will always have the assurance and the guarantee that they will have access to a prescription drug benefit in the coverage without interruption. So therefore we designed a system that incorporated the risk management so we can encourage competition among the private sector plans. We think that is important.

We also help give the Secretary the flexibility to dial down the risk even to nothing in order to encourage private plans to participate. But in the event that does not happen, that we do not get two plans at a minimum participating and providing choices to seniors in any part of the country in any one of the 10 regions, then certainly the Government would step in and provide the fallback plan. Even if there is only one private plan that is available, the Government will step in. Again, to address concerns on this side of the aisle with respect to the fact that we are not doing enough to encourage seniors to go into the private delivery model, we do only allow for a 1-year contract for the Government fallback, again trying to encourage private plans to participate in the process.

We obviously think if seniors have private plans participating, they will have competition and choices that will maximize the number of choices for seniors across the board similar to what is available to Members of Congress and to Federal employees under the Federal Employee Health Benefits Program. There are a maximum number of choices, an array of plans, different types of approaches tailored to the needs of seniors either in that particular region or in terms of their medical and health care needs.

For example, a private plan could design a generic-only plan or it could design a plan that includes the most commonly used drugs for medications. So we have hopes that we not only encourage competition but at the same time provide a fallback for prescription drug benefits.

The Secretary has the authority to design that program and negotiate the risks for the plans to make the market as appealing as possible and is required to make choices among a number of plans, at least three plans for each region. However, if at least two plans are not willing to provide services in the region, as I said earlier, the Government fallback will be triggered. Once triggered, the Government will enter into a 1-year contract with a fallback company.

Further, that leaves one plan that is willing to participate in a fallback region. The Secretary may allow that plan to provide coverage alongside the Government fallback plan.

So we think we have maximized the assurances and the security for seniors that, irrespective of where they live in America, they will have access to a prescription drug benefit. The structure of this provision was vital in securing the type of bipartisan support we received in the Senate Finance Committee, and tripartisan support with the support of Senator JEFFORDS we were able to achieve in the final analysis. It was a 16-to-5 vote in the Senate Finance Committee because we were able to incorporate the lessons of the past.

That is why we designed this type of permanent fallback so that it does not undermine the costs of the programs. It invites competition but it also provides the assurances to seniors that they will have prescription drug benefit regardless of where they live in America, regardless of what happens in the private sector. If the private sector does not play a role, Government most assuredly will. I think we have designed the maximum amount of security and the least amount of risk to seniors in terms of the type of coverage they will receive.

I did want to address some of those issues because I do think it is a fundamental component of this legislation before us. There has been a lot of confusion about what this legislation is and is not, and I assure my colleagues that we do have Government protection but at the same time we also do not want to diminish the ability of the private sector to play a competitive role. In the event that does not transpire, then we obviously will have the availability of a fallback provided by Government and the maximum amount of authority vested in the Secretary to design that program so it does not jeopardize seniors' access to coverage at any point, especially those seniors who live in rural areas.

I yield the floor.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Madam President, if we can get consent, which I will offer in a moment, I intend to offer an amendment which would address one of the concerns I have with the current bill; that is, the uncertainty with regard to the premium itself.

Under the bill, it is anticipated the monthly premium paid for by beneficiaries, the beneficiary obligation, would be $35, but there is no guarantee that beneficiary figure of $35 is going to be what our beneficiaries are going to pay; it is only an average. The Congressional Budget Office that gave the $35 figure cannot state what the range will be that will be charged to beneficiaries. It could be lower. Most likely, it could be higher. I am told last year the Medicare+Choice plans increased by 15.5 percent. That was just last year alone. If Medicare+Choice premiums increased by 15.5 percent, there is no telling what the figure could be. It could be $40 or $50, and I will get into that in a moment.

Even the so-called Medicare fallback, available when private plans choose not to serve a community, provides no guarantee. So you do not have any guarantee in the private sector options that will be made available. And if those cannot be made available in a region, the Medicare fallback does not

offer any guarantee with regard to what the premium will be either.

Initially, we were told by the bill's authors that the fallback plan would have a uniform premium, but in fact it does not have even a uniform premium. So not only do we anticipate that it will not be $35, we do not know what it will be. We also know it could be different in different areas. We know that Alaska or South Dakota could be forced to pay a much higher premium than someplace where price and utilization figures could be different; say, Florida. We actually see that right now with Medicare+Choice. Medicare+Choice HMOs offer prescription drug coverage today. According to a report provided to the Congress recently, the premiums in Connecticut, under a Medicare+Choice plan, today are $99 per month. That same premium is $16 in Florida.

So with the experience we have already had in the private sector, the Medicare+Choice option, we have seen a dramatic variation in the price of the premium for beneficiaries. I fear we are going to see exactly the same thing with the private plans offered through this bill as soon as the legislation is implemented.

We have two issues: First, we do not know what the premium will cost because we just have an estimated national average; second, even if there is a national average, we are concerned that there could be a dramatic variation from one part of the country to the other. It is that variation, as well as that uncertainty with regard to the premium itself, that we are trying to address with the amendment we are offering.

The way the bill is written, I will state what will likely happen. There are two terms with which I hope people will become more familiar. The first term is the national weighted average premium. That is the overall premium cost that must be achieved in order to pay for the private sector coverage as well as the Medicare backup when the bill is implemented. In other words, the prescription drug companies will determine, given what the benefit package is, given the utilization rates, given the actuarial tables, it will take so much money, divided up per person, to pay for the plan once it is implemented.

There will be two payments. One will be from the Government and the other is from the beneficiary. The second part of this term, the beneficiary obligation, is what the senior citizen is going to pay. That is the so-called $35. But the overall premium could be $100. In fact, we think it might be in the $100 range. So, under that example, $65 would be paid by Government, $35 would be paid for in the premium by the beneficiary, the beneficiary obligation.

Assume the average is $100 and assume, then, the payment is over by $10. Assume the premium is not $100 but it is $110. Under this bill, that $10 extra in the premium is paid all by the beneficiary. That will be added to the beneficiary obligation. So instead of a $35 payment, it could be $45, a 30 percent increase in the premium the Medicare beneficiary will have to pay. That is why there could be a significant variation.

So we have these two calculations: The national weighted average premium, which we estimate could be around $100; the beneficiary obligation, which is $35, roughly, give or take. And of course, as I said, we do not know what it will be like in some parts of the country. It could be dramatically different, as we have seen with Medicare+Choice right now.

AMENDMENT NO. 939

Mr. DASCHLE. I ask unanimous consent that the pending amendments be set aside and that this amendment be considered at this time.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] proposes an amendment numbered 939.

Mr. DASCHLE. Madam 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:

(Purpose: To ensure that an affordable plan is available in all areas)

On page 103, strike lines 10 through 13 and insert the following:

''(B) the lesser of—

''(i) the amount by which the monthly plan premium approved by the Administrator for the plan exceeds the amount of the monthly national average premium; or

''(ii) in the case of an eligible beneficiary who is enrolled in a Medicare Prescription Drug plan that provides standard prescription drug coverage or an actuarially equivalent prescription drug coverage and does not provide additional prescription drug coverage pursuant to section 1860D–6(a)(2), an amount equal to 10 percent of the amount of the monthly national average premium.

On page 77, strike lines 10 through 22 and insert the following:

''(A) IN GENERAL.—In the case of an eligible beneficiary receiving access to qualified prescription drug coverage through enrollment with an entity with a contract under paragraph (1)(B), the monthly beneficiary obligation of such beneficiary for such enrollment shall be an amount equal to the lesser of—

''(i) the applicable percent (for the area in which the beneficiary resides, as determined under section 1860D–17(c)) of the monthly national average premium (as computed under section 1860D–15) for the year as adjusted using the geographic adjuster under subparagraph (B); or

''(ii) 110 percent of an amount equal to the applicable percent (as determined under section 1860D–17(c) before any adjustment under paragraph (2) of such section) of the monthly national average premium (as computed under section 1860D–15 before any adjustment under subsection (b) of such section) for the year.

Mr. DASCHLE. Madam President, basically what our amendment does is simply say: We understand there will be variance. We understand we cannot pinpoint with any precision exactly what the cost to the beneficiary is going to be. Why don't we put a cap on what that senior citizen is going to be required to pay, within some reason. If we say the beneficiary obligation is going to be $35 a month, put a 10 percent cap on that premium. It can be below to whatever extent. If it comes down to $15, we all ought to celebrate. But if it is going to be more than $35, say that it cannot exceed 10 percent of the average beneficiary obligation.

This would give some assurance to senior citizens that they are not going to be facing dramatically varied costs or facing this extraordinary uncertainty with regard to what the premium will be. But within a 10 percent range, give or take, they will know what their premium obligation will be as they make their decision from one year to the next as to what that premium will cost them.

This is exactly what we do with Medicare Part B. Right now with Medicare Part B, beneficiaries pay $58.70 a month for their physician and outpatient care. I might add, that is a consistent figure. It is the same in Alaska and South Dakota as it is in New York and California. That has worked. No one has complained.

I don't know that any amendment has ever been offered to suggest South Dakota ought to pay a different Medicare Part B premium than someone else. No one has said that having an actual figure every year that seniors can know will be a given cost is something that does not work for physicians. If it works for Medicare Part B, if it works for physicians and outpatient costs, why wouldn't it work for prescription drugs?

We are actually giving more latitude. We are not saying it has to be $35. What we are saying, simply, is let's make sure there is some certainty. Even if it cannot be with the same precision—which, frankly, I think it could be—but if it cannot be the same precision as we expect with Medicare Part B, let's at least say: Give or take 10 percent, it has to be in that $35 range. I don't think that is too much to ask, with all the uncertainty people are facing today as they consider this.

I was just talking on a radio station a few minutes ago, trying to explain what a senior would have to pay. The question was, What does this mean for a senior?

Here is what I had to say. I said we think the premium is going to be $35. We think the deductible is going to be $275. We think the copay is going to be 50/50 between the program and the beneficiary with all the charges up to $4,500, and after that we know the benefits are cut off until you reach about $5,800, and then it kicks on at a 90-percent reimbursement rate at $5,800.

If I was a 87-year-old citizen listening to the radio, I would say: Holy cow, call my accountant. And this is for a drug benefit.

But that is what we are doing. We are asking the senior citizen somehow to make sense of all this, and then we have to say we don't even know if two companies are going to come into your region to provide the benefits in the first place. If they do not, there will be a Medicare backup and we will give you the details on that later.

This just provides a modicum of additional certainty, some degree of confidence that they have some idea, with one of those calculations, of the premium itself, that it is not going to be $45, $55, $65 a month; that it is going to be $35 a month, give or take 10 percent. I do not think that is too much to ask.

We had a debate about this legislation in the committee. I was disappointed the amendment was not adopted in committee. I feel so strongly about it I think it is important for the Senate to have an opportunity to reconsider the amendment.

We got a letter from the National Committee to Preserve Social Security and Medicare. Let me read this letter:

On behalf of the millions of members and supporters of the National Committee . . . I am writing in support of your ''Guaranteed Premium'' amendment to S. 1. The current Senate prescription drug bill, S. 1, does not limit the premium increases, which could potentially subject seniors to dramatic fluctuations in premium costs. Seniors want assurance that their costs will not suddenly skyrocket. Over the past year, premiums for Medicare Plus Choice plans increased 15.5 percent. Seniors need to know what costs they can expect in order to receive a drug benefit. Most seniors are on fixed incomes and even the slightest increase could impose a huge burden on their ability to afford a drug benefit or other necessities, such as food and shelter.

We understand your amendment would limit premium increases . . . preventing dramatic changes in price. We agree that seniors have the right to know what they will be paying today and in the future for a drug benefit. . . .

I will just add one other thought. The letter notes that a slight increase could impose a huge burden on their ability to afford a drug benefit. I have talked literally to hundreds of seniors—maybe even thousands by now. I know it is hard for a United States Senator to be fully appreciative of what it means to live on Social Security but many seniors do. That is their only source of income.

We are now telling them in addition to the $58.70 they pay for Medicare Part B, there is going to be added to that at least $35, probably more, for a prescription drug benefit. So now we are talking about, not $58, but probably $100, out of whatever Social Security check they get each month.

I have talked to many seniors who have said: For me, it is a choice between drugs and rent, drugs and groceries.

I think we overlook that. I think people minimize the extraordinary financial impact these charges, these costs have in their daily lives. What they want is a little more certainty. What they want is a little more assurance that they can make ends meet with these extraordinarily limited budgets within which they live.

That is what our amendment does. I am hopeful the Senate will consider it. My hope is that, on a bipartisan basis, we can adopt it later today.

I yield the floor and 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. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. REID. Madam President, I worked with Senator BAUCUS all morning, getting people to come and offer amendments.

For the information of all Senators and other interested parties, we have a number of very important committees going on—Judiciary, Commerce, to name but two. We have people on this side who really want to offer amendments, but they are simply unable to do so because of their other Senate responsibilities today.

There will be amendments offered, but we have to get these committees out of the way first.

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

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

AMENDMENT NO. 939, AS MODIFIED

Mr. DASCHLE. Madam President, yesterday the committee offered a modified version of the bill before us. My amendment does not conform to the modified version in terms of page and line numbers. I ask unanimous consent that a modified amendment be offered and substituted for the amendment I offered earlier this morning.

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

The amendment (No. 939), as modified, is as follows:

On page 106, strike lines 11 through 14 and insert the following:

''(B) the lesser of—

''(i) the amount by which the monthly plan premium approved by the Administrator for the plan exceeds the amount of the monthly national average premium; or

''(ii) in the case of an eligible beneficiary who is enrolled in a Medicare Prescription Drug plan that provides standard prescription drug coverage or an actuarially equivalent prescription drug coverage and does not provide additional prescription drug coverage pursuant to section 1860D–6(a)(2), an amount equal to 10 percent of the amount of the monthly national average premium.

On page 80, strike lines 1 through 12 and insert the following:

''(A) IN GENERAL.—In the case of an eligible beneficiary receiving access to qualified prescription drug coverage through enrollment with an entity with a contract under paragraph (1)(B), the monthly beneficiary obligation of such beneficiary for such enrollment shall be an amount equal to the lesser of—

''(i) the applicable percent (for the area in which the beneficiary resides, as determined under section 1860D–17(c)) of the monthly national average premium (as computed under section 1860D–15) for the year as adjusted using the geographic adjuster under subparagraph (B); or

''(ii) 110 percent of an amount equal to the applicable percent (as determined under section 1860D–17(c) before any adjustment under paragraph (2) of such section) of the monthly national average premium (as computed under section 1860D–15 before any adjustment under subsection (b) of such section) for the year.

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

The PRESIDING OFFICER (Mr. ROBERTS). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Without objection, it is so ordered.

Mr. SANTORUM. Mr. President, I am going to make an opening statement on this legislation. I understand there are amendments being worked on.

First, I commend the President for his leadership. But for his leadership on this issue, we would not be here today. The President a few months ago laid out a framework for the reform and improvement and strengthening of the Medicare system which we are using in this underlying bill today. The President said he would be willing to move forward with an expansion—a rather expensive expansion, $400 billion over the next 10 years of taxpayer dollars—to provide prescription drug benefits for our senior population, outpatient prescription drug benefits. Obviously inpatient prescription drugs are covered but outpatient prescription drugs are not. The President said he would be willing to move forward with that. He believes, as I believe everyone in this Chamber does, that this is a necessary part of the continuum of care with which seniors, as well as all Americans, should be provided.

The question is how do you move forward with a huge dollar expansion of a program, Medicare, which is already $14 trillion short in revenues over the next 50-plus years? How do you move forward with a bill or an idea that is going to expand this program and create another unfunded liability of $3 to $4 trillion?

What does that mean? That means the money coming into the Medicare system is going to be insufficient to cover the additional expenditures we are going to put on the system with this bill to the tune of $3 or $4 trillion over the next 50 years. How do you justify adding this expense to a program that is already $14 trillion short in revenues?

The President said, I justify this because, No. 1, we need to do it. It makes no sense to have seniors receive care

that is not the best quality or not necessarily recommended from the standpoint of what a physician would recommend but is done because the alternative pharmaceutical product is not covered under Medicare. They will do things that may not be the best quality care or may not be called for, just because it is covered, as opposed to something that is not covered. This is an important benefit that needs to be provided. But how do you justify that to the American public and future taxpayers?

The President said we need to balance that future expenditure with an improvement to the system, an improvement in terms of efficiency in the system to make the system work better from two perspectives: No. 1, from the perspective of efficiency so the money we are putting in to the system is used more efficiently and, No. 2, that we provide better quality, that the quality of care improves under the changes we hope to make in the Medicare system.

The President set out with those two goals, provide a prescription drug benefit but improve the efficiency and the quality of the Medicare system going forward. He had other goals, but I would argue those are the two big, overriding ones. So he put forward a model.

He understood the way you improve efficiency in this country is not to have the Government run the operation. The way you improve the efficiency is to marry what Government does well with what the private sector does well. What Government does well is guarantee a stream of funding and provide oversight, regulation—or refereeing, if you will—to the private sector. What the private sector does well is compete to drive down costs. Competition drives down costs. And it responds to the consumer in front of you, responds to the person with whom you have to deal. Because if you do not treat your patient well or your insured well, then you will lose their business.

Under Medicare today, Medicare cannot lose the senior's business. You have one Medicare plan. It is what it is. If you don't like it, tough. That is it. People cannot walk, by and large. In a few communities they have Medicare+Choice but just in some urban areas in this country. By and large, Medicare has a monopoly and they treat beneficiaries just like all monopolies treat beneficiaries—not well.

What we want is to have a system in place where we have private sector insurance plans that have to treat you well, have to design benefit packages you want; otherwise, they are not going to get your business. If they do not get your business, they do not survive. We believe that will improve the quality of the medicine that is going to be practiced. But it will also improve the efficiency of the health care system.

The tradeoff, and an important one, to adding benefits to this already cash-starved program was to put some things in place that over the long term will result in more efficiency and better quality care for our seniors. So the President put up a model which is doing that right now. The model is the Federal Employees Health Benefits Plan that the Presiding Officer from South Carolina and myself are under—with the exception of the pages. I don't know for sure whether they have coverage under the Federal Employees Health Benefits Plan. I don't know. I don't think they do. Maybe they do. All the other people in this Chamber who are employees of the Senate have health coverage through their Federal Employees Health Benefits Plan. It is a system that marries what the Government does well, which is a steady stream of funding, and an oversight board to make sure the private sector is doing things properly—and with competition. They let each region in which the Federal employees health benefit system offers plans contract. People come and bid for business. The companies that participate in the Federal employees health benefit system go out and market to Federal employees in the region to get them to sign up to their plan. If they don't do a good job, people do not sign up for their plan. If they don't offer a good benefit package, if they don't service the beneficiaries well, then they lose business and move on. And someone else comes and picks up the slack. It is a good combination of public-private partnership to get quality benefits and efficiency of taxpayer dollars and a reliable benefit for Federal employees.

The President saw this as a good model to move Medicare—which is right now a one-size-fits-all Government program run out of Baltimore, MD, and here in Washington, DC. Prices are set here for all of the country—what is going to be reimbursed, what is not going to be reimbursed, what technology is going to be available, what medical technology will not be available, what drugs will be available, and what drugs will not be available. Everything is run out of central planning here.

The average time it takes for Medicare to have a new technology approved is roughly 18 months at the earliest and 3 or 5 years at the latest. The turnover rate for a change in medical technology is 18 months to 2 years. Just about the time Medicare has the approval of a new technology, it is replaced.

We are always behind. Why? Because it is a bureaucracy. Guess what. They don't have to compete for your business. If you do not like it, tough. You have no choice. If you want health care coverage as a senior, this is what you get. It is not consumer friendly. It is not patient friendly because there is no incentive to be.

We want to marry these two concepts—public and private, the good parts of both.

When the President put this plan out, some complained that what we put out wasn't detailed enough. I know many of us in the Senate urged the President not to be very detailed. His job is to provide the vision and the overall goal and structure by which we can accomplish it in very broad-brush terms. What we have been doing for the last few weeks is figuring out how precisely we get that done. It is very complicated. It is very difficult. We are working through a lot of those issues right now.

I think we took a very good step and a big step in the right direction in the Senate Finance Committee. That is the next group which I would like to congratulate—the chairman, Senator GRASSLEY, and the ranking member, Senator BAUCUS—for working together in a bipartisan way.

The President put forth a plan that he argued—and I think it has been proven out—is the basis for a bipartisan compromise.

''Mediscare'' has been used in this Chamber and across this country for far too long. It is time to get down to solving the problem. That means we have to try to put something together that brings the two parties together. The President put out a plan that lays the foundation. Now it is our job to continue that work.

I think with the vote in the Senate Finance Committee of 16 to 5, you saw that there is a foundation which has now been flushed out considerably on the Senate floor as a solid one on which to build this service. There are still a lot of problems.

I don't want to paint this as a rosy scenario and that we are going to walk arm in arm down the aisle for a bill signing in the next day or two. There are a lot of issues we have to go through. The ones that concern many on this side of the aisle and yet to be resolved are issues that go to the underlying premise of what the President is trying to accomplish.

I talked about the President wanting to add this very expensive and needed benefit onto this program but at the same time providing some improvements to the system—marrying the private and public sector so we would have long-term stability in this program.

There are concerns on this side of the aisle that while we have accomplished the first—that is, we have added $402 billion worth of new drug benefits—we may not have done enough to make sure this new system that mirrors the Federal Employees Health Benefits Plan, a combination of the public-private, as opposed to just the solely public. But this new system was written in a way for it to succeed.

We are working through that process right now to make sure we don't go forward with a plan which simply adds a drug benefit to a monopolistic, publicly run, bureaucratically run health care system—Medicare—and simply add more costs to it without the improvements in efficiency and quality that, frankly, beneficiaries deserve and that the public should demand.

We have some work to do. A lot of Members on our side are very concerned about that balance because it is important. The big stumbling block on this side of the aisle has always been of adding a new benefit that has never existed. Universally, people here believe we need to extend outpatient prescription drug benefits to seniors. But the real question is, How do we deliver that benefit? Candidly, how do we improve the Medicare system that was designed in the mid-1960s? It was designed after a 1965 Blue Cross plan that exists nowhere in the ''wild,'' if you will—only in the zoo here in the U.S. Capitol—which is Medicare. But it does not exist in the ''wild'' anymore because it couldn't survive. It became extinct because it could not compete with all the other species out there that were offering better benefits at higher quality and at lower costs.

This dinosaur—this 1965 Blue Cross plan—became extinct in the ''wild.'' But only in the laboratory of the Government here in Washington, DC, has this dinosaur been able to survive. Does it survive and thrive? No, it does not. Is it reproducing? No. It will be reproduced nowhere. The only place this will ever survive is in this environment of the Federal Government.

What we need to do is understand that there are better species out there. There are better models out there. There are improvements as to how we deliver quality care and better responses that beneficiaries need through the insurance process. We need to implement those. I would argue that we need to implement them quickly. We need to get as many people as possible into those better models. I don't see too many people driving around in a 1965 Plymouth Fury. People do not drive them anymore. They are driving newer models and technologically innovative automobiles that have responded to consumer demands and they have improved as a result.

That has not happened in Medicare. We need to get people into a much more efficient, quality-oriented model for them to ''drive'' through their senior years. That is what we are attempting to do. But if we do not do that—and in the past, when we looked at all these bills, whether it was in the last session of Congress or in previous sessions of Congress, we were never willing to get out of the 1965 ''car.'' We always wanted to keep more and more people, with more and more demands, and with there being more and more complexity, ''driving'' in this old vehicle that does not work well.

It is on its last leg. As I said before, using the animal analogy, it does not survive in the ''wild.'' We want something that can survive in the ''wild.'' Why? Because the private sector has evolved to be responsive to the needs of our people. So as new technologies come into play—where it takes 2 or 3 or 4 or 5 years for Medicare to figure out it is a good idea—the private sector, because they have the pressure of knowing people can leave their plans, can look at it and say, yes, we will reimburse this right away because it is better quality, probably better value, and it may lead to lower costs somewhere else. Medicare does not do that. It is not that they can't do it; they don't do it.

So we will have plans in place that change as medicine changes. And that quality is what seniors deserve. But we have to make sure the bill is structured to make sure these plans have the resources and don't have the regulatory ropes to constrain them to where they can't survive.

So it is a major issue. It is one that is being debated as we speak in a lot of places around this Capitol as to how we structure this system. I know there are many people on the other side of the aisle who would not like to see this system exist. They have been very clear about that. They want a continuation of the ''extinct dinosaur'' that can survive nowhere in the ''wild'' as being a model by which we can model this plan after to deliver this benefit.

Or the 1965 Plymouth, you don't see very many of them around. Why? The consumer wants something different, better, higher quality, more efficient. That is what we are trying to accomplish here. I understand there is opposition over there. I understand people want to stay with what they are comfortable with. Unfortunately, for lots of years, seniors have been scared into believing that any change is bad, that we are going to destroy Medicare or have Medicare go away. Candidly, models of cars change, animals evolve, we change based on technology, innovation, improvement, and Medicare needs to do the same. It needs to have the ability to do the same. That should not scare the American public. It should be that we give seniors the kind of quality health care system they deserve, that every other American has in the private sector who has private-sector insurance, which is available to them. So we are making a good start. We have a little ways to go.

We have to make sure that what is the highest priority on this side of the aisle—which is to have a balance between a drug benefit and improvements to the system—is maintained in this bill. I know that isn't the highest priority for many on the other side of the aisle. Thank goodness there are more than a handful of Members on the other side of the aisle who understand the need to accomplish both these goals. That is what bipartisan consensus is formed on.

I hope we can continue down that road and keep this bill centered, by accomplishing both missions, not just what one party really wants or what the other party is really seeking but both missions. If we can do that, if we can have a balanced bill, then we will pass this bill by an overwhelming margin. If we have a bill that ultimately is going to rely on a ''1965 Plymouth'' or a ''dinosaur'' to deliver benefits, then it is not going to be a bipartisan bill and there will not be any bill at all.

We need to have both. Seniors deserve both. Taxpayers deserve both. Future generations, who are going to be dealing with this unfunded liability, deserve both. And we have a responsibility to deliver that.

Mr. President, I yield the floor and 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. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. FRIST. Mr. President, while we have been in the quorum call, there are a lot of negotiations underway in terms of various amendments being brought to the floor and the ones that are currently here. While I have an opportunity, I want to spend a few moments on a couple of charts I know have helped me and I believe will help my colleagues and others who are paying attention to the debate as to why we are looking at real changes in Medicare and why such changes will result in strengthening and improving Medicare in a way that we just did not do 5, 10, or 15 years ago and why the time is now for us to act.

Yesterday, I talked a little bit about the history and the advances that have taken place since 1965, when Medicare was enacted. The advances have been huge. The point I had begun to make was that the advances in health care, health care delivery, medical technology, and science have been huge and dramatic, but at the same time the structure, the system, has been almost frozen in a 1965 model.

I will use three consecutive charts. The X axis here will be time, 1965, when Medicare was first enacted, and the present date here, 2003 or 2005. Then on this vertical axis—this is subjective—is change. It is modernization. It is advances. It is differences from 1965 to where we are today. With the third chart, I will put this together.

Referring to the first chart—this is change; this is time—Medicare was enacted in 1965. Things didn't change very much in the system until 1972, when coverage was expanded for individuals with disabilities and for a subpopulation that had been missed but was growing, and that is people with kidney failure, called ESRD, end stage renal disease. That was a pretty dramatic change in the system because we changed the entitlement nature and we expanded coverage. We are doing a little bit of that on the floor this week and next week. I will come back to that.

It was a reasonable change. In terms of overall change, it wasn't a big change. Then things went for another 13 years, to 1985, until we had the next big structural change in the way health care is delivered to our seniors.

That change—we ratchet it up a little bit here in 1985—we had what is called prospective payment for hospitals, inpatient hospitalization. So if you had a patient in a hospital, instead of just reimbursing whatever cost went through, we sat back and said: What should a patient with a certain diagnosis—say, heart disease, or it could be ischemic heart disease—if you took all the patients coming through, what is a reasonable price, looking at everything we knew at that point in time, to reimburse the hospital.

That is called the prospective payment system, PPS, for inpatient hospitals. That was an innovative change that was important to overall health care delivery in the system.

Then we had several references to what happened in 1988 and 1989. In fact, a lot of people have said to me: We will have to be very careful with what we do; otherwise, we will repeat what happened in 1988 and 1989. Here we had enactment. We passed a bill and then repealed catastrophic coverage, meaning high out-of-pocket expenditures if there was a tragic, unexpected event or an automobile accident where health care costs were just huge, that there would be some limit there. It was nobody's fault. You would have some insurance there to cap how much you take out of your pocket to pay for that catastrophic event in one's life.

Here I have a line coming up. And since we repealed it, I have a line going back down. So we attempted a pretty big change at the time, but for all sorts of reasons the system was not quite ready for it and, therefore, it was enacted and then shortly thereafter, in 1989, repealed.

Then things didn't change very much until the late 1980s and we had added a prospective payment system for physicians. I mentioned that we did it for hospitals in 1985. So again, we ratcheted up, and the system changed. It was modernized; it was improved in the late 1980s.

Since then, we had some other types of changes that didn't dramatically change the system in terms of the way health care is delivered to our seniors but did affect it dramatically. We had the Balanced Budget Act of 1997. We had what is called Medicare+Choice which is predominantly an HMO. What we are talking about in the bill on the floor is not health maintenance organizations. We are talking about a newer, more up-to-date way than HMOs of delivering care called PPOs, which is a preferred provider way of delivering care. It is very different.

This is Medicare+Choice, HMO delivery, in 1997. Today, there are about 5 million people in HMOs and Medicare, and although those numbers are falling over time, it is because there are fewer HMOs offering it because of the regulations, the way we reimburse. But the people who are in the HMOs, those 5 million seniors, are very pleased with those plans in the aggregate. We did some other prospective payment changes here but not much change.

The point of this graph is that since 1965, the Medicare system, a great system that has served people very well, has not changed very much at a time—and this is what is on the next chart—when technology, medical science, medical advances have all been really quite dramatic over this same period. Indeed, if you look, again, from 1965 to 2003, you see there has been huge growth in health care advances, both science and technology, what we know, the human genome project, delivery of care directly.

For example, in 1967, there was the first successful heart transplant and the first liver transplant. I put that on there because that is what I did before coming to the Senate. In 1969, we developed a genetically engineered vaccine. We are trying to go back and pass new legislation called BioShield. As soon as we get finished with Medicare, we have to come back to that legislation because it looks at the importance of vaccines to fight bioterrorism, SARS, and other illnesses.

In 1974, this body passed the HMO Act, a new type of delivery system. It hasn't worked out quite as well as anybody would have liked, but it was important to try to deliver health care more efficiently. In 1977, coronary angioplasty developed, where you put these stints in the heart. Before then, it had never been done.

In 1984, we talked about HIV/AIDS on the floor. I was a resident at that time, working up in Boston, MA. We didn't even know what that virus was, HIV/AIDS. Since 1981, 23 million people have died from this virus we identified not that long ago. We responded on this floor in a very admirable, bipartisan way, following the leadership of the President. We passed a public health bill that targets this HIV/AIDS virus throughout the world.

The first successful single lung transplant was in 1983.

In 1985 came preferred provider organizations, a new type of health care delivery system. Over a million people were enrolled.

I will jump up to 1998. Now 90 million people are enrolled in this entity that was invented in 1985. Remember, Medicare hadn't changed at all. Medicare doesn't have PPOs in it today, except in a few demonstration projects.

Prozac, in 1988, had a revolutionary effect on people when appropriately prescribed for certain disorders.

In 1987, there was the first cloned adult animal, Dolly. We remember that. It brings up all sorts of issues we will be coming back to eventually here, including the appropriate role of the cloning, stem cells, and all of the issues that are before us.

In 1997, 85 percent were enrolled in managed care. It did not exist in 1965 or 1970. Yet there was 85 percent enrollment in 1997.

The human genome project—the Senator from New Mexico just walked in and he is, in my mind, the father of this project. It finished 2 years ahead of schedule, under budget. It really started as an idea here, or was captured as an idea on the floor of the Senate by the distinguished Senator from New Mexico and others as well. Since that point in time, over a 10-year period, there are 3 billion bits of information we now know that we didn't know 10 years ago. There have been tremendous advances, and it opens up a whole new spectrum of innovation, creativity, and technology to benefit untreatable diseases today. This human genome project is exciting.

The challenge we have today is to have a Medicare system that can capture that innovation, that technology, and what we learned in better health care delivery, and right now Medicare doesn't do that. Medicare is not designed to do that. Thus, as we look ahead, we need to strengthen and improve Medicare. Now we have the opportunity.

If you put these two charts together, it explains why we are on this bill and why we are working hard to negotiate this bill in a way that is bipartisan and looks at health care security for seniors. That is what we want on both sides of the aisle. Shown in red on this chart, Medicare has not changed very much over the last 35 years. Yet we have health care delivery, and science and technology, pharmaceutical research, and heart surgery, lung surgery, and coronary artery bypass surgery wasn't done in 1965, period. Medicare has not changed at all. Health care advances have changed dramatically and will change even more, and it is this gap—for our seniors we are talking about—that we are addressing.

How can we sufficiently change Medicare so the line will come up and we can be more in sync with health care advances and health delivery advances with a system that is flexible enough to capture them—whether it is treatment for mental illnesses or whether it is preventive care. There is no preventive care in Medicare today. There is no protection for catastrophic coverage. There is no chronic disease management. Yet our health care delivery system knows that is the most effective way to treat seniors and, indeed, everybody in terms of health care.

So what is the response? The gap is what conceptually has changed. I don't have numbers over on this side of the chart because it is concepts. But at least what we are trying to do is bring that forward. What are we going to do? I will go through this quickly. We have seniors today—this is Medicare today—who have two choices. There is traditional Medicare, with 35 million in the program. These are seniors and individuals with disabilities, those two groups. Five million people are in Medicare+Choice. We brought that forward about 5 years ago. Those 5 million are pretty satisfied. They are mainly HMOs, that 5 million. So 35 million are in traditional Medicare, what we call fee for service. It is this traditional Medicare that really has not changed

much since 1965. There have been some changes but not many.

The next question is, if this legislation is passed, after we amend it and pull things together, what are we going to have in 8 months or a year from now? That will be this chart. It is going to be the same format for the next two charts. We will have, again, traditional Medicare, with 35 million people, and 5 million people in Medicare+Choice. This will alter a little bit. The addition to this will be the prescription drug card. Maybe 6 to 9 months from the time the bill is signed, every senior will have access to a prescription drug card that will allow that senior to go into a pharmacy, a retail outlet, or a mail order house and, with that card being used, will be given a discount of maybe 10, 15, 20 percent. That will be within—I don't know—6 to 8 months when that will take place, while the rest of the system is being modernized. That is in 2004.

People need help now. We can give them help now. I mentioned some figures earlier. If you are low income, this prescription drug card can be used just straight right off the top as a benefit. Then the last chart——

Mr. DOMENICI. Mr. Leader, every time you pointed to this group, the most important fact about it is they don't have any prescription drugs. When you talk about the other groups, they may have. But this group doesn't have any today.

Mr. FRIST. That is correct. In response to the distinguished Senator from New Mexico, he is exactly right. We are talking about health care security for individuals, and 35 million seniors who are choosing this particular plan today do not have access. They have no choice. Even if they wanted it through Medicare, they cannot get it. That is the benefit—the prescription drug card—that we are initially going to reach out with to help every single senior.

People with low incomes will get a lot more help than wealthy people. Every senior will have access to the prescription drug card. On the last chart, we will show what happens 2½ years from now. This will be Medicare in 2006. This is exciting. Seniors, after using the prescription drug card about 2 years, will stop using that because, by then, we will have designed a system that does the following:

Those people, just as the distinguished Senator from New Mexico said, who chose traditional Medicare can keep it. They can keep exactly what they had, but they will have access to a new prescription drug insurance plan. They don't have this now. We are going to add that. Some people say they don't want all these choices. ''I am fine, Dr. Frist, Senator FRIST. Let me keep what I have. I am 80 years old and I just want exactly what I have. I am doing fine.''

We are going to be able to tell them they can keep what they have, but if they would like, they can have access to prescription drugs. The green here represents prescription drugs. Medicare+Choice, which is mainly HMOs, already has prescription drugs—almost all of them. The value is about $600 today, if you choose this. Only 5 million people chose this, and 35 million are in that. We will really double the value. If you want to stay in Medicare+Choice, the actuarial value—I really hate using these words—you are going to get this much benefit, and you are going to have this much benefit.

Or—this is the exciting part—we have the entities that build upon all the rapid advances of the last 20 to 30 years that is state of the art. That is why it is so important to get the best Democrats have to offer, the best Republicans have to offer, the best of the private sector, the best of the administration to make sure this is designed well with state-of-the-art technology, the most modern, the fairest, the most equitable—this is where a lot of the debate is going to be.

People can stay in traditional Medicare, choose Medicare+Choice, or choose these new PPOs. The PPOs will have prescription drug insurance as part of integrated health care and coordinated care where they have teams of doctors and chronic disease management, with nurses who are integrated into a team who may call a patient once a week to make sure they have not picked up too much weight. When you pick up weight, that means you are retaining water, and you could develop congestive heart failure.

They actually will have chronic disease management and preventive care. Remember, there is no preventive care in Medicare. There is no coordination in Medicare. If you have chest pain, it may be esophagitis or indigestion, and you might go see BILL FRIST, the heart surgeon, because it is in your chest. That is what you do in Medicare. You go to BILL FRIST, the heart surgeon. I know a lot about heart surgery and fixing a heart, but I do not know that much, to be honest with you, about indigestion. Yet people will come see me when I practice. That coordination is fragmented, it is disjointed, and that is what we will give away by giving this option of the PPOs. That is pretty much it.

The debate is how many people will move from traditional Medicare to Medicare+Choice or PPOs. Should there be incentives for people to move since we know PPOs are a higher quality of care in terms of objective management?

It only makes sense, if you coordinate people's care, you have preventive medicine built into it and chronic disease management. It is going to be hard to argue that the care is not there. But what sort of incentives? That is where much of the debate will be.

Initially, the debate was maybe the prescription drug package over here should be more available than this one and people will gravitate. The underlying bill does not have that happen. This Medicare benefit for drugs is the same as the Medicare+Choice benefit and the same as the PPO benefit.

That is the way I look at this issue. It keeps it simple, which I need as we go through this debate. Now we are down to filling in the details to make this system work.

I am very optimistic that this will be what seniors have access to in 2006, but it will not happen unless we do our work over the next 10 days.

Mr. DOMENICI. Will the Senator yield?

Mr. FRIST. Mr. President, I will be happy to yield to my distinguished colleague.

Mr. DOMENICI. Mr. President, first, I was watching the majority leader's discussion in my Senate office. I was so pleased that he chose to give the history of Medicare and his personal understanding of where we are that I thought I should come down and be present, at least as he finished.

I congratulate Senator FRIST. I am going to say something that is perhaps outrageous. I do not think it is possible that previous Senates, as they passed great health care programs—Medicaid, Medicare—or when they passed Social Security in the Franklin Roosevelt days, I do not believe there can possibly be a CONGRESSIONAL RECORD that has an explanation of something as complicated as this that is as competent, as good, as understandable as this, and I commend Senator FRIST for that.

First of all, Senator FRIST understands the issue. Second, we are very fortunate that he happens to be a great doctor who decided to be a Senator. That does not happen very often either in history. Combine the two, and then we were pretty fortunate—we Republicans, and then the Senate—that we elected him as leader.

Frankly, as his good friend, the truth is, Senator FRIST had not been around here long enough to be the leader. But we picked him anyway. How lucky we are. Frankly, he has not missed a step. This year will end, as it started, with one success after another because of his leadership.

This bill will pass. Seniors will know more about this program than any comparable program because of Senator FRIST, because of the way he has handled it. As a matter of fact, those who talk to America on all the talk shows, whether they are for this or against it, whether they call it too liberal, too generous, whether they call it wrongheaded, whether they call it a Kennedy program that Republicans have been suckered into—whatever they are saying out there, the truth is, it is very bipartisan, and there is nothing wrong with that.

I was telling Senator FRIST the other day that Social Security and Medicare heretofore in our history were not passed with equanimity of support.

However, once they were passed, regardless of what has been said partisan-wise out there, the support has been just about the same by Democrats and Republicans for Medicare funding and Social Security funding. We have all agreed to save Medicare and save Social Security. It is just about Democrats and Republicans doing the same thing because it seems that somehow the seniors of the country bring us together. We end up being one, and that is happening here.

The Senator would admit, would he not, that we are taking a chance because we are drafting something enormous, and a huge portion of it is going to have to be administered by both private companies and by the Government. It would seem that we are trying in these models to give our seniors choice, to build into a model something we have left out of medical practice, and that is preventive medicine and group practice.

The majority leader gave an example of where perhaps somebody who is sick will actually be treated by a team if they are in a PPO. That does not happen today unless it is an extraordinary fee-for-service doctor who has a lot more than just a doctor's office but has all the equipment and two nurses who are treating people. We also are hoping people will say they are comfortable, but maybe they ought to move over and try this broader scope of coverage.

I will tell all of my colleagues that my good friend, the leader, knows a lot about my ailments. I have been pretty sick for the last few years; in fact, for 4½ years. I have something wrong with my hand that causes unabated pain and the leader has been very helpful to me. The other day he was explaining the PPO system to me. He slipped and talked to me as one of America's senior citizens. He started laughing as he said it. He said: Well, you are, aren't you?

I said: That's true, I am. I'm 71.

He laughed and said: It would not be too easy to tell you, Senator, just move on over and get into a PPO. I said to him it would not be easy. I want to be honest, it is not going to be easy for a lot of senior citizens.

The point is, they are going to find out from their neighbors, their friends, through their relatives, and, if it is done right, from their doctors, that moving from traditional Medicare to the PPOs, the group coverage which will also have the same prescription coverage, is a better way for more Americans.

That is our hope. As a matter of fact, I think I am correct that is the hope of the system. That has to happen if this new system is going to work properly. I ask the Senator, is that a fair assumption?

Mr. FRIST. Mr. President, in response, I believe it is. Some people would say, no, we can make everything work and improve on everything. In terms of the demographic shift, the fact is, we have doubled the number of seniors. It is unprecedented. It never has happened in the history of this country, or indeed in the world, where a country has doubled the number of seniors over a 30-year period, going from 40 million seniors to approximately 78—really about 37 million to 77 million. At the same time, we have not half but a diminishing number of workers paying into the system.

I argue that this is done on quality of care. I just know if one gets into a system where they have a doctor talking to a nurse, a doctor talking to a specialist, that they have preventive care, they have a nurse who specializes in chronic disease management—which is the whole purpose of this coordinated care, that they are getting a higher quality of care.

In addition to that, it is a more efficient system. Choice is going to allow people to go to the systems that give the best care, and with that it is sustainable over time because it allows an element of the marketplace to work.

The marketplace is nothing more than rational people making rational decisions, and it might be to stay in traditional Medicare. But the argument would be if someone is getting better care over here and better value over time, the PPO model will attract people.

The other point I should at least mention, and the reason why I know it can work, is that people who are near seniors say they are 64 years of age and they become 65 years of age about 80 percent of them have similar type plans, although not exactly. They have employer-sponsored plans. So when they get to be 65—not the Senator from New Mexico because he is in the Federal Government and he is already in a plan like this. We have that advantage. We want to give it to our seniors. But for the person who is 64, soon to be 65, when they make it to 65 they give up their employer-sponsored plan and have to take this traditional Medicare. So what we are going to say is when someone hits 65——

Mr. DOMENICI. They can stay there.

Mr. FRIST. They can keep that sort of plan. That is why I am so confident that over the next 30 years this will work because that is what the Senator has, and what I have, and what most employer-sponsored plans are. But that is what we are denying seniors and those with disabilities. That is why underneath I am so confident this can work.

We have to make this work. We have to improve it and that is what we can do over the next 8, 9, 10 days.

Mr. DOMENICI. Does the Senator remember—well, he was not in the Senate yet.

Mr. FRIST. I was probably in the operating room.

Mr. DOMENICI. He probably was. The Senator was making those flying trips back and carrying the hearts so he actually could transplant them in a timely manner. But when we first started talking about HMOs, there was a big battle going on between whom? The doctors of America and the legislators because the doctors were not accustomed to HMOs. The doctors were all accustomed to what was called traditional care; that is, they themselves ran it. They did not have any kind of group practice. They did not have any kind of clinical practice. As a matter of fact, we used to have to go home as legislators and meet with doctors and try to convince them that the goal was not to destroy the medical practice but rather to give them an opportunity to practice in a different way.

Mr. FRIST. Yes.

Mr. DOMENICI. Frankly, what was being said in this Chamber—not as well as the Senator from Tennessee says it and not with as much knowledge—but what was being said was everyone would benefit if we went to the HMOs. The patients will get better care. Prevention has a better chance of inserting itself into the system than the traditional way. We have now—and not because we are great thinkers and because America plans things very well, but we have moved in the direction of PPOs that is professional units—and HMOs, which are privately managed delivery groups, they are no longer a surprise to the doctors. Some still sit home, like in my State, and wonder what is happening to the world. It is passing them by and it is no good.

The truth is, millions are trying managed care and hundreds of thousands of doctors are practicing that way.

Mr. FRIST. Mr. President, if I could just briefly respond, and that is where this Medicare+Choice is really the HMO model, although not for everybody.

Mr. DOMENICI. Correct.

Mr. FRIST. We have learned a lot from it since 1974. The point is Medicare has not changed.

Mr. DOMENICI. Right.

Mr. FRIST. We can preserve the good of that model but, based on what we know in 2003, add state-of-the-art, quality, partnering-type, coordinated, integrated delivery of health care. That is a great example of traditional Medicare in 1965. We opened up the Medicare+Choice and 5 million people went with it. That is one type of plan. It is not for everybody now because, to be honest, a lot of patients want more choice, and therefore we give them a system that has more choice. That is really what this legislation is all about.

Mr. DOMENICI. The other thing I wanted to close with, and it seems to be quite obvious, is there is no question but that some of our best Senators have already, or will speak about this plan, and they are worried. They will speak with trepidation and principally they will talk about two things, but the big one will be it is going to cost more than we think. Can we afford it? There is another question that is asked around, and that is: Are we giving benefits to the right groups of people in the right quantities?

I served on the Budget Committee for 28 or 30 years. I was chairman 14 times. When I left the Committee, I could have given a little speech and said, here is what is going to happen over the next 10 years, and here is what is going to happen over the next 15 years. Of course, I could have predicted cycles, that we are going to have big deficits, and we are going to come out of them and we are going to get bigger ones. I probably could have talked about the fear of the baby boomers and our ability to pay what we have said we are going to pay them when their day comes. That is lingering and that is kind of washing its way through this debate.

The question is not, will we, because we will pay. The question is, When we get there and we have to make all of those payments, how are we going to pay for it? Frankly, I do not think that is a reason to say we should not do this. We do not know whether in 15 or 20 years we will be able to have a balanced budget. In fact, if someone were to ask me—and the Senator is not asking me—I would say in 15 years we probably cannot, regardless of the economy.

The choice is to do something for the seniors on medication, which we know we have to do. Or we can choose to do nothing because we are worried about how we are going to handle this. Or we can say when that day comes there will be another great confrontation, and it will very simply be a confrontation about how do we change this, for it is not written in stone like the Ten Commandments? How do we change them if we have to? Or, God forbid, how do we change the fiscal plan of the country, whatever that is, in terms of putting a tax to pay for what?

Now, it is not embarrassing to admit that. It seems to me that I ought to say that. I know that. I am very lucky to know that, and it cannot be that I am wrong. People cannot say I should not tell Americans that, because it is true.

I was fortunate. I have heard every economist. I probably deserve a degree in economics. I did not take economics. I took chemistry and physics.

I have heard Alan Greenspan 20 times in my life. I called him up on the Energy bill. When I need somebody to tell the world there is a shortage of natural gas, I call an expert. I say Alan Greenspan will find out if it is true. And sure enough, he will tell the world. When he does, they listen.

He tells Members the same thing I am talking about here. But it does not mean we should not do this. How can we leave a system that has seniors without prescription drugs because we have questions about what will happen in 20 years? We don't. We move on ahead.

The Senator mentioned in passing the mentally ill coverage. I don't intend to inject that here. But we cannot forget about the mentally ill in our country and the fact they are not covered by insurance because we have problems. We cannot say, well, we have problems, so forget about them. Because the system made a mistake and did not include them, we cannot run around and say we made a mistake. Half the people that are in the gutters of America are there because they are homeless, because they are mentally ill, because there was no insurance when they were little kids and they end up from about 15 years of age onward doing nothing. We cannot say there is no solution.

To that end, I thank the Senator for his assistance with reference to that group of people.

Last, your eloquent speech about the greatest wellness research program in the history of mankind, that is what I call the program the Senator described when we mapped the human genome. There is no greater scientific wellness research program. It delivered to the hands and minds of the scientists of the world the chromosome makeup of every serious disease known to mankind. They said, as if to challenge the scientists, Here it is, here is where they are located within the chromosome system; solve it, scientists. What a fantastic thing to have been a part of.

I thank the Senator for commenting on my involvement.

Mr. FRIST. I take 1 minute. I know we have other Senators on the floor and we will turn to those Senators.

The human genome project which I mentioned a few minutes ago really happened. Completion really took 10 years. There are great advances that will come out of this mapping of the human genome. It is like a phone book we did not used to have, but now we have all that information. There will be tremendous advances out of that.

The problem with the Medicare system, which has not changed very much, is those new advances and what we learned cannot be rapidly incorporated into Medicare. I talked earlier about heart disease. Most people know cholesterol is important to heart disease. The cholesterol screening test is not covered by traditional Medicare today. Before seniors could benefit from heart transplants, the private sector was doing heart transplants. It took 6 years before seniors had access to that lifesaving operation.

The micromanagement out of Washington, DC, means new technology is slow to come into the system because it is so rigid. If we are going to capture the great advances, we need a system that is receptive, that is flexible. That is what the PPO model does. The demographic shift is critical.

The Senator from New Mexico is the expert in this body, having chaired the Budget Committee in such an admirable way, a distinguished way for so many years. Whatever we do on this floor, we have to look 10 years out, 20 years out, 30 years out because of the demographic shift. This plan does that.

In terms of the delivery program, it can be sustained over time. Traditional Medicare right now, because of its rigidity, means a doubling in the taxes. Maybe we can do that as we go forward. By giving traditional Medicare improving benefits, and allowing prescription drugs, allowing flexibility, allowing choice to be part of that, it can be sustained long term.

I appreciate the comments of my distinguished colleague from New Mexico. I appreciate the patience of the other Senators on the floor. This is an important issue. Every now and then it pays to walk back and look from 30,000 feet at what is going on below. What goes on below determines ultimately what goes on at 30,000 feet. I have enjoyed the opportunity to do that.

The PRESIDING OFFICER (Mr. BUNNING). The Senator from Michigan.

Ms. STABENOW. Mr. President, before my esteemed colleague from New Mexico leaves the floor, I commend him for his leadership on the issues related to mental health and mental health parity. No one has been more of a champion than the Senator from New Mexico on these issues related to mental health. I have been pleased since being in the Senate to cosponsor those efforts. I congratulate the Senator and urge him on as we work to provide mental health parity which is another very important health care issue we need to address in the Senate.

I will speak in general as it relates to this debate regarding prescription drug coverage and Medicare. Seeing my friend from Wyoming, I commend the Senator from Wyoming, Senator ENZI, who spoke on an amendment dealing with community pharmacies which is important to pass. I am supportive of it.

I did not have a chance to say that yesterday and wanted to take a moment today to commend him for his work. Part of providing choice for seniors is to make sure they can have the same choice from their community pharmacy as mail order and a number of other issues dealing with the importance of community pharmacies. Congratulations for his work in this area.

I take a moment to speak about my perspective relating to where we are and the issues of Medicare and many of the comments I have been hearing this morning that I respectfully share a difference on. I believe millions of Americans who have benefitted from Medicare have a different perspective about the choice of traditional Medicare—dependability, reliability, ability to choose your own doctor, the fact it has been there for our seniors and people with disabilities since 1965—have a different view versus wading through the insurance bureaucracies. There are lots of bureaucracies we can talk about, but certainly Medicare is not alone in having a bureaucracy. Anyone who has had to wade through insurance forms or attempted to wade through questions from our insurance companies certainly would not say that is less bureaucratic or less paperwork. I find it interesting to hear comments lauding

the process of working through insurance companies. If you ask anyone when they have a claim of any kind whether or not that is a streamlined, easy process, usually it is not.

When I hear about how traditional Medicare does not cover preventive services or has not been updated to cover other services, it is very important to note that it could. Traditional Medicare can cover preventive services. Since arriving in the House of Representatives in 1997, we have gone from paying for mammograms every other year to paying for mammograms every year. We have added other screenings. We can continue to do that. There is nothing about prevention that cannot be done through traditional Medicare. There is nothing relating to coordination that cannot be done through traditional Medicare.

I am in a fee-for-service health plan myself through Blue Cross/Blue Shield, an integrated plan. I am able in a fee-for-service plan to have integration. We can do that, if we want to do that, if we want to strengthen Medicare. The question is where we want to go with health care. If we want to strengthen traditional Medicare, we add preventive measures. We do prescription drug benefit within Medicare so it is coordinated. We are certainly not adding to the coordinated nature of Medicare by saying you can receive an integrated health care approach through an HMO or PPO or other plans, but we are going to, instead, offer only private insurance if it is available in your community. You can't have an integrated approach through traditional Medicare.

That is a conscious policy choice. It is not that you can't.

What we are really debating here is the very same debate that we had before Medicare came into being. I urge colleagues to go back and look at the CONGRESSIONAL RECORD and read the debate about what occurred before 1965. There were two different philosophies. So many years later it is interesting to me the very same two philosophies exist.

One philosophy, at that time, that of my Republican colleagues, is we should not have Medicare. It is a big Government program. What we should have is private insurance. People should buy from private insurance. At that time about half the seniors in the country could not find private insurance. Much like today, in many parts of the country it was not available to them. Certainly, prescription-only policies are difficult to find. Certainly, in Michigan an HMO is hard to find. If you live anywhere but metro Detroit, you don't have an option such as that. So, much like today, it was not available or not affordable. So the decision was made. It was championed by the Democrats in the Congress. I am proud of that. They were joined by, I believe, 12 Republican Members at the time who voted to make the decision, as an American value, that we were going to make sure older Americans and people with disabilities had access to health care they could afford, quality health care, and they would have access to it regardless of where they lived in the United States.

That was an important value statement made in 1965. I think it is fair to say it has radically changed and improved the quality of life for millions, tens of millions of American citizens, that decision in 1965.

Since that time, it is absolutely true that health care has changed. Boy, has it changed. There are exciting new things that have happened. There are new treatments. There are new miracle drugs. You can take a pill instead of having heart surgery. Our esteemed leader of the Senate talked about those changes and certainly we all agree with those changes.

The question is, Do we change and improve and strengthen Medicare to reflect that, or do we move to a different system? That is a conscious choice. We can absolutely do everything that is being talked about here through traditional Medicare if we choose to do that.

Mr. President, 89 percent of the seniors are under traditional Medicare; 11 percent have chosen to go into managed care available in their area. I share the desire to make sure options are available to seniors at their choice.

But to somehow say we have to abandon the insurance system called Medicare that has worked because it is outdated is not accurate. The accurate statement is we choose not to update Medicare. We choose not to strengthen and modernize Medicare because we want to go back to the private sector, private for-profit insurance and managed care. That is a conscious choice. I find it interesting that is the very same debate that took place when Medicare started.

Again, there is a difference in philosophy of different parties. I believe we have seen the philosophy at work back since the mid-1990s to weaken Medicare, so it is easier to criticize. What do I mean by that?

We had a Speaker of the House, a well-known Speaker back in the mid-1990s, say we cannot eliminate Medicare directly—I am paraphrasing—but, instead, we will let it wither on the vine.

At that time, there was a lot of strong support for going to managed care, HMOs, under Medicare. At that time the person who now leads the Center for Medicare and Medicaid said there would be a California gold rush into managed care. People would be leaving in droves, going to managed care because it was so much better than traditional Medicare.

In fact, that did not happen. In the areas where it did happen, such as Michigan—which I have talked about many times on the Senate floor—we have had over 35,000 seniors dropped because the private HMO made the business decision to pull out of the market and not to cover Medicare beneficiaries anymore. Those individuals went back into traditional Medicare.

But what happened in the 1990s? We had a balanced budget agreement. I believed it was important. I supported that in 1997. But since that time, we have seen cuts, very deep cuts, deeper than we were told would happen, to providers who cover Medicare beneficiaries, people who provide critical home health services, people who provide critical nursing home coverage; our hospitals, our teaching hospitals, our doctors, nurses, physical therapists—all of those who provide health care. We have seen deep, deep cuts.

We have seen rural hospitals and urban hospitals closing. We have seen tremendous cutbacks, more paperwork, less funding. We have seen a crisis. Again, this was due to policy decisions to pull money away from Medicare, to underfund Medicare. My concern is that essentially Medicare has been set up by underfunding it, and then those who do not support Medicare saying: See, it doesn't work; not funding preventive care and saying: See, we don't fund preventive care. See, it is too bureaucratic. All those things could be fixed if there was a commitment to Medicare, if there was a commitment to a program that is a great American success story.

Let me just say in conclusion—I see colleagues on the Senate floor I know wish to speak—I think it is important in this debate that we be very honest with the American people about what the real debate is. It is not that Medicare has failed. It is not that Medicare cannot be improved upon and modernized. The debate is a philosophical one, an ideological one. There is a difference in view where those now in the majority believed, before Medicare, and believe now, that we are better off with a private for-profit insurance company model.

I am also deeply concerned when I continue to hear that somehow we cannot afford to continue with Medicare anymore because of the demographics. I have two points about that. I said this before, but the evidence is overwhelming. Medicare's administrative costs are less, and they are growing at a slower rate. Its costs are less right now than those of managed care HMOs. Every independent study shows there is no evidence that when you bring in a private for-profit insurance company that needs to make a profit because they are in the private sector, the for-profit side of the world, that somehow that brings more money for health care—when they have to take a piece of that for administrative costs and for profit, and so on. In fact, it is just the opposite. The majority of health care in this country, the majority of hospitals, the majority of home health agencies and nursing homes are nonprofit so that every dollar goes into health care because health care is not an option. It is a critical necessity for our people. That is really the debate.

The other piece of the debate is another question of values and priorities. We continue to see trillions of dollars

being given in tax cuts as a priority to a privileged few in this country, instead of focusing on shoring up and modernizing health care with a real, comprehensive prescription drug benefit, and instead of investing in education and innovation in our country to grow the economy through greater productivity. These are conscious choices. The fact that this is not a very good benefit and the fact we are limited in scope is a conscious choice by this body, by this Congress, and by this President, which says Medicare and health care is not as important as another round, and what will be coming, another round and another round of tax cuts for the privileged few of this country.

I will just say in conclusion that as we speak I believe we need to talk about the fact that these are conscious choices being made. I for one believe all the evidence shows we can strengthen and modernize and update Medicare in a way that our seniors want, need, and deserve.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

Mrs. DOLE. Mr. President, I rise in favor of a Medicare prescription drug benefit. We live in different times now. Thirty-eight years ago when the Medicare Program was created, most people were treated in hospitals. Many illnesses were untreatable, and the average lifespan was shorter than it is today. But we have made great strides since then. Today people are living longer, better, and healthier lives. My own mother turned 102 years old last month—something perhaps she never even imagined. But new medical technologies and advanced drugs have made it possible for many of our elderly to live productive lives for many years.

Unfortunately, the high cost of these life-sustaining medications is preventing many of our seniors from reaping the benefits of these advancements.

The elderly in my State of North Carolina have been hit particularly hard. The State's Division of Aging estimates that one-half of North Carolina's residents aged 65 and older have no prescription drug coverage.

As I traveled our 100 counties, I have heard their stories. They are cutting their pills in half to make them last longer—a dangerous practice that can lead to unanticipated drug reactions. They are sacrificing groceries so they have money to buy the drugs they need. Even worse, far too many of them are simply going without needed drugs.

Many of North Carolina's seniors have even been forced to go back into the workplace from retirement—often with an ailing condition—just to earn some income because of prescription drugs.

I talked last night to a woman in Clayton, NC named Kathy Roberts. She retired after 13 years of working at Wal-Mart with dreams of spending time with her grandchildren, but a heart condition ran up medical costs. Kathy had soon lost $29,000 in savings. She recently returned to her job at Wal-Mart for the extra money. But because she is only working part time in order to keep her $700 a month Social Security check, she is ineligible for the health insurance benefits Wal-Mart gives to its full-time employees. Her prescription drugs cost $170 each month.

In Mecklenburg County, officials recently completed a report on the status of seniors there. The study found that 45 percent of older adults said the high cost of prescription drugs made them decide not to take a medicine as frequently as prescribed. Forty percent had not purchased a prescription because of costs, and more than 15 percent said they put off paying for food, rent, or utilities to buy medicine.

This is simply not right. Our elderly deserve better treatment. This Government made a promise to our seniors when the Medicare program was created, and we should keep our promise.

This year we have our best chance yet to get a prescription drug benefit signed into law. It is an opportunity that should not be allowed to slip away.

I have been reviewing the prescription drug plan passed by the Finance Committee as well as proposals put forth by other Senators. The Finance Committee legislation commits $400 billion over the next 10 years for a benefit. It is a voluntary program, something I have long advocated. But I have concerns. While the legislation adds a drug benefit to Medicare, it does not make sufficient changes to strengthen and improve an outdated program. None of us want to add a benefit that is simply going to send Medicare's bills through the roof as soon as the baby boomers retire.

Just 3 months ago, Government trustees reported Medicare was 4 years closer to insolvency than expected. It is projected to start paying out more money than it brings in in the year 2013. With Medicare so close to the brink of insolvency, shouldn't we look more closely at ways to improve this aging program?

This bill provides a prescription drug initiative—an enormous change. But in terms of improving and strengthening Medicare, it simply does not go far enough.

For instance, the bill does not do enough to eliminate the mountains of paperwork and red tape that discourage doctors from participating in Medicare—100,000 pages of regulations, according to the Mayo Clinic. Where is the regulatory reform Medicare so desperately needs?

There is also a need to provide for more disclosure among our pharmacy benefit managers and plans. The Senate should consider amendments such as that offered by Senators ENZI and REED which promote greater transparency and require plans to disclose how much of the rebates from drug manufacturers are being passed on to consumers. We must seek to provide a prescription drug benefit that maintains fiscal responsibility, too.

There are also concerns that this drug benefit will cause private insurers to drop coverage. The Congressional Budget Office estimates that 37 percent of employers would be inclined to terminate prescription drug coverage for retirees. This would shift those retirees into the Government-sponsored system and further drive up costs of the program. Our Nation cannot afford that. The budget is already being stretched because of national security concerns.

The Senate must ensure this program stays within the cap of $400 billion over 10 years we agreed to in the budget resolution.

I intend to spend the next several days listening to the debate and further examining proposals. I hope we can find ways to address these issues so we can pass a benefit for our seniors this year without creating a system that will balloon into a tremendous burden for future generations.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I call for regular order.

The PRESIDING OFFICER. The Senator's amendment is the regular order.

Mr. ENZI. Thank you, Mr. President.

AMENDMENT NO. 932, AS MODIFIED

Mr. ENZI. I send a modification to my amendment to the desk.

The PRESIDING OFFICER. The Senator has that right. The amendment is so modified.

The amendment (No. 932), as modified, is as follows:

(Purpose: To improve disclosure requirements and increase beneficiary choices)

On page 57, between lines 21 and 22, insert the following:

''(3) DISCLOSURE.—The eligible entity offering a Medicare Prescription Drug plan and the MedicareAdvantage organization offering a MedicareAdvantage plan shall disclose to the Administrator (in a manner specified by the Administrator) the extent to which discounts, direct or indirect subsidies, rebates, or other price concessions or direct or indirect remunerations made available to the entity or organization by a manufacturer are passed through to enrollees through pharmacies and other dispensers or otherwise. The provisions of section 1927(b)(3)(D) shall apply to information disclosed to the Administrator under this paragraph in the same manner as such provisions apply to information disclosed under such section.

''(4) AUDITS AND REPORTS.—To protect against fraud and abuse and to ensure proper disclosures and accounting under this part, in addition to any protections against fraud and abuse provided under section 1860D–7(f)(1), the Administrator may periodically audit the financial statements and records of an eligible entity offering a Medicare Prescription Drug plan and a MedicareAdvantage organization offering a MedicareAdvantage plan.

On page 37, between lines 20 and 21, insert the following:

''(C) LEVEL PLAYING FIELD.—An eligible entity offering a Medicare Prescription Drug plan shall permit enrollees to receive benefits (which may include a 90-day supply of

drugs or biologicals) through a community pharmacy, rather than through mail order, and may permit a differential amount to be paid by such enrollees.

Mr. ENZI. Thank you, Mr. President.

I thank the Senator from North Carolina for her comments about the amendment and appreciate her support. I am going to try to convince everybody else that support is also warranted.

I have offered a modified version of amendment 932 to the original one yesterday on behalf of myself and my distinguished colleague from Rhode Island, Senator REED. Senators PRYOR, COCHRAN, and CHAMBLISS also join us on offering this modified amendment. I welcome their cosponsorship and support.

These modifications ensure the amendment will not add to the cost of this Medicare bill, which is a concern I share with Chairman GRASSLEY and a great many of my colleagues.

I thank the Senator from Iowa for his willingness to work with me to address the concerns of our seniors and pharmacists.

The heart of this amendment remains the provisions that would ensure fair prices for consumers and fair treatment for local pharmacists under a new Medicare prescription drug benefit.

To ensure reasonable drug prices for seniors, the amendment would hold Medicare drug plans and Medicare Advantage organizations accountable for passing on to their consumers a fair portion of the rebates, discounts, and other incentives the plans may receive from drug manufacturers and other sources.

The amendment would require disclosure of these incentives to the Federal Government. It would also clarify that the Government may audit the records of these plans and organizations to ensure compliance with this disclosure requirement. The amendment would not, however, make these disclosures part of the public record. This is certainly not our intent. The amendment simply ensures that our corporate partners are held accountable for sharing with our seniors the savings they generate.

To ensure fair treatment for the pharmacists in our communities, the amendment we are offering would prohibit Medicare drug plans from implementing restrictions that would steer consumers to only mail-order pharmacies. It would require Medicare drug plans to allow local community pharmacists to fill long-term prescriptions—long-term prescriptions; not just 30-day ones but 90 days as well—and offer other services they are equipped and licensed to provide.

Seniors trust their local pharmacist, and they should be allowed to keep that relationship in place under this bill. This drug benefit should not force them to choose a mail-order house when a pharmacist who could provide the same or better service is right down the street, and they are used to dealing with them.

This amendment would permit a Medicare drug plan or Medicare Advantage organization to charge a different cost for a mail-order prescription versus a prescription filled by a community pharmacist. This happens today in many health plans. As an example, one health plan for Federal employees charges a $10 copay for a 30-day prescription filled at a local pharmacy but charges a $20 copay for a 90-day prescription filled through a mail order. That is a $10 savings. This would allow the local pharmacist to offer the 90-day prescription so the consumer could take advantage of the same reduction in copay.

Under this amendment, Medicare drug plans could still charge different copays, but the plans could not prohibit a local pharmacy from filling 90-day prescriptions.

I know some of my colleagues are concerned that seniors may get confused. Actually, if they can get through the rest of the bill without being confused, they will not be confused by this. But some people are concerned that may happen or that they may pay more than they should for their drugs. In response, I would say the Finance Committee's bill clearly states that seniors cannot be charged more than the negotiated price of a covered drug.

The bill is also very direct in its expectations of Medicare drug plans. The bill would require plans to provide clear information about copayments and deductibles. This information would have to include details on the differences in cost between mail-order and retail prescriptions.

I think seniors and their families are very smart about drug costs, and they will take factors, such as different copays, into account when they make a health care decision.

I am sure Medicare drug plans will encourage seniors to use mail order, just as health plans encourage us to use mail order. What this amendment would do is give seniors the option—the option—to use their local pharmacists.

The bill already requires health plans to give seniors accurate information on the costs of their options. From that point, I think we should trust seniors and their families to make the decisions that are best for them, without arbitrary limitations on services that steer seniors in one direction or the other.

Again, I thank Senators REED, PRYOR, COCHRAN, and CHAMBLISS for joining me in offering this modified amendment. The sponsors of this bill appreciate the role local pharmacists play in helping all Americans manage their medications, especially the elderly and the sick, who need the most advice.

As I mentioned yesterday, Senator REED and I worked last week to pass a bill to address the pharmacist shortage through the Committee on Health, Education, Labor and Pensions. We agreed to work together on that bill to ensure our aging population has access to the knowledge of pharmacists on how to use a new Medicare drug benefit appropriately and safely.

As highly educated professionals, our pharmacists know how important drug therapy is in helping seniors live longer and better lives, and they want to support this bill. In fact, many pharmacies and pharmacists are supporting, and will support, the bill, in part because of this amendment.

The National Association of Chain Drug Stores and the Food Marketing Institute support this amendment. I ask unanimous consent to have letters of support printed in the RECORD.

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

FOOD MARKETING INSTITUTE,
Washington, DC, June 11, 2003.

Hon. CHARLES GRASSLEY,
Chairman, Senate Finance Committee, Washington, DC.

DEAR CHAIRMAN GRASSLEY: The Food Marketing Institute (FMI), on behalf of our supermarket members who operate more than 12,000 in-store pharmacy departments throughout the United States, wishes to express our industry's strong support for legislation that you are developing along with Senator Baucus and other members of the Finance Committee that will reform the Medicare program and provide our nation's seniors with a meaningful outpatient drug benefit.

This bi-partisan initiative embraces a number of very important principles that will promote greater competition in the marketplace and provide more choices for seniors in the delivery of medications through alliances with retail pharmacies, pharmaceutical manufacturers and other entities. Moreover, it is our understanding that the bi-partisan legislation includes provisions that will generate information so that seniors can make informed decisions in terms of selecting a plan that best meets their individual needs for medications.

FMI is further encouraged that the legislation seeks to ensure that seniors have convenient access to prescription drugs through pharmacy networks and that pharmacies are not placed at risk under this new benefit. Additionally, our industry is hopeful that the bi-partisan bill will clarify that retail pharmacy will be permitted to offer Medicare beneficiaries the option to receive long-term 90-day prescriptions which means seniors will have both convenience and the opportunity to consult with their pharmacist about taking their medications safely and effectively.

In closing, FMI wishes to commend you on your leadership regarding Medicare reform, and we look forward to working with you throughout the legislative process as Congress moves toward providing seniors with outpatient drug coverage.

Sincerely,

JOHN J. MOTLEY III,
Senior Vice President, Government and Public Affairs.

AHOLD USA, INC.,
Chantilly, VA, June 13, 2003.

Hon. CHARLES GRASSLEY,
Chairman, Senate Finance Committee, Senate Hart Office Building, Washington, DC.

DEAR CHAIRMAN GRASSLEY: Ahold USA, which operates retail food stores and over 800 pharmacies along the Eastern seaboard under the names of BI–LO, Bruno's, Giant of Carlisle, Giant of Maryland, Stop & Shop and

Tops, wishes to express our strong support for legislation that you are developing, along with Senator Baucus and other members of the Finance Committee, that will reform the Medicare program and provide our nation's seniors with a meaningful outpatient drug benefit.

The bi-partisan initiative embraces a number of very important principles that will promote greater competition in the marketplace and provide more choices for seniors in the delivery of medications through alliances with retail pharmacies, pharmaceutical manufacturers, and other entities. It is our understanding that the bi-partisan legislation includes provisions that will generate information so that seniors can make informed decisions in terms of selecting a plan that best meets their individual needs for medications.

As a retailer in the marketplace, we are further encouraged that the legislation seeks to ensure that seniors have convenient access to prescription drugs through pharmacy networks and that pharmacies are not placed at risk under this new benefit. We are also hopeful that the bi-partisan bill will clarify that retail pharmacies will be permitted to offer Medicare beneficiaries the option to receive long-term, 90-day prescriptions which means seniors will have both convenience and the opportunity to consult with their pharmacist in a timely manner about taking their medications safely and effectively.

Ahold USA wishes to commend you on your leadership regarding Medicare reform. We look forward to working with you throughout the legislative process as Congress moves toward providing seniors with outpatient drug coverage.

Sincerely,

BARRY F. SCHER,
Vice President, Public Affairs/Communications.
JOHN J. FEGAN,
Vice President, Pharmacies.

WINN DIXIE,
Jacksonville, FL, June 11, 2003.

Hon. CHARLES E. GRASSLEY,
U.S. Senate, Senate Finance Committee, Chairman, Washington, DC.

DEAR MR. CHAIRMAN: Winn-Dixie Stores, Inc., operates more than 680 in-store pharmacies throughout the Sunbelt. We are writing to express our support for legislation that you are developing along with Senator Baucus and the Finance Committee Members to reform Medicare and the development of an outpatient drug benefit for our nation's seniors.

The bill, which has bi-partisan support, will promote competition and provide seniors with more choices of delivery of their prescription medication. Additionally, seniors will be more informed in terms of selecting a plan that will work best for their particular needs.

Other positive points of significance include:

Risk is eliminated for pharmacies under the new benefit.

Convenient access for seniors through pharmacy networks.

Clarification of retail pharmacy providing 90-day supplies of prescription needs.

Continued of retail pharmacy providing 90-day supplies of prescription needs.

Continued pharmacist's consultation with seniors ensuring medication safety and effectiveness.

In closing, Winn-Dixie salutes your hard work on this most important issue and we look forward to working with you as this most important issue continues to develop.

Sincerely,

RANDY HUTTON,
Vice President, Director of Government Relations.

THE KROGER CO.,
Cincinnati, OH, June 17, 2003.

Hon. CHARLES E. GRASSLEY,
Chairman, Senate Finance Committee, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN GRASSLEY: The Kroger Co., appreciates your leadership and the efforts of Senator Baucus in developing with your colleagues in the U.S. Senate legislation that will reform the Medicare program.

Kroger is the nation's 7th largest pharmacy provider. We support the Medicare reform legislation because we believe it improves Medicare in several important ways.

First, we believe having a range of entities that can offer a pharmacy benefit or drug discount card will benefit seniors and all taxpayers.

Second, it is our understanding the legislation ensures that senior will have access to nonconfidential, summary information gathered from plan sponsors. We believe this transparency will facilitate informed consumer choice.

Seniors also will benefit from the option of having their 90-day, long-term prescriptions filled by their neighborhood pharmacy. The value-added services pharmacists provide are important to the health and well being of our seniors.

And finally, we appreciate the clarification we understand the legislation contains that pharmacists should not be held responsible for risks they do not manage or control.

Again, we appreciate your leadership and look forward to working with you and the Senate Finance Committee.

Sincerely,

JOSEPH A. PIOHLER,
Chairman of the Board and Chief Executive Officer.

Mr. ENZI. Mr. President, by ensuring fair prices for seniors and fair treatment for pharmacists, we will ensure this new Medicare drug benefit does right by seniors and values the trusted relationship that pharmacists and their senior patients share.

This is just a small step to helping community pharmacists. I would like to do more, but we are matching that constraint with the requirement that there can be no amendment that adds dollars to the cost of this bill. So we are staying in that constraint but still giving that option for the local pharmacists.

I ask my colleagues to support this amendment, as modified, and I am gratified by all the people who are doing that.

AMENDMENT NO. 944 TO AMENDMENT NO. 932, AS MODIFIED

Mr. President, I offer, on behalf of Senator CANTWELL, a second-degree amendment to my amendment and send the amendment to the desk.

I thank Senator CANTWELL, who has worked with Senator REED and myself on coming up with this amendment, which also does not add a single dollar of additional cost to the pharmacy bill but does provide some clarification on how any audits would be done on records to make sure that rebates and refunds are going to the proper place.

The PRESIDING OFFICER. Without objection, the amendment will be reported.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. ENZI] for Ms. CANTWELL, proposes an amendment numbered 944 to amendment No. 932.

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

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

The amendment is as follows:

(Purpose: To prohibit an eligible entity offering a Medicare Prescription Drug plan, a MedicareAdvantage Organization offering a MedicareAdvantage plan, and other health plans from contracting with a pharmacy benefit manager (PBM) unless the PBM satisfies certain requirements)

On page 2 of Amendment No. 932 between lines 18 and 19 strike ''.'' and insert the following: ''with the auditor of the Administrator's choice.''

Mr. ENZI. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, before the Senator from West Virginia takes the floor, I say to my friend from Wyoming, shouldn't we accept this second-degree amendment now?

Mr. ENZI. Mr. President, I am sure it has been cleared on both sides, and I would be more than happy to do that at this time.

The PRESIDING OFFICER. If there is no further debate on amendment No. 944, without objection, the amendment is agreed to.

The amendment (No. 944) was agreed to.

The PRESIDING OFFICER. The Senator from West Virginia.

AMENDMENT NO. 932, AS MODIFIED

Mr. ROCKEFELLER. Mr. President, I would like to speak briefly on the underlying amendment.

We are here to consider legislation that is going to create a much needed prescription drug benefit. We have been here to consider that matter for some years now. We have 41 million seniors and disabled people in this country who require and need that benefit. So it is a momentous time. It is also a moment of opportunity, which we will either grab or not grab, where we can craft a prescription drug benefit that provides the coverage seniors desperately need, coverage that is both affordable and reliable for all seniors.

I intend to offer amendments—not now, but later—that will improve the proposed coverage and delivery system for the Medicare prescription drug benefit so that this bill will better meet the real needs of our senior citizens.

In 1965, this Nation recognized that health care costs were the primary reason that one-third of our Nation's seniors lived in absolute poverty. With the establishment of a universal health care benefit for seniors, financed through both individual payroll tax contributions and the General Treasury—the Medicare program—we lifted most American seniors out of poverty.

That is something to be profoundly proud of, but it is the work of our predecessors. And now there is work for us

to do. Medicare is one of America's great achievements, but it has long needed to include a prescription drug benefit. At the time Medicare was enacted, prescription drugs were not a popular form of treatment. Now they are a critical part of health care.

A Medicare prescription drug benefit is something I have heard seniors tell me they want and need almost every time I have ever run into them or have had meetings with them in my State. And I daresay the Presiding Officer has had the same situation in his State of Kentucky.

I have worked on this for nearly 2 decades as a Senator, and we are perhaps at the point—or perhaps we are not. I don't know. I hope so.

Fifteen years ago, Congress acted to provide a catastrophic drug benefit under Medicare. The fact of the matter is, it was a very good bill. I led the fight on this floor three times to defeat repeal by the House because it was a very good benefit. There has never been anything that approached that in terms of catastrophic drug benefits since that time.

However, seniors did not understand the bill because we did not do a good job of putting it out to them, and we passed it perhaps too quickly. So the catastrophic benefit was rejected by the very people that it was intended to help through the votes of their elected representatives.

We should not repeat that experience. We should do our very best as the legislative process moves forward to offer a benefit that will be widely welcomed by Medicare beneficiaries and by their families. This will be a very hard thing to do, working with only $400 billion, as that is not the full cost of what we need. But that is what we have. We are operating, therefore, under a very tough budget constraint. I understand and accept that. But I think we should keep in mind that if we can achieve more than 50 votes for a Medicare prescription drug benefit, we might be able to achieve more than 60 votes to pay for a strengthened drug benefit. We shall see whether the Senate is able to successfully amend this proposal over the next several days, weeks, whatever the situation will be.

For my part, I remain committed to fight to improve the Medicare prescription drug benefit that is before us because I know the need is tremendous. The average total gross income for the average Medicare beneficiary in West Virginia is about $10,800. My guess is for the State of Kentucky, it is not a great deal more. It probably is somewhat over that, but $10,800 in West Virginia. If they have various kinds of internal problems, they may be paying $3-, $4-, $5,000. That doesn't give them very much to live on.

When I talk about this, I think about senior citizens in Mingo and Raleigh Counties in West Virginia; Charleston and Weirton, in Martinsburg and Parkersburg. They want and expect a prescription drug benefit that will meet their needs, and they have that right. I would like to believe that 2003 could be another landmark date in the passage of Medicare legislation that will improve the basic health of more than 40 million Americans. But even as I say that, I need to acknowledge that there are a few things in this bill that are very troubling to me and which may well make the difference between a welcome and sustained Medicare drug benefit and a long road of complaints and criticisms from the very people we are, in fact, trying to help.

Let me take a minute to talk about a couple of them. There is a substantial gap in coverage under this bill. That gap is about $1,300. Under the bill, there will still be times when seniors are paying a premium and receiving no benefits whatsoever. We should eliminate that coverage gap.

I fundamentally disagree with the notion that we should pay private insurers more than traditional fee-for-service Medicare to deliver a drug benefit. Either they are more efficient or they are not. If they have marketing costs, well, then that has to be factored in, but there is no reason to pay private insurers more than other providers.

All Medicare beneficiaries should get the same benefit. They should pay the same premium, just as they do under Part A or Part B. There should not be different benefits or premiums for Medicare beneficiaries just because they happen to live in West Virginia or Montana or, on the other hand, in New York or California.

Seniors who don't have access to a private insurer or choose to stay in traditional Medicare should be able to still receive additional benefits such as a catastrophic limit on their medical expenses. We should do our best to make sure that employers do not drop coverage because there is not a sufficient incentive for them to continue providing this coverage to their retirees. That should not be an excuse. We could fix this by allowing employer contributions to count toward the out-of-pocket costs seniors currently are paying.

In addition, I have serious concerns about the fallback in the proposal. It is, in my judgment, unstable. Under this proposal, if there are not at least two quality bids for plans to serve a region, as we all know by now, the fallback moves into place for 1 year. The next year, a new bidding process begins. And if two plans show up, the fallback disappears. This means seniors, especially seniors in rural areas where PPOs and private plans are not likely to come or perhaps have not ever been, may end up bouncing between a fall back, then a private plan the next year, and then back to a fallback. All the while seniors will be forced to change doctors and pharmacists. Their cost sharing will be changed, and there will be other changes. This will be of profound concern to them, confusing to them. I think it is a frightening scenario which takes me back to the catastrophic bill to which I referred a few moments ago. I don't think that kind of coverage represents a stable, genuine, or guaranteed fallback for seniors.

Finally, there have been a number of Members on the floor of the Senate referring to this as a universal drug benefit. We should all be very clear this is not a universal drug benefit. In fact, this legislation specifically excludes some Medicare beneficiaries from enrolling in the Medicare drug benefit. Those Medicare beneficiaries who are low income, 74 percent of poverty or below, and therefore, qualify to receive a drug benefit under Medicaid, are excluded from enrolling in the Medicare benefit. This is the first time in the history of the program that we would prohibit some Medicare beneficiaries from receiving a Medicare benefit.

Not only is it unfair to exclude the poorest seniors from part of the Medicare Program, it gives them a bad deal. Prescription drugs are an optional benefit under Medicaid. States can and are limiting the number of prescriptions. Some States only cover three drugs or charge any copayments that they choose to or that they have to. Since 1965, Medicare has provided a universal benefit to all of its beneficiaries. That has been its magnificent social contract. It is the promise that society made to our seniors: If you work and make your payroll contributions, then you get Medicare, regardless of where you live, how old you are, or what your income might be.

This legislation—for the very first time in the history of the program—would prohibit some Medicare beneficiaries from receiving a Medicare benefit. We should provide all seniors with a dependable Medicare guarantee of prescription drug coverage. That is what seniors expect when we tell them we are giving them a Medicare drug benefit. And we should make sure that they have a drug plan they can always count on, even if some believe private plans are the future of the program.

I have a word on the pending Daschle amendment. The current Senate plan offers no protection against varying premiums. The estimate that is given, $35 as an average premium, is precisely that. It is an estimate. The proposed legislation gives PPOs broad discretion in assigning premiums. Senator DASCHLE's amendment will limit variations in the amount the beneficiaries have to pay to only 10 percent above the national average, no matter where they live. So it does not limit the amounts plans could charge as a whole; i.e., the total premium. It would also not prevent lower premiums.

Stable premiums limit seniors' cost of liability and complement the provisions of the fallback plan. Stable premiums increase the safety net for seniors in geographic regions where private insurers are less likely to offer affordable coverage. This amendment is especially important for seniors who

live in rural areas because it is in rural areas where private insurers are more likely to charge higher premiums to offset the increased costs associated with benefit deliveries.

Stable premiums do not inhibit competition. Instead they increase the safety net for seniors. Beneficiaries in rural areas, such as West Virginia, are often older and sicker. Competition among private insurance plans in these areas is likely to be less under any circumstances. Seniors' ability to plan for prescription drug expenditures within their limited budgets hinges upon a great degree of certainty. That is what seniors depend on. Their ability to have this assurance should not be decided by private HMOs, who respond to market forces and attempt to correct deficiencies by varying and fluctuating premiums. Seniors should not have to wait and see what private insurance companies are going to charge them from year to year.

I support Senator DASCHLE's amendment. He is working to pass a Medicare package—as we all are—that works for all Medicare beneficiaries no matter where they live.

I yield the floor.

The PRESIDING OFFICER (Mr. TALENT). The Senator from Nebraska is recognized.

Mr. NELSON of Nebraska. Mr. President, I appreciate the opportunity today to speak regarding the Daschle amendment. First, I want to commend my colleagues from Iowa and New Mexico, Senator GRASSLEY and Senator BAUCUS, for doing truly an outstanding job with putting together a package of legislation to deal with the challenges we have all met and continue to sort out relating to prescription drug coverage for seniors. I commend them for an outstanding effort.

In the midst of that commendation, I think—and others would admit—that the pending legislation can be improved. I have yet to see a piece of legislation that could not have some amendment that at least some people would think would be an improvement.

In this particular situation, I think the area that we could improve is in making sure the rate differentials among the States is not extraordinary. Therefore, the Daschle amendment sets a 10 percent variation of the national average, so that a State would not have a rate that would be 10 percent above what that national average is. What this provides is protection that the rate differential between States such as New York and Nebraska are not going to vary more than 10 percent.

We all recognize if insurance is a focus to provide protection and stabilize across a broad base of individuals, to spread the costs and risks over that entire group of individuals, you will then have a rate that would be based on that spreading of the risk. This particular situation seeks to do that, but the spread of the risk seems to be more directed on a statewide basis, therefore giving the opportunity for a wide variation of rates between two States on a nationwide basis.

I think this amendment will correct that and will assure that people living in whatever State they may reside are not going to be paying a substantially higher rate than other individuals.

The proposed prescription drug plan promises an average premium of about $35 a month. But we cannot be sure that is a guarantee because just in the case of Medicare, managed care, Medicare+Choice, there is no set premium under the new prescription drug proposal. So all premiums will vary nationwide. Experience suggests that premiums could significantly—as they do with premiums for Medicare HMO plans—vary from $99 a month in Connecticut to $16 a month in Florida. Floridians might enjoy that, but residents of Connecticut might ask a question as to why we cannot have a balanced rate nationwide with variations of a much smaller amount.

Spreading the risk is what insurance is all about. I think spreading the risk in this case involves spreading the costs as well. I think I speak for many of my colleagues when I say we want to have a prescription drug benefit that is well balanced, meets the needs of those who are the neediest and the sickest, but provides a fair amount of coverage for all American seniors who qualify. It is my duty to make sure that what we provide, whether for Nebraskans or Floridians, is truly a spread of the risk and cost. We need to ensure that the premiums are priced both fairly and equitably and that geographic concerns don't price seniors out of the market for coverage in any location. That is what I think we must find as the focus as we move forward.

So, again, I commend my colleagues for putting together an outstanding package of benefits given the very difficult task of making the ends meet with $400 billion, but with needs that could exceed that several times over, putting together a package that I think truly represents what will take care of the prescription drug needs of our seniors. At the same time, we want to make sure the protection is also there against a wide disparity of rates from State to State. So I speak today on behalf of the Daschle amendment. I hope the people within this body will look at that and think about that in terms of their own States—not as to whether their State will get a better deal than others but where we all have an opportunity for an excellent deal and that the variations will be minimal at best.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, I note that the managers are not on the Senate floor at this moment. I had visited with Senator REID before the Democratic Policy Committee luncheon, and he indicated the floor would be open for an amendment. I have an amendment I wanted to offer. It deals with reimportation. I am ready to offer that. The amendment is written, and I have been told that they are looking for amendments. This is ready to go. If we are not able to offer it now, the question I ask is when are we able to offer it?

Can we sequence it so I may have an understanding as to when I may offer it this afternoon?

The issue of reimportation is one that relates to this legislation because it relates to the issue of the cost of prescription drugs. I will want to offer this on behalf of myself and Senators STABENOW, JEFFORDS, SNOWE, JOHNSON, LEVIN, and BOXER. I don't want to tie up the Senate for any great length of time. I think this is important, and I would like to speak on it. I expect a number of colleagues would like to speak on this amendment as well. It makes sense to me to have it considered, and then I will make a presentation, and then it can be set aside so others can make presentations.

I understand we have three additional amendments that are now pending and on which we will likely have a vote, perhaps midafternoon. I don't know exactly the whereabouts of the committee chairman or ranking member. They are not on the floor. I shall not ask for unanimous consent, but I would like to, as soon as they return, be able to query them so I can understand where I fit in this mix. As I indicated yesterday and today, I have continued to hear that they want amendments offered, and they want to move through these issues as quickly as possible. I am ready. Several of my colleagues would like to speak on this as well and are ready to do so. I will wait at this moment until the chairman and ranking member come back. I will make the inquiry of them as to when I might be sequenced. I would like to be recognized to offer this amendment this afternoon—the earlier the better.

At the moment, I will relinquish the floor. I am tempted to ask unanimous consent, but I shall not in recognition that the chairman and ranking member will want to find some order. I will relinquish the floor with the expectation of being able to query them on the floor when they return.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, to follow the remarks of my colleague from North Dakota, I, too, have an amendment I would like to lay down. It is a very short amendment. It would not require a great deal of debate and discussion. I hope it would have widespread support. It has to do with mammography screening under Medicare, and the fact that we have a dual system now for that screening. They are reimbursed at a certain rate.

For diagnostic mammographies, they are reduced to a lower rate. What we find is when a woman who is Medicare

eligible who gets screened for breast cancer and, under the screening mammography, there are some indications possibly that she might have breast cancer, she now needs to get a diagnostic screening. The waiting time is up to 6 months because the rates are so low for the reimbursement for diagnostic screening of mammographies.

What we have done is put women in this very terrible position. They get screened and there is some indication they might have breast cancer, and yet they then cannot get the diagnostic screening they need.

What my amendment would do, basically, is increase the technical portion of diagnostic mammograms performed in hospital-based facilities by removing this procedure from the ambulatory payment categories and placing it in the Medicare fee schedule. The Medicare fee schedule reimburses at a higher rate than the ambulatory payment categories. The change would result in roughly a 13-percent increase for unilateral diagnostic mammograms and roughly a 39-percent increase for bilateral diagnostic mammograms.

As I have said, under these two repayment categories, screening mammographies are already in the Medicare fee schedule, but the diagnostic mammograms are still in the ambulatory payment category. This amendment would put the diagnostic screening in the same position as the screening.

Medicare officials estimate that more than half of all women who are Medicare beneficiaries receive their breast cancer screenings in a hospital-based facility. Unfortunately, due to the low Medicare reimbursement rates for the diagnostic screening, over 700 hospital-based mammography facilities have closed in the last 2 years simply because the reimbursement rates are so low. As a result, waiting times for hospital-based mammograms covered by Medicare can be several months in many parts of the country. These delays can have significant clinical implications for fighting breast cancer.

Again, what my amendment would do is correct the problem by increasing the reimbursement for the diagnostic mammograms. I point out again why this is necessary. Women receive diagnostic mammograms following the screening mammograms if there is a suspicious finding.

Imagine that you had a screening—put yourself in a woman's shoes—and they said there is some suspicion there, but because there are no local hospital-based mammography facilities—they have closed down—you may have to wait weeks or months to get your diagnosis definitively confirmed or denied. As these facilities close, there are fewer places for women to get mammograms.

When you consider that approximately 1 million additional women per year become age eligible for these mammogram screenings, it is easy to see we have an access problem. Moreover, because radiologists use and train at these hospital facilities, they find it difficult to sustain their mammography practices, and fewer and fewer of them are being trained.

Again, it is a very simple, straightforward amendment. I would like to ask that the pending amendment be set aside, but I am not going to do that. As the Senator from North Dakota pointed out, the managers are not in the Chamber. It seems to me we are trying to move this process along, and we have amendments we could offer and have a short debate, have a vote or have them accepted. We are standing here not being able to move the process along.

Mr. DORGAN. Mr. President, will the Senator from Iowa yield for a question?

Mr. HARKIN. I will be delighted to yield to my colleague from North Dakota.

Mr. DORGAN. I know what is going to happen. When we get into mid next week, late next week, as we try to finish this bill, there is not going to be enough time to offer these amendments and to debate these amendments. That is why, it seems to me, right now it is in our interest to lay these amendments down, have the discussion on the amendments, and then proceed.

I mention to the Senator from Iowa, there is a second amendment I have—I have not offered it, but I have talked to the staff about an amendment that sounds similar to the amendment Senator HARKIN described, and that is on the issue of cholesterol screening.

If you have heart disease and have cholesterol screening for that heart disease, it is covered under Medicare. But if you do not have heart disease and the screening is to determine whether you have heart disease, it is not covered. It seems to me the best way to promote wellness and the appropriate way to deal with the reimbursement for these issues, especially something such as cholesterol screening, would be to cover cholesterol screening, especially if the cholesterol screening is to determine whether someone has heart disease, not just cover in the circumstance you know they have heart disease. It seems to be a similar circumstance to the situation the Senator from Iowa was describing.

I am told the chairman and ranking member are off the floor working on this bill. When they come back, I hope to inquire of them. My desire would be to be the next Democratic amendment. I know the Senator from Iowa wishes to have his amendment considered. It behooves the Senate and those managing this bill to put us in line, let us offer amendments and move them through, so that by late next week we are not in a circumstance where we are told: We have to finish this bill; we do not have to time to consider your amendment.

I thank the Senator.

Mr. HARKIN. Mr. President, I think the Senator has laid out exactly the format. We know the crunch is going to come next week because at the end of next week begins the July 4 recess period. They are going to go around asking, Can you drop your amendment; drop your amendment; we have to get out of here.

Here we are ready to go with amendments that I think are meaningful. The Senator from North Dakota has a meaningful amendment. The one on cholesterol screening sounds meaningful. These are important life-and-death issues for a lot of people out there, as mammogram screenings for women are.

These are not amendments that are going to require a long time to debate. As a matter of fact, in the length of time I have stood here, I probably could have offered my amendment, had it debated, and started a vote on it or had it accepted. I hope we will move along.

Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. HARKIN. Will the Chair please advise at least this Senator what is pending at the desk right now? What is the pending business before the Senate right now?

The PRESIDING OFFICER. The pending question is the Enzi amendment, as modified and amended. There are also two other amendments pending.

Mr. HARKIN. Further parliamentary inquiry: There are three amendments pending, and the one that is now before the Senate is the Enzi amendment.

The PRESIDING OFFICER. The Senator is correct.

Mr. HARKIN. The Senator assumes then the other two amendments—I am sorry, I forgot what they are—a unanimous consent agreement was entered to set them aside to consider the Enzi amendment.

The PRESIDING OFFICER. The Enzi amendment was the first amendment called up, and consent was obtained to set the Enzi amendment aside, first for the Bingaman amendment and then for the Daschle amendment. Then Senator ENZI called for the regular order, which brought the amendment back before the Senate.

Mr. HARKIN. The pending business is the Enzi amendment. As I said, with comity with respect to the fact the managers are not here, I will not ask unanimous consent to set the Enzi amendment aside to offer my amendment. When they come back, I hope we can do so.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I understand there are some issues as to who is in line and how this is going to proceed. I will simply express what I hope will occur and what I believe is the general understanding, at least amongst a number of Senators, and that is that the next amendment to be offered is a Republican amendment. We

have been alternating back and forth. The amendment that would be offered would be the amendment sponsored by myself, Senator SCHUMER, Senator MCCAIN, and Senator KENNEDY, which deals with generic drugs. We would agree to an hour of debate, no second degree, and then a vote on that amendment.

I would ask unanimous consent for that now, but I understand there is one Senator from the other side who may have an issue. So we want to wait for that.

As long as we are waiting and not doing much, I will talk a little bit about this amendment and then hopefully that will even lessen the time that has to be dedicated to it once we get to it.

This amendment which will be brought forward by myself, Senator SCHUMER, Senator MCCAIN, and Senator KENNEDY, is very important legislation. It is not specifically on the Medicare issue but it is certainly specifically on the issue of how we make affordable drugs more available to people in this country by making available to people in this country drugs which are of a generic form which therefore cost less and are more affordable.

This has been an issue that has been before the Senate before. It has been debated. As a matter of fact, a bill offered by Senator MCCAIN and Senator SCHUMER passed the Senate by a rather large vote. I did not support it at the time. However, we have taken the issue back. We have sat down. We have worked very hard with all the different people who are concerned about how we should proceed in this very critical area of getting drugs out to consumers at a more reasonable price, and we have now worked out this understanding with legislation which passed out of the Health, Education, Labor and Pension Committee, which I have the honor to chair and Senator KENNEDY is the ranking member. It passed out of that committee unanimously.

The reason it passed out unanimously obviously is because after a great deal of consideration we were able to reach an accommodation that works rather well in addressing this issue.

The basic theme of this bill is really quite simple. No. 1, we want to make generic drugs more available to consumers on a faster timeframe, which therefore gives them lower cost drugs. At the same time, we want to continue to encourage innovation, especially in our brand-name companies, which are the ones that create the drugs to begin with. Without their creativity and research, we would not have a generic industry because there would not be any underlying drug from which to develop the generic. So we do not want to chill innovation. Rather, we want to accomplish both goals, and to some degree the goals pull at each other.

The third thing which I was concerned with was that we not set up a massive atmosphere of litigation, that we not create a minefield of litigation through which people have to pass before they are successful in getting the generics to the market or fight getting the generics to the market, having a definitive decision in both of those areas.

This bill does that. It accomplishes those three goals. I think it does as well as can be expected in the context of the different forces pulling at the issue.

It builds upon the underlying law, which is the Hatch-Waxman law, which was extraordinarily good legislation put together by Senator HATCH on our side of the aisle and Congressman WAXMAN across the hallway, which basically created the first attempt at settling out the issue of how generics get to the market in a prompt way while still maintaining innovation.

Over the years, Hatch-Waxman, as with much legislation, was put under the microscope of the attorneys and the creative folks who work for various entities involved in this issue. As a result, it developed cracks. We found that in some instances the system was being gamed and in some instances simply misdirected. As a result, it wore down over time and there were corrections that needed to be made. That is what the purpose of this bill is, to correct the problems we saw that were occurring.

At the same time we moved this legislation forward, the administration was moving forward with its own initiative in this area dealing with a 30-month stay issue, which is the technical part of this bill. They have now put out a rule in this area. The rule is fairly close to where we end up with the legislation. As a practical matter, the administration could not go as far as they wanted. And when I am talking of the administration, I am speaking of the FDA, the Food and Drug Administration. They could not go as far as they wanted to go because they were restricted by the fact they were working within the framework of regulatory requirements, but because we are working in a legislative atmosphere we can go much further, and we have. We have addressed not only the issue of the 30-month stay, we have addressed the issue of the 180-day questions which were raised. We have addressed the issue of listing, of how we handle the orange book and a variety of other issues, including patent extension, the changing of labels, coloring of pills, and things like that which became an issue of whether they were actually substantive changes or attempts simply to avoid having the generics come to the market.

Our bill goes considerably further than the rule the FDA has put in place. In my opinion, it is a very substantive improvement over the proposal which came through this body last year, and although it passed, it never became law. That is why it has garnered very bipartisan support.

I note the amendment I am going to be offering is cosponsored. The original sponsors are from last year, Senators SCHUMER and MCCAIN, who designed this bill, joined by myself and Senator KENNEDY, the chairman and the ranking members of the committee, Senator ROBERTS, Senator EDWARDS, Senator COLLINS, Senator LEAHY, Senator JOHNSON, Senator FEINGOLD, Senator HARKIN, and Senator KOHL. I know other Members have a deep interest in this bill and will probably want to cosponsor this amendment also.

With that being said as an introduction to the issue, hopefully we can move to it as soon as we reach an accommodation with all of those parties who have other issues floating around.

I will yield the floor unless the Senator from Oregon has a question?

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. If I could pose a question to the Senator from New Hampshire and the Senator from New York, who has been very gracious in indicating that he has been in support of what I want to do. Last week I made public a report from the General Accounting Office involving Taxil, which is the biggest selling cancer drug in history. This drug was developed largely by the taxpayers, with everything for support from the Pacific yew tree, which grows in my home State of Oregon, all the way to the work done at the National Cancer Institutes by Federal researchers, and has produced $9 billion in sales for Bristol-Myers with the Federal Government getting a return of about $35 million, about one half of 1 percent on the biggest selling cancer drug in history.

In this report, the General Accounting Office documents that the Federal Government basically dropped the ball. Without going to price controls and regulations and things of this nature, with some modest steps, the Federal Government could have stood up for the taxpayers and the patients who cannot afford the medicine and gotten the drug to market quickly and also taken steps to make it affordable and to protect the taxpayers. It is my desire, as somebody who has worked on these issues often with the Senator from New Hampshire for many years, to work out a bipartisan agreement where the National Institutes of Health would simply consider affordability when it enters into these agreements. It would not have to do anything prescriptive but would also have to look at affordability. I do not want in any way to hold up the work of the Senator. I think what he and the Senator from New York have done is very helpful, but I would have to object now if we could not get an agreement to at least at some point in this take a very modest step and ask that the question of affordability be considered when the National Institutes of Health enters these agreements, given the fact that basically patients on this particular drug, which has been the biggest selling cancer drug in history, cannot afford it and taxpayers got very little in return.

Would that be acceptable to the Senator from New Hampshire? If I did not object at this point, would the Senator from New Hampshire work with me so at some point later in this discussion we could get a bipartisan agreement on a very modest step that affordability be considered in these agreements? Is that acceptable to the Senator from New Hampshire?

The PRESIDING OFFICER. The Senator from New Hampshire has the floor.

Mr. GREGG. First, I was very impressed with the report the Senator was able to get out of the public domain. It was a report that raised very serious issues. The fact is it appears somebody dropped the ball somewhere in the process. We should have gotten a better return for the taxpayer than we got on this drug.

The Senator is approaching an issue which needs to be addressed. I am happy to work with the Senator to try to address it. I cannot say unilaterally I can agree to the terms, but I will work throughout the day and tomorrow and have our staffs work to try to come up with language that gets to the Senator's purpose to make sure, when this research is done by NIH or other Federal entities, that research receives a fair return to the taxpayer. I was rather surprised we did not in that instance. I am happy to work with the Senator.

On this amendment, there is an agreement between myself and the other primary sponsors that we will not have second-degree amendments because we worked hard to get to this point.

Mr. WYDEN. Mr. President, the Senator from New Hampshire is being very gracious. On the basis of his statement that he would work with me on it—what the Senator from New Hampshire and Senator SCHUMER have accomplished is very important. I reiterate how important it be done at this time. It is one thing when drugs are developed with private sector money. It is a free enterprise system. Fortunately, investors take risks. There are some gushers, some that are not profitable. It is a different story when the drugs get to market with taxpayer money. Here we have the largest selling cancer drug in history.

It is imperative over the next day or so we work in a bipartisan way. The National Institutes of Health does phenomenal work. I don't want to do anything to impede their mission in getting drugs to market quickly. That is their first and foremost obligation. But let us also make sure when they sit down and enter into these agreements, they also try to make sure the drugs are affordable. It is one thing to get the drugs on the shelf, and it is another to not have the patients able to afford them.

On the basis of the pledge of the Senator from New Hampshire to try to work this out with me in the next day or so in an agreeable fashion, I do not intend to object. I want to see the amendment of the Senator from New Hampshire and the Senator from New York go forward. I will work with the Senator from New Hampshire when he completes this important amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. I appreciate the Senator from Oregon. His issues are legitimate. I certainly hope we can work this out and include it in the bill. It is an appropriate place for it.

I now ask unanimous consent, regarding the amendment Senator SCHUMER, I, Senator KENNEDY, and Senator MCCAIN will offer relative to generics, that we have 1 hour of debate equally divided and there be no second degrees and the yeas and nays be considered as ordered on the amendment.

The PRESIDING OFFICER. The Chair informs the Senator, the Senator cannot order the yeas and nays by unanimous consent.

Mr. BAUCUS. Reserving the right to object, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from New Hampshire has the floor.

Mr. GREGG. Mr. President, 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. GRASSLEY. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. GRASSLEY. Mr. President, I ask unanimous consent the pending amendments be set aside and that Senator GREGG be recognized in order to offer an amendment regarding generic drugs, with no second-degree amendment in order to the amendment; further, that there be 60 minutes equally divided for debate prior to the vote in relation to the amendment; provided further that at 3:45 today the Senate proceed to a vote in relation to the Enzi amendment, No. 932, as amended, with no other amendments in order to the Enzi amendment. I further ask that following that vote there be 10 minutes equally divided for debate prior to a vote in relation to the Daschle amendment, No. 939, again with no second-degree amendment also in order prior to the vote. Finally, I ask consent that following that vote, the Senate proceed to a vote on the Gregg amendment, with no intervening action or debate, and 2 minutes equally divided prior to the vote.

I further ask consent that following disposition of the Gregg amendment, the next sequence of amendments be the following: Senator DORGAN, Senator GRASSLEY, and Senator HARKIN, and these would be first-degree amendments.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. Reserving the right to object, I wonder if we could get some time to explain the amendments.

The second two votes will be 10-minute votes? I ask consent they be 10-minute votes, not the ordinary 15.

The PRESIDING OFFICER. Does the Senator object?

Mr. GRASSLEY. I amend my consent request accordingly.

The PRESIDING OFFICER. Is there objection? The Senator from Nevada.

Mr. REID. Reserving the right to object, as the manager of the bill said, there will also be 2 minutes equally divided before each vote?

Mr. GRASSLEY. That is in my request.

The PRESIDING OFFICER. Is there objection? The Senator from North Dakota.

Mr. DORGAN. Reserving the right to object, and I shall not object, is it my understanding the vote on Gregg-Schumer is the third rollcall vote in sequence, and following the disposition of that vote I will be recognized to offer an amendment?

Mr. GRASSLEY. Yes.

Mr. DORGAN. I have no objection.

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

The Senator from New Hampshire.

AMENDMENT NO. 945

Mr. GREGG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. GREGG], for himself, Mr. SCHUMER, Mr. MCCAIN, Mr. KENNEDY, Mr. ROBERTS, Mr. EDWARDS, Ms. COLLINS, Mr. LEAHY, Mr. JOHNSON, Mr. FEINGOLD, Mr. HARKIN, and Mr. KOHL, proposes an amendment numbered 945.

Mr. GREGG. I ask unanimous consent the 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. GREGG. I yield 5 minutes to the Senator from Arizona, who is one of the original creators of this legislation and has done such extraordinary work in this area.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank Senator GREGG for his leadership on this legislation. I thank him for reaching out to Senator SCHUMER, Senator KENNEDY, and myself to resolve issues that are important. He recognized the problem existed and worked to ensure loopholes in the system are closed and consumers have access to the best and most affordable medicines. Senator GREGG's leadership enabled the expeditious introduction and successful committee markup of this legislation. Under his chairmanship, the bill was reported out by unanimous consent last Wednesday.

Senator KENNEDY's support of this measure must also be recognized. His

experience and technical expertise have been invaluable throughout the process. Staffs of all three of these Senators have worked 7 days a week for the last few weeks to ensure that the language we have crafted is as technically sound as possible without unintended consequences.

I also thank my friend, Senator SCHUMER, with whom I have enjoyed working over the last few years. His dedication to American consumers and his commitment to restoring fairness to the drug industry must be commended time after time.

This amendment will enhance competition and restore a level of sanity in the pharmaceutical market. The amendment closes loopholes in the current food and drug laws that allow brand pharmaceutical companies to protect themselves from generic competition by unfairly extending drug patent life, maximizing company profits on the backs of American consumers.

This amendment ensures that lower cost generic drugs will get to market faster and with more competition, allowing substantial savings for both consumers and taxpayers. With this measure, we are one step closer to the larger goal of providing better access to affordable health care for all Americans.

Several years ago, my good friend, Senator SCHUMER, and I began this effort when we introduced the first Greater Access to Affordable Pharmaceuticals Act in the fall of 2000. I joined Senator SCHUMER then in order to put a stop to the anticompetitive actions in the pharmaceutical industry that artificially inflate prices and keep lower cost prescription drugs out of the hands of American consumers. I am here today because those loopholes remain.

Last summer, when the Senate was mired in partisan gridlock debating a Medicare prescription drug benefit, the later version of the bill was used as a vehicle for Medicare debate. Although the Senate failed to pass a Medicare prescription drug benefit package last summer, the GAAP Act passed by an overwhelming margin of 78 to 21. That bill set consumers on course to save an estimated $60 billion over 10 years, while providing seniors and all Americans with access to more affordable prescription drugs. Unfortunately, after our astounding victory for consumers, the bill was not subsequently passed or even considered by the other body.

Today, we are once again debating Medicare prescription drug benefits. We have before us a plan that is estimated to cost a minimum of $400 billion over the next 10 years but will surely cost substantially more upon implementation. Unlike the majority of the amendments that have been and will be considered during this debate, the amendment we are offering will not cost the taxpayers a dime. In fact, it will save money for both the Federal Government and American consumers.

The amendment is the result of a carefully crafted bipartisan compromise, which Senators SCHUMER, GREGG, KENNEDY, and I reached several weeks ago. This amendment achieves the same goals Senator SCHUMER and I have been striving to achieve over the last few years. It closes loopholes in the law, encouraging competition, without sacrificing incentives for innovation, while discouraging anticompetitive behavior on the part of brand or generic drug companies.

Of the many elements contributing to the rapid growth in our Nation's health care costs, the rising costs of prescription drugs is one of the most significant. This year alone, prescription drug costs are expected to rise by 19 percent.

I ask my friend from New Hampshire if he would yield me an additional 4 minutes?

Mr. GREGG. I yield the Senator from Arizona such time as he may need.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. I thank my friend from New Hampshire.

I want to repeat that comment. This year alone, prescription drug costs are expected to rise by 19 percent. Today, this morning, in New York, New Hampshire, Massachusetts, and Arizona, seniors are getting on a bus—in the case of Arizona, to drive to Mexico; in the case of New Hampshire, Massachusetts, and New York, to go to Canada—to buy their prescription drugs. Most times these prescription drugs are fine. Most times they are exactly what they are advertised to be. But sometimes they are not. That is because these seniors who are having to get on the bus to go to Canada or Mexico simply cannot afford to go to their local druggist and get the prescription drugs that they very badly need—many cases in lifesaving situations.

Skyrocketing health care costs have left many businesses struggling to provide coverage for their employees and an increasing number of Americans without any health insurance. Consequently, access to affordable prescription drugs represents one of the most serious problems facing our Nation's health care system today. Not isolated to one segment of society, this issue affects individuals, families, companies, and the like.

The financial burdens associated with rising prescription drug costs have left many companies struggling to provide employees with health care coverage. This January, workers at General Electric staged a 2-day strike over increased copayments for prescription drugs covered under the company's insurance plan. General Motors, one of the largest providers of private sector health care coverage, spends billions of dollars a year on workers, retirees, and their dependents, over $1 billion of which is on prescription drugs alone. Even with aggressive cost-saving mechanisms in place, General Motors' 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. Such abuse simply has no place in our health care system. My intention in supporting this amendment is 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 life-sustaining drugs. The purpose of the underlying legislation is to close loopholes in the Hatch-Waxman Act, which established the generic drug industry we know today, and to ensure more timely access to generic medications. This is an important distinction which must be made clear.

Nonetheless, 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 (FTC). Over the past three years several Senate and House committees have heard testimony regarding the extent by which pharmaceutical companies, including generic manufacturers, engage in anticompetitive activities and impede access to affordable medications. During a hearing at the Senate Commerce Committee, Chairman Muris of the FTC testified that:

> [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 pharmaceutical industry has increased exponentially. Unfortunately, however, some bad actors have manipulated the law in a manner that delays and, at times, prohibits generics from entering the marketplace.

I believe that this amendment 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 an unfair advantage to generic manufacturers. Rather, the intent of this amendment is to strike a balance between these two interests so that we can close the loopholes that allow some companies to engage in anti-competitive 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.

I want to thank my friend, Senator SCHUMER, with whom I have enjoyed working over the last few years. His dedication to American consumers and his commitment to restoring fairness to the drug industry must be commended.

I also want to thank Senator GREGG for reaching out to Senator SCHUMER, Senator KENNEDY and myself, to find middle ground. He recognized that this problem existed and joined us to ensure that loopholes in the system are closed and consumers have access to the best and most affordable medicines. Senator GREGG'S leadership enabled the expeditious introduction and successful Committee markup of this legislation, where under his chairmanship the bill was reported out by unanimous consent last Wednesday.

Senator KENNEDY'S support of this measure must also be recognized. His experience and technical expertise have been invaluable throughout the process. The staffs of all three of these senators have worked seven days a week for the last few weeks, to ensure that the language we have crafted is as technically sound as possible—without any unintended consequences.

It is my strong belief that this measure represents a significant and immediate step that Congress can take to help to improve the lives of many Americans. I look forward to debating this issue and working with my colleagues on both sides of the aisle to protect the health care needs of older Americans while also eliminating the anti-competitive abuses of both pioneer and generic drug companies.

This place in some ways has become more partisan than a lot of us would like. I think this legislation is an example of how people on both sides of the aisle can work together. In this case, the chairman and ranking member of the appropriate committee, Senator GREGG and Senator KENNEDY, have worked together, as have Senator SCHUMER and I, and all others on his committee who have made this legislation come to the floor. I imagine it will pass with relative ease, to the benefit of many millions of Americans.

I again thank all who have been involved in it.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I thank the Senator from Arizona for laying the foundation without which this piece of legislation could not have come forward. I thank him, and, of course, Senator SCHUMER—two key Members in getting this initiative going. I congratulate them for making this product a much better product this year.

Also, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I cleared this with the Democratic manager. I ask unanimous consent that I control the time under the control of the Democratic manager.

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

Mr. SCHUMER. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. SCHUMER. Thank you, Mr. President.

I thank my colleagues and my friend, the Senator from Arizona, who is just walking off the floor. He and I got involved in this issue a couple of years ago when we saw the abuses that occurred. He has been simply a pleasure to work with—right on the money, focused on getting the job done for consumers, and not being deterred by interest groups on one side pushing him one way or by others questioning him on this or that. I thank him.

I also thank my partner in this endeavor, Senator GREGG of New Hampshire. Early on this year, he came over to Senator MCCAIN and me and said: Why can't we work this out? He agrees with the principles in the bill that we put together, but he had some very positive and constructive suggestions. I mean this as a complete compliment, having spent 7 years there. Without his New England style leadership—understated, to the point, courageous, forthright—this bill would not have gotten as far as it did. I thank him for his leadership. I would say that New England leadership is tempered by having spent a few years in higher education in the great city of New York as well.

Finally, I thank my good friend and our great leader in this Senate, a Senator I have been privileged to know and who again has been invaluable in bringing this bill to the floor. The original Schumer-McCain bill would not have gotten the push that it did if the Senator from Massachusetts had not steered it through the shoals of the health committee when he was chair, and again he and his staff have just been of constant, invaluable assistance in making this happen. I thank him for that.

The concept of this bill is simple. It is clear that we know we have these miracle drugs. They are wonderful drugs. The people who invent them in the pharmaceutical industry, I know many have had harsh words for on occasion, and I am not the least of those. But they do a very good thing. They come up with new, wonderful drugs that keep people living longer and living healthier.

One of the reasons that my parents—praise God—just last week turned 80 and 75—our whole family got together and celebrated their birthdays in Connecticut—is the fact that these drugs are available. I think every family can recount the stories.

The careful balance we seek to reinstate here says we want to see innovation continue. We want to see a fair and reasonable rate of return made. We want to realize that for every 1 successful drug, there may be 20 or 50 or even 100 failures. There has to be an economic viability there. We want that to happen.

I think most of us agree that the Hatch-Waxman bill—I thank my friend from Utah, who I think is over at the Judiciary Committee trying to work out another grand compromise, this time on asbestos, understood that.

But here is what has happened over the last several years. This is where I fault the drug companies despite the goodness of the products they come up with. A lot of blockbuster drugs were on the market. Their patents were about to expire. The drug industry, accustomed to the high rate of return they have had, came to the conclusion that they had to do everything they could, they had to pull out all the stops to extend their monopolies. They came up with wild and crazy schemes to do it, such as patenting the substance the body makes when the drug is ingested; developing computer programs and listing the patents on the drug; and, in one case, absurdly, a new patent was asked for because the color of the bottle was changed.

That was never the concept of Hatch-Waxman. We found that the pharmaceutical industry, instead of spending all its time developing new drugs, was developing new patents. They seemed to care more about hiring good lawyers than good chemists, scientists, and doctors.

Let me give you one example of what happened. Paxil, a $2.1 billion drug used to treat obsessive compulsive disorders, has been in litigation since 1998. After the lawsuit began and the first 30-month stay was triggered, the brand, Glaxo, listed nine additional patents on the drug, triggering five additional 30-month stays.

Well, over the past 4 years, there have been court decisions on four of those patents. The patent which began this litigation was found not to be infringed by the generic, and three others were found invalid. But the 30-month stays are still going on and on and on, costing consumers $3 billion. The same drug, with its same miracle qualities, would have been available for $3 billion less altogether had these frivolous and unnecessary patents not been filed. Well, this story could be repeated and has been repeated.

Why is this a great day for consumers? Because the cost of the generic drug is so much less than the cost of the brand-name drug. And that generic drug should be allowed to come on to the market without frivolous patents, lawsuits, and legal mumbo jumbo preventing that from happening.

We want a rate of return to be made by the drug company, but we do not want to allow them to do what they have been doing, with increasing frequency: playing games, perverting the law, and costing consumers billions of dollars because the lower-priced generic drug is delayed from coming on the market by frivolous patents.

Let me give you some examples in my State:

In Buffalo, Allegra, a great drug for allergies: The brand cost for 30 pills is $84.56; if a generic were available, it would cost about $32.98.

In New York City, Prevacid, to treat acid reflux: The brand cost is $154.28; the generic would cost $60.17.

In Rochester, Celebrex, a great drug for arthritis: The brand cost is $108.29; the generic would cost $42.23.

In Rochester, Lipitor, a wonder drug for cholesterol; I think it is now the largest selling drug in the world: The brand cost is $77.73; the generic would cost $30.32.

And finally, in Syracuse, Norvasc, for angina and hypertension: The brand cost is $54.37; the generic would cost $21.20.

The bottom line is: When 30 pills cost you $100 for the brand-name drug, it will cost you $25 or $30 for the generic—for the exact same medication.

What our proposal does is encourages robust competition by allowing the generic to come on to the market in its fair time. It restores the balance of Hatch-Waxman. It does it in a way without frivolous lawsuits. It does it in a way that gives everybody notice. But what it says is, the recent trend to extend the patent monopolies long beyond what anyone thought they should be will be stopped.

So this is a fair compromise. It is a compromise that helps consumers. It was estimated that the original McCain-Schumer—bill I don't see why it should be too much different in this new bill that Senator GREGG and myself, with Senator MCCAIN and Senator KENNEDY, have sponsored, other than some changes due to the baseline—would have saved American consumers $60 billion over 10 years. It was estimated our bill would have saved $18 billion in the Democratic Medicare package on the floor last year.

In the same way, the bill before us today will save companies, that are struggling to pay for health care, hundreds of millions of dollars. That is why it has such a big and broad coalition behind it. And not just consumers and consumer groups, but industry groups, companies such as General Motors, the insurance industry—which I am often at odds with when it comes to health care issues—are fully on our side. There is a broad consensus of support.

It is my hope the House will pass this bill. It is my hope the President of the United States will support this bill and sign it. And it is my hope—my sincere hope—the drug companies will see the error of their ways and, instead of spending so much time on extending patent monopolies, they will, rather, spend that time creating new drugs. They will spend their time not innovating new patents but, rather, innovating new drugs. That is what this is all about.

One final point. Some might say, well, the FDA is doing some of this, anyway. I am glad they are, but as this chart shows, the FDA only goes about a third of the way in doing what is needed in this fair and balanced bipartisan compromise. In fact, when the FDA actually talked about closing these loopholes, it was made clear that legislation would be needed to finish the job.

Mr. President, in conclusion, this legislation finishes the job. It allows generics to come on the market. It will save consumers, American companies, and our Government billions of dollars and increase the quality of health care—the good health and vitality—of the American people.

The PRESIDING OFFICER (Mr. CRAPO). The Senator has used 10 minutes.

Mr. SCHUMER. Mr. President, I do not see Senator GREGG on the floor, so let me yield 10 minutes to my colleague and partner in this 2-year attempt to bring balance back into the area between brand and generic drugs. He is one of our great leaders in the Senate on health care and so many other issues, the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 10 minutes.

Mr. KENNEDY. Mr. President, if the Chair will remind me when I have used 8 minutes.

Mr. President, first of all, I congratulate Senator SCHUMER and Senator MCCAIN for the development of this legislation from over 2 years ago. I thank them for their work and help with our Labor and Human Resources Committee.

When I was fortunate enough to be chairman of that committee, we considered the legislation, and we reported that legislation out. But it was a very contentious meeting of our committee, and we had a very contentious debate here on the floor of the Senate.

But what we have been able to do over the period of the recent months, under the leadership of Senator GREGG and others, is we have come up with a recommendation which reflects virtually a unanimous committee. I think this legislation is going to achieve the objectives Senator MCCAIN and Senator SCHUMER had intended.

So at the outset, I want to say that I am very hopeful we will get this legislation passed.

I quite frankly think this is the appropriate amendment on the appropriate vehicle because we are talking about prescription drugs and we are talking about Medicare, and we are now talking about the costs of the prescription drugs. These matters are interrelated.

If you ask people and seniors about their issues with prescription drugs, they will say, first, accessibility and availability, but, secondly, they will talk about cost. This legislation isn't going to be the final answer on cost, but make no mistake about it, as Senator SCHUMER has pointed out, the savings will be in the tens of billions of dollars to consumers over the period of the next few years. That is incredibly important.

The Hatch-Waxman legislation, as we know, was to try to provide encouragement to our drug companies to innovate and to create and to bring new possibilities into the market. It has been very successful. But it has also interfered with the chances for generics to enter the market after these patents were up.

As has been pointed out by those earlier, we found out there were abuses. Senator MCCAIN and Senator SCHUMER noted this and made a series of recommendations in order that we address it. Their position was justified, again just over a year ago, by the Federal Trade Commission, which virtually identified very similar kinds of problems. There were previously many questions by the Members of this body—I remember the debate and I can still hear the voices in opposition. But, I think, this legislation is reaffirming the efforts which they have developed and which will, hopefully, pass here and will be accepted in the conference that is going to take place.

Just finally, Mr. President, I want to review once again, as the Senators have pointed out, the cost difference of the various drugs over recent times.

First of all, this chart I have in the Chamber shows you that the brand and generic price gap continues to widen.

This chart goes back to 1990. And here you will see, the average prescription was going for $27.16, but only $10.20 for the generic.

On the chart, the red represents the continuing increase in the cost of the average prescription drug that is requested by the pharmacy. It has gone up to $65.29 over the period of 10 years. For the generic, it has gone from $10.29 up to $19. So we have seen this dramatic increase in terms of the brand name, and really a very level increase effectively in terms of the generic.

If we are talking about cost and talking about prices, the more we do to help give consumers a greater opportunity to get generics, we will have had some important impact in terms of creating a downward trend in prices. That is enormously important.

Let's just look over, as others have pointed out, the difference between the average cost per brand name on these

various items. If we look at Prozac for depression, $110.77 for the brand name versus $44.31 for the generic. Claritin for allergies, $63.65 versus $25.46. And going to heart disease, Norvasc, $55.69 to $22.27. Zocor for high cholesterol, $124.71 to $49.88. These are various drugs dealing with ulcers, depression, allergies, heart disease, and high cholesterol, which are many of the challenges our seniors are facing. This is a pretty good indicator of what we are talking about in terms of making generics more available and improving the opportunity for them to get on the market and be able to have a positive impact for our consumers.

All of us understand that we have doubled the NIH budget. That is because we recognized in a very important way, Republicans and Democrats, that this really is the life sciences century. The opportunities we are facing now with the mapping of the human genome, the analysis of DNA, the proclivities that individuals have in terms of cancer and other diseases, are enabling us to anticipate and begin to develop medical technologies that will help prevent individuals from getting these diseases. The opportunities are unlimited. We have made that commitment and we are finding these breakthroughs that are taking place every single day. Many of these initiatives are up in my home State of Massachusetts, they are in New England, associated with many of our great universities and our teaching hospitals. We want to make sure those kinds of breakthroughs are actually going to get out and benefit our fellow citizens.

We want to maintain on the one hand the incentives for the industry, the pharmaceutical industry to move ahead with breakthrough kinds of technologies. On the other hand, we want to make sure that available drugs in the form of generics will be accessible. This legislation is going to have an important impact in terms of the cost.

I commend the Senator from New York, Mr. SCHUMER, and Senator MCCAIN for moving this along. I thank very much the chairman of the committee, Senator GREGG, for giving it time and attention and for his very constructive and positive help. This is an important piece of legislation. It makes a very significant difference for our seniors. I am hopeful this will pass by an overwhelming majority.

I yield back to the Senator from New York any remaining time I have.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. I thank the Senator from Massachusetts and the Senator from New York for their kind words. Obviously their efforts have already been highlighted and have been the key to this successful undertaking. The doggedness of Senator SCHUMER on this issue has managed to bring this to fruition.

It is an important piece of legislation as has been outlined relative to the differential in cost. It will save people significant amounts of dollars on their pharmaceuticals, obviously, as they come off patent. It is important not to underestimate the innovation side. We didn't want to do something that basically undermines or chills innovation, because the ability of our health care system to function well today requires a pretty strong pharmaceutical industry. Pharmaceuticals are really the process by which we are going to be caring for people as we go into the future. That is where the true discoveries are occurring, especially in the biologics area.

We want to make sure we have an extraordinarily vibrant and strong research component, not only in the public sector through NIH, where we have doubled that budget, but in the private sector where people will invest in research, if they see a reasonable return. Some folks forget when they go to Canada to buy these drugs at a discounted price, they don't realize the cost of bringing a drug to the market is extraordinary. It takes about somewhere between 10 and 12, 15 years to bring a new drug to the market. It costs somewhere in the vicinity of three quarters of a billion dollars, $750 million to $1 billion, to bring it to the market. You can't do that unless you have dollars to support the investment and that length of time it takes to develop the drug.

In a free market society, dollars flow where there will be a return. If somebody is going to find that they invest in a drug and that drug research comes to fruition and they produce a drug and immediately the drug is taken over or in too short of a time the drug's patent rights are taken over so there cannot be an adequate return on investment, people will not make the investment in trying to find a new drug. As a result, everyone will suffer. There will be fewer new and exciting drugs on the market that help people with health issues. So we have to have a strong and vibrant industry doing the research. That is why I have always been an aggressive advocate of a strong pharmaceutical industry. It is key to maintaining a health care system in this country which is going to be vibrant and effective for people.

That being said, there is a time at which drugs need to come off patent. They have to be available at a lower price. They have to be available at a more reasonable price, the return having occurred on the original investment. What we saw, regrettably, under Hatch-Waxman, was there were games being played. There were games being played on both sides of the aisle, in fact. There were games being played on the brand-name side which would use the 30-month stay as a weapon, basically interminable stays. And there were games on the generic side where they might team up with a brand name and take advantage of the 180-day exclusivity clause and never bring the drug to market even though they had filed. This bill is an attempt to address those issues. It addresses them very conscientiously and in a positive way. It does it in a way that will not open up a whole new arena of litigation. It is going to do it in the context of the already existing causes of action which is the way it should be done, and it goes a little bit further than what the administration could do in their FDA rule, quite a bit further in some areas, certainly the 180-day issue. In addition, it has statutory support versus regulatory action which means it probably has more opportunity to survive a court challenge.

We think this is an excellent bill. It is a bipartisan bill. I thank the original sponsors, Senators Schumer and McCain. I especially thank Senator KENNEDY for his willingness to work across the aisleway to make sure we move it through committee in a prompt way and have it be done in a constructive manner.

I notice the Senator from Maine is here. I suspect she wishes to speak on this as she has been an aggressive advocate for this type of approach, one of the leaders on this issue in the Senate. We regret she is no longer on the HELP Committee because she was a positive force on lots of issues but especially this one specifically.

Now that she is chairperson of the Investigation and Oversight Committee, she has her plate full of her own accord. I yield to the Senator from Maine such time as she may consume.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. I thank my colleague from New Hampshire for his leadership on this issue. He is an extraordinarily talented chairman of the HELP Committee who was able to bring people together on both sides of the aisle. This is yet another example of an outstanding achievement of the chairman, working together to benefit the people of this country. I do miss serving on the HELP Committee. I enjoyed the many issues the committee addresses, and this is an issue that is near and dear to my heart. I am very pleased to be a cosponsor of this amendment. I commend not only Chairman GREGG, but also Senators SCHUMER, MCCAIN, and KENNEDY, for all of their hard work on this comprehensive proposal.

The amendment we are offering today will make prescription drugs more affordable by promoting competition in the pharmaceutical industry to increase access to lower priced generic drugs while at the same time protecting innovation and preserving the incentives for companies to make the investments necessary to develop newer, better, and safer pharmaceuticals.

This amendment, which is based on legislation I joined Senators SCHUMER and MCCAIN in introducing earlier this year, will make prescription drugs more affordable for all Americans. The Congressional Budget Office estimates that our original proposal would have cut our Nation's drug costs by some $60 billion over the next 10 years, and I understand this compromise proposal is

also expected to result in similar savings.

I will repeat that. There are very few bills we are ever going to consider that will result in cutting our Nation's health care costs. This proposal, according to the CBO, will help reduce the cost of prescription drugs by some $60 billion over the next decade. At a time when we are modernizing Medicare to include a prescription drug benefit, it is very important that this legislation be passed to help moderate the cost of prescription drugs.

Prescription drug spending in the United States has increased by 92 percent over the past 5 years. These soaring costs are a particular burden for millions of uninsured Americans, as well as for seniors on Medicare who now lack prescription drug coverage. Many of these individuals are simply priced out of the market or forced to choose between paying the bills or buying the pills that keep them healthy.

Skyrocketing prescription drug costs are also putting the squeeze on our Nation's employers, who are struggling in the face of double-digit annual premium increases to continue to provide health insurance for their employees. They are exacerbating the Medicaid funding crisis that all of us are hearing about from our Governors back home as they struggle to bridge shortfalls in their States' budgets.

The 1984 Hatch-Waxman Act made significant changes in our patent laws that were intended to encourage pharmaceutical companies to make the investments necessary to develop new drug products while enabling their competitors to bring lower priced generic alternatives to the market.

We should acknowledge that, toward that end, the Hatch-Waxman Act has succeeded to a large degree. Prior to the Hatch-Waxman Act passing, it took 3 to 5 years for generics to enter the marketplace after a brand name patent expired. Today, lower cost generics often enter the market immediately upon the expiration of the patent. As a consequence, consumers are saving anywhere from $8 billion to $10 billion a year by purchasing lower priced generic drugs.

There are even greater potential savings on the horizon. Within the next few years, the patents on brand name drugs with combined sales of $20 billion are set to expire. If the Hatch-Waxman Act were to work as it was intended, consumers could expect to save between 50 to 60 percent on these drugs as lower cost generics became available as these patents expired.

Despite its past success, however, it has become increasingly apparent that our patent laws in the Hatch-Waxman Act have been subject to abuse. While many pharmaceutical companies have acted in good faith, there is mounting evidence that some manufacturers have attempted to game the system by exploiting legal loopholes in the current law.

Too many pharmaceutical companies have maximized their profits at the expense of consumers by filing frivolous patents that have delayed access to the lower priced generics. Currently, brand name companies can delay a generic drug from going to market for years. A ''new'' patent for an existing drug can be awarded for merely changing the color of the pill or its packaging. There were examples cited by the Chairman of the Federal Trade Commission in testimony before the Senate Commerce Committee last year.

One case involved the producer of a heart medication which brought a lawsuit for patent and trademark infringement against the generic manufacturer in early 1996. Instead of asking the generic company to pay damages, however, the brand name manufacturer offered a settlement to pay the generic company more than $80 million in return for keeping the generic drug off the market. In the meantime, the consumers of this heart medication, which treats high blood pressure, chest pains, and heart disease, were paying about $73 a month, while the generic would have cost them only $32 a month.

Last July, the FTC released a long-awaited report that found that brand name drug manufacturers had misused the loopholes to delay the entry of lower cost generics into the market. The FTC found that these tactics led to delays of between 4 and 40 months—that is over and above the first 30-month stay provided under the Hatch-Waxman Act—for generic competitors of at least eight drugs since 1992.

The FTC report pointed to two specific provisions of our patent laws—the automatic 30-month stay and the 180-day market exclusivity for the first generic to file a patent challenge—as being particularly vulnerable to strategies that could delay the entry of lower cost generics into the market. And it is precisely those two provisions which this carefully crafted compromise, which the chairman of the HELP Committee, Senator KENNEDY, Senator SCHUMER, and Senator MCCAIN have crafted, it is precisely those provisions that would be solved, and those loopholes would be closed by the amendment we are offering today.

The bipartisan amendment we are offering would restore the balance in the current laws. It would close the loopholes that have reduced the original law's effectiveness in bringing lower cost generic drugs to market more quickly.

Again, I salute the chairman for the tremendous work that was done on this important proposal. I am delighted it is being offered. I am proud to be a cosponsor. This will make a real difference in the drug bill, not only for consumers, not only for seniors, but employers, State governments, or anyone who is purchasing prescription drugs.

I urge my colleagues to support the amendment.

Mr. FEINGOLD. Mr. President, I join my colleagues, Senators GREGG, SCHUMER, MCCAIN, KENNEDY and others in introducing the Gregg-Schumer-McCain-Kennedy Amendment to the Medicare Prescription Drug Benefit bill.

As we all know, the sky-rocketing cost of prescription drugs is a problem deeply affecting senior citizens across the country. During my listening sessions and travels around my State of Wisconsin, health care, and specifically the cost of prescription drugs, continue to be the number one issue on people's minds. The problem of access to affordable prescription drugs is particularly acute among Wisconsin senior citizens who live on fixed incomes. Nationally, prescription drugs are senior citizens' largest single out-of-pocket health care expenditure, and the amount they are spending is rapidly increasing: this year, the average senior spends $996 a year for their prescription drugs. This is expected to rise to $1,147 in 2004.

I am pleased to be an original cosponsor of the bill on which this amendment is based, the Greater Access to Affordable Pharmaceuticals Act. This important legislation will improve access to prescription drugs, and make them more affordable for our Nation's seniors. By closing a series of loopholes that are hindering true competition in the prescription drug market, this legislation will bring lower-cost generic drugs to the market faster, passing on approximately $60 billion in savings to consumers over the next ten years.

A Medicare Prescription Drug Benefit is absolutely necessary, and the debate we are having on this bill is an important one. But there are no real cost-control measures for the rapidly escalating costs of prescription drugs. This amendment is truly a cost-savings measure for not only our Nation's seniors, but also all Americans who need prescription drugs. This amendment offers a way to help halt the rising costs of prescription drugs, without costing the taxpayers a dime.

Drug companies have every right to profit from their innovations. We need drug companies to continue the important research that brings life-saving drugs to the market. But once a prescription drug patent expires, we cannot allow the drug companies to keep renewing their patents for frivolous reasons, denying consumers affordable access to a generic alternative.

Mr. KOHL. Mr. President, I rise today in strong support of the amendment offered by Senators GREGG and SCHUMER, of which I am a cosponsor.

We are all aware of the incredibly high cost of health care these days and the often prohibitive cost of prescription drugs. We have all heard the sad but true stories of the senior citizens who are forced to choose whether to buy food or buy the medicine they need. We have heard the stories of seniors who only take half a pill instead of a whole one in order to make their prescriptions last longer. We hear these stories, and we all struggle to find a solution to these problems.

I believe this amendment is an incredibly important step towards that

solution. In 2001, Americans spent more than $130 billion on prescription drugs, and of this amount, only $11 billion of this was spent on generic drugs. What makes this statistic so important is that although only $11 billion out of $130 billion spent was on generic drugs, this $11 billion bought 45 percent of the total prescription drugs purchased in 2001. Generic drugs, as safe and effective as their brand name counterparts, cost up to 80 percent less than those counterparts, and this amendment will help make sure that these drugs are made available to the consumer as soon as possible.

This important amendment will close the loopholes that brand name companies have been using to make sure that their drug is the only one on the market, keeping their profits, and consumer costs, high. It will prevent brand name drugs companies from listing frivolous patents with the FDA in order to keep generics from being able to enter the market, and if they do, it will give generic companies recourse options. It will limit brand name companies to one automatic 30-month stay automatically keeping a generic alternative off of the market, instead of unlimited stays, which have kept generics off the market for years.

These provisions, and others in this amendment, will save significant money to States, large corporations, small businesses, senior citizens, and so many others—money we could all use in this economy. For example, at the State level, Wisconsin spent over $14 million dollars in 2001 as a part of its Medicaid Program on 17 popular drugs whose patents will expire in the next 2 years. If generics for those drugs are allowed to enter the market, the taxpayers in my State will save about half of that money. That is no small change.

At the same time, however, this amendment will not force pharmaceutical companies to stop researching and developing new and improved drugs, and looking for the cure for cancer, Alzheimer's disease, Parkinson's disease, and so many other ailments we are so close to curing. Both of these goals—bringing generics to the market as soon as possible, and continuing to support companies in their research and development efforts—are vital, and I believe this amendment strikes a solid balance between the two.

I would like to commend Senators SCHUMER, MCCAIN, KENNEDY, and GREGG for their hard work on this effort, and I encourage all Senators to vote in favor of this amendment.

Mr. HATCH. Mr. President, I rise to speak on the Gregg-Schumer amendment. This is a revised and improved version of S. 1225, the Gregg-Schumer bill, ''The Greatest Access to Affordable Pharmaceuticals Act of 2003.'' The HELP Committee reported S. 1225 just last week.

This bipartisan amendment was authored by Senators GREGG, SCHUMER, MCCAIN, and KENNEDY. I commend all of them for their hard work which, I believe has resulted in a bill that is vastly improved over legislation that passed the Senate last July, S. 812. Additionally, substantial improvements have been made between the version reported by the HELP Committee last week and the new draft of the amendment that I understand was only completed early this morning after an all night drafting session.

While I am supportive of the efforts and leadership of Senator GREGG and his prime cosponsors, Senators SCHUMER, MCCAIN, and KENNEDY, I am not in position to support this extremely important but complicated amendment at this time.

While I am mindful that the underlying bill is an attractive vehicle for this amendment, my experience teaches me that it is good to let the dust settle a bit, or at least let the ink dry, before making an informed judgment on an amendment that works at the complex intersection between the patent code and the Federal Food, Drug, and Cosmetic Act.

I can say this for certain: Senators GREGG, SCHUMER, MCCAIN, and KENNEDY deserve credit for their effort to make drugs more affordable for the public without undermining the existing incentives for developing new medicine.

On Tuesday, the Senate Judiciary Committee held a hearing on the issue of competition in the pharmaceutical industry. This hearing focused on the July 2002 Federal Trade Commission Study: Generic Drug Entry Prior to Patient Expiration, the recently-finalized Food and Drug Administration rule on patent listings and the statutory 30-month stay available in certain circumstances, and the new bipartisan Gregg-Schumer legislation, S. 1225.

At that hearing, I requested the Department of Justice to give us its opinion on the constitutionality of a provision of the legislation and asked the Patent and Trademark Office for their views on the patent-related provisions of the bill. I want to learn more from DOJ and PTO and others about their views on this only recently developed piece of legislation.

As well, at the hearing I discussed with the Chairman of the Federal Trade Commission, Tim Muris, and the Chief Counsel for Food and Drugs at the Department of Health and Human Services, Dan Troy, problems that may arise from the manner in which the bill addresses the granting of the 180-day marketing exclusivity incentive when patents are successfully challenged. The amendment appears to retain a feature of the current system that grants the 180-day marketing exclusivity period to first filers of generic drug applications rather than those applicants actually successful in defeating the patents of pioneer drug firms.

I look forward to working with the proponents of this legislation and once again commend them for their efforts to bring innovative and affordable drugs to the American public.

Mr. GRASSLEY. I commend Senator GREGG and Senator SCHUMER for their bipartisan efforts and leadership on this issue. This amendment would eliminate questionable practices that have emerged since passage of Hatch-Waxman. I applaud the responsible intent of this amendment.

This amendment reduces the possibility for drug companies to play games and prevent competition. These drug companies have not been accountable to consumers. Simply stated, this bill helps to ensure that consumers have access to low-priced drugs. This is a good thing.

This amendment reduces the cost of prescription drugs.

I can't think of a better time to enact these improvements. The underlying bill, S. 1, will provide drugs to seniors and this amendment will ensure access to lower priced drugs to everyone.

I support this amendment and appreciate the efforts of the HELP Committee on this issue.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, I ask unanimous consent that Senator GORDON SMITH of Oregon be added as a cosponsor of the amendment.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

If no one yields time, the time will be charged equally to both sides.

The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator from New Hampshire has 4 minutes. The Senator from Montana has 11 minutes.

Mr. BAUCUS. Mr. President, I yield 5 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Ms. STABENOW. Mr. President, I thank my friend and colleague from Montana, who is working hard overall on this legislation. We appreciate his work.

I came to the floor today to join with colleagues to support this amendment and to commend the Senator from New Hampshire and the Senator from Massachusetts for their joint leadership on the committee of jurisdiction and on this very important amendment.

I think one of the most important actions we can take to lower prescription drug prices for everyone is this amendment. Making the marketplace work, making competition work, allowing, once a patent is completed, for a generic drug—or, as we say in Michigan, an unadvertised brand—to have the opportunity to go on the market, to be able to manufacture that drug and drop the price, I think is very significant.

It is very important that we adopt the provisions in this amendment that relate to enforcement and the 30-month stay.

We have had in Michigan for the last couple of years a very important coalition with Blue Cross and Blue Shield, the Detroit Regional Chamber, and the Grand Rapids Chamber. I just came from a meeting in my office with representatives from the chambers, with other businesses, and those in the community who understand we have to get a handle on the explosion of prescription drug prices, and it is critically important we have competition to bring those prices down.

We know the average brand-name product is going up about three times the rate of inflation. We also know it is very costly to invest in new breakthrough drugs. We have many policies on the books to support and subsidize, through the taxpayers, new breakthrough lifesaving medication and to get it to market.

There is important research done in my State of Michigan, of which I am very proud, through those working in Ann Arbor and Kalamazoo and many other parts of Michigan, which has made a real difference in our lives.

Also, after we help fund the National Institutes of Health research, we allow companies tax deductions and credits for research, and we give them up to a 20-year patent so they can recover their costs from their investments in critical research and then the opportunity to bring these products to market.

The deal with the American taxpayers is once that process of subsidizing and support is finished, that formula, that information is supposed to be available for companies that do not do research—companies that have been called generic drug companies—to manufacture that medicine at a cheaper price. They do not do the research so, by definition, it can be done at a cheaper price. We know that anywhere from 30 percent—I have seen prices that were 70 percent lower. There is a wide range in the ability to bring down prices by having this system work.

We also know that, unfortunately, there have been cases where the system has not worked, where companies have gamed the system or manipulated the system to stop these lower-cost medications from going on the market.

This amendment will close the loopholes and hopefully better enable the system to work so we can have the benefit as consumers, as American taxpayers, of the investments we have made in helping to bring new drugs to the market and have the benefit of being able to afford those products once that medicine comes to the market.

I am very pleased and appreciate the hard work everyone on both sides of the aisle has been involved in to bring this legislation forward. I have spoken many times on the floor about what I believe to be the two goals of Medicare prescription drug coverage and lowering prices for everyone. This amendment is part of lowering the prices for everyone.

I commend everyone involved and urge support of the amendment.

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

Mr. BAUCUS. Mr. President, it goes without saying we live in a very complicated era. That is especially true with prescription drug pricing, health care costs, new technologies, and new health care technologies. You cannot turn on the evening news without seeing a new technology, some way to help people lead higher quality lives, and you cannot turn on the TV without seeing an ad where essentially a prescription drug is being advertised as a new drug to help make people's lives better.

It is very hard for people to know what to believe. It is also very difficult to know just what the right policy should be in Congress with respect to prescription drug benefits, more particularly what prices people should pay for drugs, and that is why we have deductibles, copays, and catastrophic coverage, and also what price Medicare should pay to the prescription drug companies when seniors are receiving benefits for drugs, and what the subsidy would be.

It is not easy. I commend the Senators who put together this amendment because this amendment says: OK, the brand-name drug companies, the pharmaceuticals have their patent protection, and there is a good reason for patent protection: Because it takes a long time to develop drugs, and it is expensive. But there comes a time when enough is enough, when 17 years—I think that is the number of years of patent protection—is enough.

Over the years, some of the drug companies have been able to prevent competition from working; that is, the generic companies come along to produce basically the same product, since the patent expired, but they are, in effect, denied the ability to sell at the much lower price because pharmaceuticals have multiple 30-month periods of stay. I am not saying this bill is perfect, but it is a great advance in helping beneficiaries and in helping the Federal Government get the best price, get the best buy for the drugs that are on the market that senior citizens are going to utilize and buy, one way or another, and Uncle Sam is going to buy.

I highly compliment the authors of this legislation. We will see how well it works. My guess is it is going to work pretty well. There are many efforts, Mr. President, as you know, around the country; many States are figuring out ways, with volume purchasing, to get lower prices for prescription drugs under the Medicaid program.

We do not want to kill the goose that lays the golden egg. The pharmaceuticals have provided our people with wonderful drugs. There is no getting around that. At the same time, everybody wants to get as much as he or she can for themselves—not everybody but a lot of people do. Certainly, in our competitive capitalistic system which works pretty well, companies are concerned about the bottom line, shareholders, quarterly reports, so they are going to try to make as much money as they can for the shareholders, and that is their responsibility.

In so doing, brand-name companies have taken advantage of the patent, taken advantage of current law. They have found a loophole, and this legislation is designed to close that loophole, so that after 17 years and the patent period has expired, companies can offer generic drugs, lower-priced drugs. That makes the most sense once the patent period has expired. It is going to help. This is a bill which has many different provisions. It is very complicated. We are entering a whole new era of prescription drug benefits and a whole new way to get them out to senior citizens through Medicare, through private plans, through PPOs, through HMOs, and trying to find the right balance between value for beneficiaries—that is stability, so our senior citizens know what they are getting on the one hand and efficiency on the other; that is making sure it is the lowest price possible.

This amendment before us does a pretty good job in striking that balance; that is, efficiency as a lower cost to seniors and the Federal Government because of generics, and also stability because it is done in a way that seniors have a better idea what they are getting.

I commend the Senators, and I yield the floor.

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

Mr. SMITH. Mr. President, I rise in support of this amendment. I commend Senators GREGG, SCHUMER, MCCAIN, and KENNEDY for their work on this carefully crafted and bipartisan amendment.

Improved access to generic drugs is a policy that is, frankly, long overdue. Last year I voted in favor of this amendment, and I am pleased to say I believe today's vote will be on an improved amendment.

The bill's sponsors have worked with the FDA, the drug industry, and the generics to reach the compromise that is before the Senate today. The result is a bill that will bring generics to the market in a timely way without stifling or shifting the process. Innovations that are vital to the American public and to health care consumers around the globe are, I believe, contained within this bill. By closing the loopholes that have allowed both the brand name drug companies and the generics to keep more affordable drugs off the market, all Americans win. I urge my colleagues to support this amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ENZI. Mr. President, I ask unanimous consent that Senator LINCOLN be added as a cosponsor to my modified amendment.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

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

The PRESIDING OFFICER. Forty-five seconds.

Mr. GREGG. Mr. President, that is just enough time for me to once again thank the people who have brought this bill to fruition, especially Senator SCHUMER, Senator MCCAIN, and Senator KENNEDY. It is very strong legislation which is going to do a lot to make drugs more affordable for all American citizens, and innovation for new drugs to care for the people in America.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. FRIST. Mr. President, I know we are about to vote in a couple of minutes. I look forward to voting for this very important amendment. I commend the Senator from New Hampshire and the Senator from New York for their tireless work to bring this amendment to the floor in a way that it will receive broad support. It will achieve the objective of lowering the cost of prescription drugs, I believe, by bringing generic drugs to market faster. It will do so in a balanced, responsible way.

I also want to take a second to applaud the Senator from Utah, Mr. HATCH, who really showed remarkable foresight in the original Hatch-Waxman bill that has done so much to maintain balance between fostering research and innovation of new drugs on the one hand and expanding accessibility of more affordable generic drugs on the other. The success of that particular bill has been remarkable.

I do have several concerns about the amendment. I will be voting proudly for this amendment, but I will state the few concerns I have that I hope we can address over the coming days.

The intent of the amendment is clear: To improve competition, to bring high-quality, cost-efficient, and generic alternatives to the market sooner; and this amendment does just that.

Mr. President, I want to address the amendment before us offered by Senator GREGG and to commend him for his tireless work to lower the cost of prescription drugs by bringing generic drugs to market faster.

Last year, the Senate considered, and I voted against, a proposal to disrupt a system that has worked relatively well for almost 20 years—the landmark Hatch-Waxman law. And I want to express my respect and admiration for the tremendous commitment and foresight shown by Senator HATCH in sponsoring and authoring—along with other colleagues in this body—the original Hatch-Waxman bill that has done so much to maintain a balance between fostering research and innovation of new drugs on the one hand and expanding the accessibility of more affordable generic drug copies of existing medicines on the other.

Under Hatch-Waxman, generic competition has flourished. In 1984, when the law was passed, generics represented less than 20 percent of the market. Today, generic drugs represent nearly 50 percent of the entire market.

Yet because of some abuses of the law, S. 812 last year proposed to address the conditions under which generic drugs come to market. Although the bill was intended to speed this process and bring cheaper drugs to the American consumer, I voted against this proposal for a number of reasons, including concerns about the impact the bill would have on public health as well as its possible effect on the development of new, innovative drugs. I shared the concern about abuses to Hatch-Waxman and agreed with issues related to rising drug costs, but the proposal last year simply went too far, way beyond the recommendations contained in the Federal Trade Commission's 2-year study.

Therefore, I commend Senator GREGG for the good work he has done on today's amendment. This represents significant improvement from last year's bill in an attempt to address ongoing concerns with last year's proposal.

Currently, we are working to provide Medicare recipients access to prescription drugs, and that debate will continue into next week. During this discussion, we must address the cost issue, what current changes we must invoke to maintain the long-term sustainability of this added benefit by ensuring that the cost of drugs are appropriate, reasonable, and not beyond the reach of Americans. The Hatch-Waxman law has almost 20 years of balance, and now is the time to go back and readjust and make sure that balance is well situated going forward.

As we look at the overall skyrocketing cost of health care, the cost of prescription drugs is dramatically increasing. But in the name of cost savings, never should we threaten public health. Furthermore, never should we threaten the research and innovation that has made us the envy of the world in terms of health care—the great breakthrough drugs, the investment in research and development, which eventually will deliver a cure for diseases that are not curable today.

Let me make clear that today's amendment is much improved over last year's proposal, which took a heavy-handed approach to this very real problem and would have dealt a serious blow to pharmaceutical research and innovation. My colleagues, Senators GREGG, SCHUMER, MCCAIN, and KENNEDY, should be commended for their progress. Nevertheless, the amendment still has some significant flaws. Let me briefly outline several of my concerns. Even though these concerns will not prevent me from voting for this amendment, I believe that we must address these issues and I hope my colleagues will work with me in this regard.

First, I am concerned by questions that have been raised regarding the constitutionality of a key provision allowing generic drug makers to seek declaratory judgment that the brand's patent is not valid or is not infringed. At the least, it seems likely that this question will generate significant litigation; at the worst, it raises the prospect that all of the work put in on this point may ultimately be for naught if the courts decide that it is unconstitutional.

Next, under current law, if the court finds that a person has willfully infringed a patent, then the court awards treble damages. The amendment states that the court need not award treble damages in some circumstances—an alteration of patent rights that would apply only to drug patents and that removes the disincentive for generic companies to willfully infringe patents.

While this amendment seeks to codify the recently finalized FDA rule limiting innovators to one 30 month stay, I am concerned that it fails to include a clarification of the Food and Drug Administration's, FDA, current policy that an amendment or supplement to an abbreviated new drug application, ANDA, cannot cover a drug other than the original drug indicated in the ANDA. Without closing this obvious loophole, we are only creating additional problems with the appropriate administration of the 30-month stay and leaving in place a possible manner by which to game the system.

The intent of the amendment is clear, to improve competition and bring high-quality, cost-efficient generic alternatives to market sooner. If improving competition is achieved, I believe costs will decrease. However, I believe changes could be made to better improve competition, for example,

by allowing a generic firm that may not have been the first to file but is the first to have an approved drug ready for market to obtain the 180-day marketing exclusivity. This would be more proconsumer because it would reward the generic company that actually gets their drug to market fastest, rather than the one that simply was first in line.

However, I do comment Senator GREGG for including a ''use it or lose it'' provision to discourage anticompetitive behavior. This is a significant advancement from last year's ''rolling exclusivity'' provision, and will protect consumers from anticompetitive behavior on the part of both brand drug companies and generics.

I will support this amendment. However, I believe we must continue to work to ensure the workability of the amendment, to provide that this does not inadvertently increase the health and safety risks to patients, and to avoid setting precedents that could lead to greater confusion and litigation in this area. I thank Chairman GREGG for his work on this issue and look forward to continuing to work with him on this as we move forward.

Again, I commend the Senator from New Hampshire for his tremendous support in authoring, sponsoring, and amending this amendment.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to amendment No. 932, as modified and amended.

Mr. ENZI. 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 legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea''.

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

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 228 Leg.]

YEAS—95

Akaka	Breaux	Cochran
Alexander	Brownback	Coleman
Allard	Bunning	Collins
Allen	Burns	Conrad
Baucus	Byrd	Cornyn
Bayh	Campbell	Corzine
Bennett	Cantwell	Craig
Biden	Carper	Crapo
Bingaman	Chafee	Daschle
Bond	Chambliss	Dayton
Boxer	Clinton	DeWine
Dodd	Johnson	Reed
Dole	Kennedy	Reid
Domenici	Kohl	Roberts
Dorgan	Kyl	Rockefeller
Durbin	Landrieu	Santorum
Ensign	Lautenberg	Sarbanes
Enzi	Leahy	Schumer
Feingold	Levin	Sessions
Feinstein	Lincoln	Shelby
Fitzgerald	Lott	Smith
Frist	Lugar	Snowe
Graham (SC)	McCain	Specter
Grassley	McConnell	Stabenow
Gregg	Mikulski	Stevens
Hagel	Miller	Sununu
Harkin	Murkowski	Talent
Hatch	Murray	Thomas
Hollings	Nelson (FL)	Voinovich
Hutchison	Nelson (NE)	Warner
Inhofe	Nickles	Wyden
Jeffords	Pryor	

NOT VOTING—5

Edwards	Inouye	Lieberman
Graham (FL)	Kerry	

The amendment (No. 932), as modified and amended, was agreed to.

AMENDMENT NO. 939

The PRESIDING OFFICER. There are now 10 minutes equally divided prior to the next vote.

Who yields time?

The Democratic leader.

Mr. DASCHLE. Mr. President, the amendment that is now pending before the Senate addresses a concern that many of us have with regard to the volatility of the premium.

As everyone knows, currently, the Medicare Part B premium is $58.70. That is across the board, across the country. Regardless of where you live, regardless of the circumstances, a senior pays $58.70. We do not know what the premium for this prescription drug benefit will be. We are told the average cost is anticipated to be $35. But there is the average national weighted premium that is supposed to be about $100, which comprises both what the beneficiary pays and what the Government pays. If that is off by $10, if it is going to be $110 rather than $100, that $10 is going to be added to the $35, requiring a 30-percent increase in the cost of the premium for the beneficiary.

So we are very concerned, first, about the unpredictability of the premium, and, secondly, about the volatility of the premium because we really do not know what the national weighted average is going to be.

We also know because of utilization, there could be dramatic changes from region to region. Currently, in a Medicare+Choice program, including prescription drug benefits, a benefit package in Florida costs $16 and a package costs $99 in Connecticut. So you get a wide-ranging variance with regard to regions of the country.

This amendment simply says: Look, of all the factors you have to be concerned about; at least on the premium you are going to have some understanding that it is not going to vary as dramatically and as wildly as it might because there will be a cap of 10 percent over that national average for the beneficiary's contribution. If the national average is $35, it cannot exceed 10 percent more in any 1 year. It might exceed more than that year after year, but each year it would be within 10 percent of the average. It can go below that, but it just cannot go above 10 percent.

When you look at all of the concerns that seniors have with regard to the unpredictability of this plan, the copay, the coverage gap, the stop loss, the benefits package itself—all of those concerns, in addition to the variance of the premium—we are simply saying, let's do, at least in part, what we do with Medicare Part B. If Medicare Part B can be $58.70, let's say the prescription drug benefit can be $35 plus 10 percent regardless of what circumstances may be out there.

Let's give a little more certainty, a little more stability to seniors as they begin to pay their premiums. As it as a result of this bill, they are going to be paying $100 a month now for Part B as well as for this new prescription drug benefit per month. I think we have to be concerned about how high those costs can go and how much economic challenge these seniors are going to have to take on as they face the real prospect of being in a position of not being able to afford the benefit at all.

Mr. President, I yield to my dear friend and colleague from Nebraska, Senator NELSON.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, the purpose of insurance is to help stabilize the market and spread costs and risk over an entire group of people. This amendment will help achieve that goal. It will reduce significantly the unpredictability of the premium and the unpredictability of the disparity of State premiums. It will bring certainty to the process. People will know that their rate cannot be greater than 10 percent of the national average.

If we are going to manage care, we need to manage competition as well. This is one way of being able to do it. Just such as in Medicare, the insurance companies here, providing the new drugs, would decide what premiums to charge seniors based on experience within the State. What we would say is they have to take into account the national statistics and data in determining the rates.

I think it will even it out, and the disparity between State 1 and State 2 will be significantly lower. Unpredictability will be reduced and the certainty that will be established will be beneficial to the people. It will give seniors peace of mind, as well, with the ability to pay and know what the future will bring.

Stability and predictability is important in this particular program. We hope our colleagues will take a look at this and understand that the difference in the rate in New York should not be significantly different than the rate in Florida or Nebraska or wherever we may reside.

I think we all have an interest in making sure this program works, that

it is sustainable, and, therefore, I ask colleagues to be supportive of this amendment. I think it is in the best interests of the insuring public, and, in this particular case, our seniors.

Mr. HATCH. Mr. President, I rise in opposition to the amendment offered by the minority leader, Senator DASCHLE. This amendment would mandate a nationwide cap on the premium for the stand-alone prescription drug plans.

Although at first this amendment might seem attractive, a closer look reveals blemishes and flaws in this approach, flaws that would spell disaster for the stand-alone prescription drug benefit and for Medicare beneficiaries were we to adopt this amendment.

S. 1 provides for a stand-alone prescription drug plan premium that would average $35 nationwide. The amendment offered by Senator DASCHLE would cap the premium at $38.50.

Although it may sound trivial, the difference between these two approaches is an important distinction to make if we are to implement a successful program.

S. 1 provides for at least two, and perhaps many more, private entities to bid for and provide stand-alone prescription drug coverage in each region. The plans may provide either the standard drug benefit or a drug benefit that is actuarially equivalent to the standard drug benefit.

The actuarially equivalent plans will have some flexibility in determining the specific prescription drugs that they provide and how they provide those drugs to beneficiaries. Some plans may be more efficient. These plans may find that they are able to provide prescription drugs at a lower cost and charge a premium that is less than $35. Others may choose to offer enhanced coverage or use delivery systems that require a premium that is higher than $35. It may be 5 percent higher. It may be 10 percent higher. It may be 15 percent higher. Or, it could also be lower.

So why should we lock ourselves in? We would be negating the very flexibility around which S. 1 was designed.

The point is that by providing for an average nationwide premium and stipulating that the plans may be actuarially equivalent, we allow plans to offer choices. And that is what Americans and particularly Medicare beneficiaries want.

S. 1 provides Medicare beneficiaries with the opportunity to choose plans based on price, service, and within certain mandated limits, the prescription drugs that are provided.

Let me mention something that I addressed also a few days ago in my opening remarks. This pertains to the provision in the bill ensuring that Medicare beneficiaries will have affordable prescription drug coverage.

S. 1 gives the Secretary of Health and Human Services the discretion to make adjustments in geographic regions so there will not be a large discrepancy in Medicare prescription drug premiums across the country.

This is very important to me, because I do not want Utahns paying significantly higher premiums than Medicare beneficiaries living in Miami or New York.

That being said, I believe it is better to give the Secretary of HHS the discretion to make those important decisions. If we cap the monthly premium in legislation, we are taking away plan flexibility—one of the fundamental principles of S. 1.

If we adopt the Daschle amendment and cap the stand-alone drug plan premium nationwide, Medicare beneficiaries will lose choices. The plans will not have the flexibility to offer improved service; they may find that they are unable to offer different services at all. There could be little to distinguish plans from each other. And beneficiaries may not be able to find a plan that offers the services or the particular brand of drug that they prefer.

This is not what Medicare beneficiaries want and it is certainly not what we in the Senate should offer them. My Finance Committee colleagues and I have worked hard during the last several months to provide Medicare beneficiaries with choices; choices that allow them to determine which prescription drug plan works best for them.

My colleague from South Dakota is concerned also about the complexity of variable premiums in S. 1. He has claimed that differences between plans will be confusing to our Nation's seniors.

I share Senator DASCHLE's desire that our seniors understand the terms of the plans that they are offered. However, I must disagree that the stand-alone prescription drug plans provided for in S. 1 will confuse seniors because the choices offered to them will be clear. Differences between plans will be obvious; seniors will choose a plan based on the factors that are important to them. It seems to me that this promotes the kind of transparency in public policy that a democratic, open society is all about.

Let me mention another problem that will certainly occur if the Senate were to mandate a national prescription drug premium.

If we mandate a specific, nationwide premium dollar amount, Congress will be back here every year debating whether that amount reflects the true cost to deliver prescription drugs. Since we all know how quickly the Government moves, this seems like a decidedly inefficient process.

This is not how the American people want their elected officials to spend our time, and it certainly is not how I think we can best use our time. This is an instance when Congress should trust the American people to determine what is best for them by making choices in the marketplace.

Furthermore, providing for a nationwide average premium allows plans the flexibility to design prescription drug benefit packages that reflect modern health care—not just what makes sense today, but what will make sense in 10 to 20 years.

If plans do not have this flexibility, we may in 10 years find ourselves in the same situation that we are in today, needing to revise a system that no longer provides the up-to-date options that Medicare beneficiaries need and deserve.

The private health insurance market and the Federal Employees Health Benefit Plans operate in this manner.

These plans provide benefits that have evolved over time in response to enrollees' needs to keep pace with modern health care innovations. Flexibility enables these plans to adjust quickly to meet their enrollees' needs and flexibility will allow the stand-alone prescription drug plans to meet Medicare beneficiary needs quickly and efficiently over time.

It is important also that we recognize that the Congressional Budget Office has said that prescriptive benefits, those spelled out in statute, will cost more and will provide lower quality and less efficient health care. Setting limits usually means that plans provide the minimum benefit at the lowest cost. Providing flexibility enables plans to be innovative and to offer multiple coverage options that reflect what Medicare beneficiaries want.

I urge my colleagues on both sides of the aisle to resist the temptation to vote for this amendment. Although it may sound enticing, capping the prescription drug premium will result in an outcome that none of us desire and that no one intended.

Capping the prescription drug premium will result in a one-size-fits-all approach, an approach that will leave us in a few years with a tired old prescription drug plan that doesn't meet anyone's needs.

This bill, S. 1, is about providing people with choices—choices that are affordable, but choices that also provide Medicare beneficiaries with what they need and want.

When the Government limits prices, Americans lose choices. In establishing a national average premium, not a nationwide premium, S. 1 will provide Medicare beneficiaries with the prescription drugs that they need and the choices that they want today and in the future. That is what Medicare beneficiaries tell us that they want and that is what my Finance Committee colleagues and I have worked so hard to provide. And that is why I will oppose this amendment and why I urge my colleagues to do the same.

The PRESIDING OFFICER. Time in support of the amendment has expired.

Who yields time in opposition?

The Senator from Wyoming.

Mr. THOMAS. Mr. President, I yield time to the Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I just want to inform my colleagues that this

is a balanced bill. It has been very difficult to achieve that balance. I fear it is becoming more fragile as the days pass by. I think it would be very unfortunate if this bill fell apart.

I am not saying, by any stretch of the imagination, that the amendment offered by my very good friend from South Dakota is going to tip the balance of the bill, but I am saying—knowing of other amendments that are coming up, and the views that various Senators are taking on the amendments they may offer later on—this balance, this bill which I think we all want to support, is not in jeopardy yet but it is somewhat tenuous.

There are protections in the bill for premiums. A couple quick points: One, under the bill, there are large geographic areas, which will tend to force the premiums to not fluctuate but to be according to insurable principles.

Second, there are very strong consumer protections that are basically the FEHBP protections which provide premiums have to be in line with benefits. That is under FEHBP. We incorporated that in the bill.

There is also a geographic adjustment in the bill. Right now, the Secretary has discretion to make the geographic adjustment. That might be strengthened later on in the proceedings.

I am sympathetic with the purpose of this amendment, but my judgment is, at this time, we should not adopt this amendment because there are sufficient protections in the bill, and I do not want this bill—I do not think any Senator wants this bill—to go south because of other amendments that may be adopted that may cause that to happen.

This is a historic moment. We are on the eve, the cusp of passing prescription drug benefit legislation. We should not take that lightly. I know we don't. I think we want a big vote. Medicare passed by a large margin back in 1965. Many Senators are saying there is a chance this underlying bill could get 60, 70, 80 votes. I say to my colleagues, I think we owe it to ourselves to try to find a way to help pass this legislation by a large margin.

The PRESIDING OFFICER. Who seeks recognition?

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

The PRESIDING OFFICER. Two and a half minutes.

The Senator from Wyoming.

Mr. THOMAS. Mr. President, I urge my colleagues to vote against this amendment. Competition is the key to holding down costs. That is common sense. This amendment is anticompetitive because it constrains competition. I think we should oppose it.

According to CBO, the competitive policies in our bill ensure that premiums and cost sharing for drug coverage will be affordable. Under S. 1, prescription drug plans that do a poor job of negotiating drug prices will have to charge a higher premium. The same goes for plans that are inefficient and wasteful. Plans that do a good job negotiating will be able to charge lower premiums. That is the marketplace. We should not micromanage it. This amendment does just that. I urge my colleagues to oppose it.

I remind my colleagues, a similar amendment capping premiums at 5 percent was defeated in the Finance Committee last week by a vote of 7 to 14.

I yield to my friend from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Mr. President, I would just say, in conclusion, protections in this bill are exactly the same we have as Members of the Senate. The Administrator could not approve a premium unless it reasonably and equitably reflects the value of the prescriptions they are getting. A Government agency makes the decision on whether it is a reasonable premium.

When you have a deductible that is fixed, it cannot be varied at all. And the catastrophic cut-in cannot be raised. It can be lowered. You have to have something left to compete on, and the premium will be one thing, although it still has to be approved by the Administrator.

So I think the balance we have in the bill is a good one. It is equitable, and I think it can work.

Mr. DASCHLE. Mr. President, 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. 939, as modified. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Florida (Mr. GRAHAM) and the Senator from Massachusetts (Mr. KERRY) would each vote ''yea''.

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

The result was announced—yeas 39, nays 56, as follows:

[Rollcall Vote No. 229 Leg.]

YEAS—39

Akaka	Dodd	Lincoln
Bayh	Dorgan	Mikulski
Biden	Durbin	Murray
Bingaman	Feingold	Nelson (FL)
Boxer	Feinstein	Nelson (NE)
Byrd	Harkin	Pryor
Cantwell	Hollings	Reed
Carper	Johnson	Reid
Clinton	Kennedy	Rockefeller
Conrad	Kohl	Sarbanes
Corzine	Lautenberg	Schumer
Daschle	Leahy	Stabenow
Dayton	Levin	Wyden

NAYS—56

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Miller
Baucus	Ensign	Murkowski
Bennett	Enzi	Nickles
Bond	Fitzgerald	Roberts
Breaux	Frist	Santorum
Brownback	Graham (SC)	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Campbell	Hagel	Snowe
Chafee	Hatch	Specter
Chambliss	Hutchison	Stevens
Cochran	Inhofe	Sununu
Coleman	Jeffords	Talent
Collins	Kyl	Thomas
Cornyn	Landrieu	Voinovich
Craig	Lott	Warner
Crapo	Lugar	

NOT VOTING—5

Edwards	Inouye	Lieberman
Graham (FL)	Kerry	

The amendment (No. 939) was rejected.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from New Hampshire.

AMENDMENT NO. 945

Mr. GREGG. Mr. President, what is the regular order?

The PRESIDING OFFICER. The Gregg amendment, on which there are 2 minutes of debate evenly divided.

Mr. GREGG. Mr. President, I ask unanimous consent that Senator TALENT be added as a cosponsor of the amendment.

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

Mr. GREGG. Mr. President, I will just say this amendment is a good idea. I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time in opposition?

If all time is yielded back, the question is on agreeing to the amendment of the Senator from New Hampshire.

The yeas and nays have been ordered.

The clerk will call the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea''.

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

The result was announced—yeas 94, nays 1, as follows:

[Rollcall Vote No. 230 Leg.]

YEAS—94

Akaka	Bond	Carper
Alexander	Boxer	Chafee
Allard	Breaux	Chambliss
Allen	Brownback	Clinton
Baucus	Bunning	Cochran
Bayh	Burns	Coleman
Bennett	Byrd	Collins
Biden	Campbell	Conrad
Bingaman	Cantwell	Cornyn

Corzine	Hutchison	Pryor
Craig	Inhofe	Reed
Crapo	Jeffords	Reid
Daschle	Johnson	Roberts
Dayton	Kennedy	Rockefeller
DeWine	Kohl	Santorum
Dodd	Kyl	Sarbanes
Dole	Landrieu	Schumer
Domenici	Lautenberg	Sessions
Dorgan	Leahy	Shelby
Durbin	Levin	Smith
Ensign	Lincoln	Snowe
Enzi	Lott	Specter
Feingold	Lugar	Stabenow
Feinstein	McCain	Stevens
Fitzgerald	McConnell	Sununu
Frist	Mikulski	Talent
Graham (SC)	Miller	Thomas
Grassley	Murkowski	Voinovich
Gregg	Murray	Warner
Hagel	Nelson (FL)	Wyden
Harkin	Nelson (NE)	
Hollings	Nickles	

NAYS—1

Hatch

NOT VOTING—5

Edwards	Inouye	Lieberman
Graham (FL)	Kerry	

The amendment (No. 945) was agreed to.

RECOGNIZING NATIONAL HOCKEY LEAGUE'S NEW JERSEY DEVILS AND THE NEW JERSEY NETS

Mr. CORZINE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution No. 176, introduced by myself and Senator LAUTENBERG.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 176) recognizing the National Hockey League's New Jersey Devils and National Basketball Association New Jersey Nets for their accomplishments during the 2002–2003 season.

There being no objection, the Senate proceeded to consider the bill.

Mr. DORGAN. Reserving the right to object—and I shall not object—I want to be certain I will be recognized following the disposition of the resolution by the two Senators from New Jersey. My understanding is that I was to be recognized at this moment. They are asking for 10 minutes, combined, for this resolution. Is my understanding correct that I will be recognized by previous unanimous consent following disposition of this?

The PRESIDING OFFICER. It has been ordered that the Senator from North Dakota shall be recognized to offer the next amendment.

Mr. DORGAN. Thank you.

Mr. LAUTENBERG. Mr. President, is that reserving the time that was immediately available? I am a little concerned. If the Senator from North Dakota has that, I want to honor that. If not, we might take a little more time than 10 minutes.

The PRESIDING OFFICER. No time has been allocated.

Mr. BAUCUS. Mr. President, if I understand the drift of things, obviously Senators can reserve, we can work this out. I ask consent that the Senators from New Jersey be given 10 minutes to speak on a very important subject; following that, the Senator from North Dakota be authorized on his amendment to follow the order in the earlier unanimous consent.

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

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. I rise today with my distinguished colleague from New Jersey, my friend and longstanding representative of our great State, Senator LAUTENBERG, to discuss a resolution honoring the New Jersey Devils and the New Jersey Nets, their accomplishments in postseason of the respective leagues.

The past 2 weeks have seen the Devils host the Stanley Cup after defeating the Anaheim Mighty Ducks and the Nets reached the NBA finals. For the second year in a row, the Nets have been in the finals of the NBA, this year against a very talented group from Texas, the San Antonio Spurs. These accomplishments have made the constituents of my State very proud, and deservedly so.

Over the last 9 years, the New Jersey Devils have won the NHL Stanley cup three times—as much as my team in hockey. During that time, a stifling defense led by Scott Stevens, the playmaking abilities Patrik Elias and Scott Gomez, and the superb goaltending of Martin Brodeur have become the standards of excellence in the National Hockey League.

At the same time, the New Jersey Nets have become one of the most successful teams in the NBA, winning the Eastern Conference Championship each of the last 2 years, led by the outstanding play of Jason Kidd, in my view the best pointguard in the NBA.

The Devils and the Nets both play at the Continental Airline Arena in East Rutherford, NJ, a town of about 10,000 folks. Many think it is the nexus of the sporting universe. We would like to see some of the Olympics in 2012. That is right, even though some of my colleagues from Texas might dispute some of that view.

It is a great organization that happens to own both teams, the Devils and the Nets. They go beyond their supporting crowds. Both teams are actively involved in the community and give a tremendous amount back to it. Patrik Elias helps support Transplant Speakers International, an organization that raises funds and awareness for organ transplants. Dikembe Mutombo helped dedicate the Nets Reading and Learning Center at the Hudson County Boys and Girls Club in Jersey City. Over and over again the players have helped in our disadvantaged schools and communities. They are terrific.

I mention one individual who sets a standard for excellence in business and in sports. That is the general manager—surprisingly, of both teams—Lou Lamoriello, whose dual role is unique in the sporting world. Quite frankly, I think he is the best in the business because he sets a standard not only on the basketball court and hockey wing but in how he operates in the communities, giving back and expecting people to behave and operate in a class way.

This is a terrific credit to an organization, to the teams, and most particularly to fans who have supported them. New Jersey sometimes does not get the kind of recognition it needs. These two organizations have done that through dedication, teamwork, and sportsmanship. They have achieved great success. I congratulate them.

I yield to my colleague from New Jersey.

Mr. LAUTENBERG. I thank my colleague and friend from New Jersey for his enthusiasm. I know he often gets on an airplane no matter what time, as long as our business here is done, and he gets up there, maybe sometimes in the fourth quarter of a game. But he gets there and roots the Nets on.

I am pleased to note the great sports accomplishments of two New Jersey teams in recent weeks. I support this resolution. I congratulate the New Jersey Devils for winning the Stanley Cup and the New Jersey Nets for winning the NBA's Eastern Conference.

I am going to be gracious and extend my congratulations to Senator HUTCHISON, with whom I had a wager, because the San Antonio Spurs played wonderful basketball, as disappointing as it was to me and other New Jersey Net fans. I paid off that wager with a case of beautiful New Jersey tomatoes for our terrible loss.

Winning the Stanley Cup 3 of the last 9 years proves that the Devils are the most dominant team in hockey. I was thrilled to watch them win game 7 with a shutout by the Devils' exceptional goalie, Martin Brodeur, who recorded 7 shutouts during the playoffs alone. Special congratulations are in order for five players who have been with the team for all three championships: Brodeur, Ken Daneyko, Scott Stevens, Sergei Brylin, and Scott Niedermayer.

As mentioned by Senator CORZINE, general manager Lou Lamoriello has established a culture of success in New Jersey by molding winning teams each year around this core of five. The Meadowlands, where the Continental Airlines Arena is located, is no safe haven for opponents. Our Devils were a remarkable 12 and 1 on home ice during the playoffs. That's the most home wins in the history of the Stanley Cup playoffs.

It's nice to congratulate the New Jersey Nets, as well, because New Jersey, after all, is where the first professional basketball game was played, in Trenton, 1898. No, I don't remember it.

The Nets have been Eastern Conference champions and have played in the NBA finals for 2 years in a row. This year they compiled an amazing streak of 10 consecutive wins, sweeping past the Celtics and Detroit Pistons along the way.

Nets coach Byron Scott has led the Nets to the most wins in franchise history. The Nets, led by their superb point guard Jason Kidd, lost a tough 6-game series to the Spurs, who are undoubtedly championship material. But the Nets are in that class, as well. I hope that this team will stay intact and continue on its quest to winning an NBA title.

New Jersey is a haven for great professional sports teams, and on behalf of the whole State of New Jersey, I congratulate the Devils and Nets and wish both teams the best of luck in the future.

Mr. CORZINE. Mr. President, I ask unanimous consent the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and any statements relating thereto be printed in the RECORD, without intervening action or debate.

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

The resolution (S. Res. 176) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 176

Whereas the New Jersey Devils defeated the Anaheim Mighty Ducks 3-0 on June 9, 2003 to win the Stanley Cup in 7 games;

Whereas the New Jersey Nets won the National Basketball Association (NBA) Eastern Conference Championship and reached the NBA Finals for the second consecutive year before losing a closely contested series to the San Antonio Spurs in 6 games;

Whereas the Devils won their third Stanley Cup in the last 9 years, as many as any other team in that period;

Whereas the Devils and Nets have won over the State of New Jersey (where the first professional basketball game took place in 1898) with their skillful offenses and stifling defenses;

Whereas the Devils and Nets have come to epitomize the never-say-die spirit of the people of New Jersey and have both become an important part of the State and its identity;

Whereas the fans of both New Jersey teams have shown the same spirit and determination in support of their teams and deserve commendation for their loyalty in this season's playoffs;

Whereas the Devils had a 12 win, 1 loss record at the Continental Airlines Arena, the most home wins in the history of the Stanley Cup playoffs;

Whereas the Nets swept both the Boston Celtics and the Detroit Pistons during a 10-game winning streak in this season's playoffs;

Whereas Pat Burns, head coach of the New Jersey Devils, has enjoyed the kind of success that has eluded so many other great coaches, winning his first Stanley Cup title in his first season as head coach of the Devils;

Whereas Byron Scott, head coach of the New Jersey Nets, has guided the Nets to the most wins in franchise history, and has led them to the NBA Finals in 2 of his 3 seasons as head coach;

Whereas Martin Brodeur, regarded by many as the premier playoff goaltender in hockey history, recorded 3 shutouts in the Finals, giving him 7 shutouts during this season's playoffs and 20 during his illustrious postseason career;

Whereas the outstanding playmaking abilities of Jason Kidd, widely regarded as the best point guard in the NBA, has been key to the success of the Nets during the past 2 seasons;

Whereas the outstanding play of Ken Daneyko, Martin Brodeur, Scott Stevens, Sergei Brylin, and Scott Neidermayer has been a vital part of each of the 3 Stanley Cup Championships enjoyed by the New Jersey Devils organization;

Whereas Jason Kidd has superb teammates in Brandon Armstrong, Jason Collins, Lucious Harris, Richard Jefferson, Anthony Johnson, Kerry Kittles, Donny Marshall, Kenyon Martin, Dikembe Mutombo, Rodney Rogers, Brian Scalabrine, Tamar Slay, and Aaron Williams, allowing the team to win its second consecutive NBA Eastern Conference championship; and

Whereas the name of each Devils player will be inscribed on the Stanley Cup, including Tommy Albelin, Jiri Bicek, Martin Brodeur, Sergei Brylin, Ken Daneyko, Patrik Elias, Jeff Friesen, Brian Gionta, Scott Gomez, Jamie Langenbrunner, John Madden, Grant Marshall, Jim McKenzie, Scott Niedermayer, Joe Nieuwendyk, Jay Pandolfo, Brian Rafalski, Pascal Rheaume, Mike Rupp, Corey Schwab, Richard Schmelik, Scott Stevens, Turner Stevenson, Oleg Tverdovsky, and Colin White: Now, therefore, be it

Resolved, That the Senate congratulates—

(1) the New Jersey Devils for their determination, perseverance, and excellence in winning the National Hockey League's 2003 Stanley Cup; and

(2) the New Jersey Nets for their success during the 2002-2003 NBA season.

HONORING LARRY DOBY

Mr. LAUTENBERG. Mr. President, I rise in sorrow because baseball lost a legend, African Americans lost a pioneer, and I lost a good friend. I went to high school with Larry Doby at Eastside High School in Paterson, NJ, and watched as he amassed records that were beyond comprehension for most people.

He had four All-State letters. He played basketball, baseball, football, and he ran track well enough to earn an All-State letter in a big State like New Jersey, with that population. He was not only an exciting player to watch on the field, he was a good man. His five children and the whole country will miss him greatly.

Few people realize that Larry began his groundbreaking athletic career in 1943 as the first African-American to play in the American Basketball League for the Paterson Panthers. He then moved on to baseball, playing for the Newark Eagles of the Negro National League. After returning from his service in the Navy for two years, Larry hit .414 with 14 home runs in his final season in Newark, NJ.

It was on July 5, 1947, just 11 weeks after Jackie Robinson broke the color barrier in major league baseball, that Larry Doby signed a contract with the Cleveland Indians of the American League. He was the first African-American player in the American League.

Larry had no intention or desire to become an important part of history. When Indians owner Bill Veeck predicted to Larry that he would ''be part of history,'' Larry replied, ''I had no notions about that. I just wanted to play baseball.''

And play baseball he did, and quite well. Larry was an All-Star 7 times in his 13-year career, and he helped the Indians win the World Series in 1948 with a home run in Game 4. He hit at least 20 home runs in 8 straight seasons.

Larry went on to become the second African-American manager of a major league team taking the helm of the Chicago White Sox in 1978. He was also the director of community relations for the New Jersey Nets in the late 1970s, encouraging the development of youth programs in urban New Jersey.

It was not easy for Larry, few things this important are. He was harassed by opposing players and fans. He was forced to eat in separate restaurants, to sleep in separate hotels. Some of his own teammates would not even shake his hand. But he pressed on, and we're a better country for it.

Larry said it best in a speech after his career had ended. He said:

We can see that baseball helped make this a better country. We hope baseball has given (children) some idea of what it is to live together and how you can get along, whether you be black or white.

When historians take note of the great contributions made by citizens of the State of New Jersey, certainly the name of Larry Doby should be included. He is at the top of that long list in my mind.

Mr. CORZINE. Mr. President, let me congratulate my colleague from New Jersey for bringing up this discussion of Larry Doby, who is really a national hero. I commend anyone to read the reports in today's newspapers about his career and the evolution of how African Americans ascended to the role they rightfully should have received in American baseball and American life in general. He was a hero to all of us. I am thankful he was remembered by my senior colleague.

PRESCRIPTION DRUG AND MEDICARE IMPROVEMENT ACT OF 2003—Continued

AMENDMENT NO. 946

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

Mr. DORGAN. I send an amendment to the desk on behalf of myself, Ms. STABENOW, Mr. JEFFORDS, Ms. SNOWE, Mr. JOHNSON, Mr. LEVIN, Mrs. BOXER, Mr. PRYOR, and Mr. FEINGOLD. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN], for himself, Ms. STABENOW, Mr. JEFFORDS, Ms. SNOWE, Mr. JOHNSON, Mr. LEVIN, Mrs. BOXER, Mr. PRYOR and Mr. FEINGOLD, proposes an amendment numbered 946.

Mr. DORGAN. I ask unanimous consent the 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.'')

AMENDMENT NO. 947 TO AMENDMENT NO. 946

Mr. FRIST. Mr. President, I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST], FOR MR. COCHRAN, for himself, Mr. FRIST, Mr. BREAUX and Mr. SANTORUM, proposes an amendment numbered 947 to amendment No. 946.

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

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

The amendment is as follows:

(Purpose: To protect the health and safety of Americans)

At the appropriate place, insert the following:

''( ) 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.''.

Mr. FRIST. Mr. President, the amendment I send to the desk is sent on behalf of Senators COCHRAN and BREAUX. It addresses an issue that we have addressed on the Senate floor this evening. It has to do with the safety aspects of the underlying Dorgan amendment.

As everyone in the Chamber knows, we have spent the last several days addressing the important issue of adding prescription drugs as a benefit to our Medicare Program today and at the same time strengthening and improving Medicare.

Just a few minutes ago, the Senate passed legislation that will speed access of generics to the market, really making drugs overall, I believe, more affordable and more accessible to all Americans. This merely builds on the rule announced last week by the administration that will enhance the overall process with generic drugs by limiting brand drug manufacturers to only one 30-month stay. But in the midst of the overall bipartisan progress to enhance access to and improve the affordability of prescription drugs, once again this proposal or proposals to look at importation of drugs from Canada have resurfaced.

Very briefly, the Senate has debated this issue several times before. The legislation itself is already on the books. Congress passed, this body passed, indeed President Clinton signed into law the Medicine Equity and Drug Safety Act of 2000, which allows for the importation of pharmaceuticals into the United States. However, the law provided that the Secretary of Health and Human Services had to demonstrate that its implementation, No. 1, would impose no risk to the public's health and safety; No. 2, would result in significant reduction in the cost of covered products to the American consumer.

Since that time, two Health and Human Services Secretaries, one a Democrat and one a Republican, could not demonstrate safety or cost savings from importation.

I reiterate, the law on the books is such that safety concerns have been expressed and, indeed, two HHS Secretaries could not demonstrate safety or cost savings from importation; therefore, the law has not been implemented.

In addition, the FDA, two separate Secretaries of Health and Human Services, the U.S. Customs Service, the Drug Enforcement Administration, and almost every former FDA Commissioner have consistently and repeatedly opposed these proposals and told us they cannot ensure that importing drugs is safe.

I ask unanimous consent to have printed in the RECORD a letter dated June 19 to Senator COCHRAN from Mark B. McClellan, Commissioner of Food and Drugs.

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

DEPARTMENT OF HEALTH & HUMAN SERVICES
FOOD AND DRUG ADMINISTRATION,
Rockville, MD, June 19, 2003.

Hon. THAD COCHRAN,
U.S. Senate, Washington, DC

DEAR SENATOR COCHRAN. This letter is in response to your request for information from the Food and Drug Administration (FDA) on the importation of prescription drugs into the United States from foreign countries. It is currently illegal to import prescription drugs from foreign countries into the United States, but Congress has been debating whether to amend the law to allow such products to flow into the United States and become part of the drug supply. The FDA has serious concerns about proposals that would open America's borders to a stream of imported prescription drugs for which FDA cannot assure safety, effectiveness or quality.

We share with Congress deep concern for senior citizens and other patients who have difficulty paying for their prescription drugs. As I am writing this, the Congress is working towards enactment of landmark legislation to provide a prescription drug benefit that will enable millions of America's seniors to receive coverage for their drugs in Medicare. In addition, under my leadership, FDA has taken a number of significant steps to provide greater access to affordable prescription medications that are safe and effective. These steps include new initiatives to accelerate approval of innovate new medical procedures and drug therapies, changes to our regulations to reduce litigation that has been shown to unnecessarily delay access to more affordable generic drugs and proposals to increase Agency resources for the review and approval of generic drugs—products that are often far less expensive than brand name products.

The overall quality of drug products that consumers purchase from United States pharmacies is very high, and the American consumer can be confident that the drugs they use are safe and effective. However, a growing number of Americans are obtaining their prescription medications from foreign sources and when they do so, consumers are exposing themselves to a number of potential safety risks that must be ignored. In FDA's experience, may drugs obtained from foreign sources that either purport to be or appear to be the same as U.S.—approved prescription drugs are, in fact, of unknown quality. These outlets may dispense expired, subpotent, contaminated or counterfeit, product, the wrong or a contraindicated product, an innocent dose, or medication unaccompanied by adequate directions for use. The labeling of the drug may not be in English and important information regarding dosage and side effects may not be available. In addition, the drugs may not have been packaged and stored under proper conditions to avoid degradation.

Some have suggested that limiting each drug imports to those from Canada would address these potential safety concerns. But FDA cannot guarantee the safety of Canadian drugs. Additionally, Canadian health officials have made clear in public statements that they can provide no assurance as to the safety and authenticity of drugs products shipped to Canada for resale in other countries. In fact, the Agency has concrete examples of drugs purchased from Canadian pharmacists that violate safety provisions established by FDA and the state pharmacy authorities, and we had been instances of internet sites that offer to sell FDA-approved drugs, but upon further investigations we have determined that the drugs they sell are adulterated, sub-potent, or counterfeit.

The relatively ''closed'' regulatory system that we have in this country has been very successful in preventing unapproved or otherwise unsafe drug products from entering the U.S. stream of commerce. Legislation that would establish other distribution routes for prescription drugs, particularly where those routes traverse a U.S. border, creates a wide inlet four counterfeit drugs and other dangerous products that are potentially injurious to the public health and that pose a threat of our nation's drug apply.

In sum, while we strongly support efforts to make prescription drugs more affordable and have taken several recent steps to accelerate access to more affordable, safe and effective prescription drugs, I remain concerned that provisions to legalize importation of prescription drug products would greatly erode the ability of the FDA to ensure the safety and efficacy of the drug supply. At the time, the Agency simply cannot assure the American public that drugs imported from foreign countries are the same as products approved by FDA, or that they are safe and effective.

Sincerely,
MARK M. MCCLELLAN, MD., PH.D.
Commissioner of Food and Drugs.

Mr. FRIST. I will read two sentences from the letter, the entire text of which will be in the RECORD. It says in the first paragraph:

The FDA has serious concerns about proposals that would open America's borders to a stream of imported prescription drugs for which FDA cannot assure safety, effectiveness or quality.

In the last paragraph, one other sentence:

I remain concerned that provisions to legalize importation of prescription drug products would greatly erode the ability of the FDA to ensure the safety and efficacy of the drug supply.

One final point: Canadian health officials just very recently made it clear

that they cannot, and they indeed will not, vouch for the safety of prescription drugs imported from Canada to the United States. Thus, I would argue that there is no need for Congress to pass yet another piece of legislation when a law is already on the books, and doing so only further threatens the safety of the American public, particularly in this time of sensitivity to the dangers of possible biological, chemical, or other terrorist attacks.

Relying on medicines that have been imported from other countries, if that were the case, I believe would lead to seniors and individuals with disabilities opening themselves to unnecessary threats in particular, especially in light of the current bill, where we are giving them access to prescription drugs they simply did not have before. Obtaining drugs from other countries has a certain appeal to seniors who simply have no access to any prescription drugs at all, but the underlying premise of the bill on the Senate floor is that we are going to improve that access to each and every senior, in terms of having better access to those prescription drugs.

I yield the floor.

Mr. COCHRAN. Mr. President, I support the effort to provide prescription drugs to Medicare beneficiaries and to lower the costs of medicines for all Americans. Today's therapies are too valuable, in terms of improving health and quality of life, for Medicare beneficiaries not to have prescription drug coverage.

However, we must not create new opportunities for counterfeit products, or products that have been tampered with, or products of unknown origin to be brought into this country.

The amendment I have offered requires the Secretary of Health and Human Services to certify that the reimportation of drug products will pose no additional risk to the public health and safety and will result in a significant reduction in the cost of covered products to the American consumer.

If reimportation is safe and will reduce costs, this amendment should not pose a problem. However, these are genuine concerns that reimportation may not be safe for Americans.

We have had this issue before the Senate on two previous occasions. Three years ago during consideration of the annual appropriations bill for the Department of Agriculture, Food and Drug Administration and related agencies, a similar amendment was added to the bill. The Senate unanimously approved that amendment.

Then again last July, when we were considering the Greater Access to Pharmaceuticals Act, a similar amendment was offered that limited reimportation to products from Canada. Again, the Senate, by a vote of 99–0 approved this safeguard as part of the legislation that passed the Senate. The House did not act upon this legislation.

In both these cases the Senate has adopted this amendment by a unanimous vote both times for an obvious reason: the safety of the American consumer must be protected.

Three years ago, 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 material was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF
HEALTH AND HUMAN SERVICES,
Washington, DC, December 26, 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 reimporation legislation. Unfortunately, our most significant concerns about this proposal were not addressed. There 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 approval 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 not 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 to 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. Mr. President, 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 and 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.

There being no objection, the material 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 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 ask 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, FDS 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 distribution 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 open 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 cannot 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 programs.

COST SAVINGS

The clear intent of the MEDS Act is to reduce the price differentials between the U.S. and foreign countries. The review by 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. Mr. President, just this week, Mark McClellan, Commissioner of the Food and Drug Administration, has written to reiterate this point. I ask unanimous consent that Dr. McClellan's letter of June 19, 2003 be printed in the RECORD.

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

DEPARTMENT OF HEALTH & HUMAN SERVICES, PUBLIC HEALTH SERVICE, FOOD AND DRUG ADMINISTRATION,

Rockville, MD, June 19, 2003.

Hon. THAD COCHRAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR COCHRAN: This letter is in response to your request for information from the Food and Drug Administration (FDA) on the importation of prescription drugs into the United States from foreign countries. It is currently illegal to import prescription drugs from foreign countries into the United States, but Congress has been debating whether to amend the law to allow such products to flow into the United States and become part of the drug supply. The FDA has serious concerns about proposals that would open America's borders to a stream of imported prescription drugs for which FDA cannot assure safety, effectiveness or quality.

We share with Congress deep concern for senior citizens and other patients who have difficulty paying for their prescription drugs. As I am writing this, the Congress is working towards enactment of landmark legislation to provide a prescription drug benefit that will enable millions of America's seniors to receive coverage for their drugs in Medicare. In addition, under my leadership, FDA has taken a number of significant steps to provide greater access to affordable prescription medications that are safe and effective. These steps include new initiatives to accelerate approval of innovate new medical procedures and drug therapies, changes to our regulations to reduce litigation that has been shown to unnecessarily delay access to more affordable generic drugs, and proposals to increase Agency resources for the review and approval of generic drugs—products that are often far less expensive than brand name products.

The overall quality of drug products that consumers purchase from United States pharmacies is very high, and the American consumer can be confident that the drugs they use are safe and effective. However, a growing number of Americans are obtaining their prescription medications from foreign sources and when they do so, consumers are exposing themselves to a number of potential safety risks that must not be ignored. In FDA's experience, many drugs obtained from foreign sources that either purport to be or appear to be the same as U.S.—approved prescription drugs are, in fact, of unknown quality. These outlets may dispense expired, subpotent, contaminated or counterfeit product, the wrong or a contraindicated product, an incorrect dose, or medication unaccompanied by adequate directions for use. The labeling of the drug may not be in English and important information regarding dosage and side effects may not be available. In addition, the drugs may not have been packaged and stored under proper conditions to avoid degradation.

Some have suggested that limiting such drug imports to those from Canada would address these potential safety concerns. But FDA cannot guarantee the safety of Canadian drugs. Additionally, Canadian health officials have made clear in public statements that they can provide no assurance as to the safety and authenticity of drug products shipped to Canada for resale in other countries. In fact, the Agency has concrete examples of drugs purchased from Canadian pharmacists that violate safety provisions established by FDA and by state pharmacy authorities, and we have seen instances of internet sides that offer to sell FDA-approved drugs, but upon further investigation we have determined that the drugs they sell are adulterated, sub-potent, or counterfeit.

The relatively ''closed'' regulatory system that we have in this country has been very successful in preventing unapproved or otherwise unsafe drug products from entering the U.S. stream of commerce. Legislation that would establish other distribution routes for prescription drugs, particularly where those routes traverse a U.S. border, creates a wide inlet for counterfeit drugs and other dangerous products that are potentially injurious to the public health and that pose a threat to the security of our nation's drug supply.

In sum, while we strongly support efforts to make prescription drugs more affordable and have taken several recent steps to accelerate access to more affordable, safe and effective prescription drugs, I remain concerned that provisions to legalize importation of prescription drug products would greatly erode the ability of the FDA to ensure the safety and efficacy of the drug supply. At this time, the Agency simply cannot assure the American public that drugs imported from foreign countries are the same as products approved by FDA, or that they are safe and effective.

Sincerely,

MARK B. MCCLELLAN, M.D., Ph.D.,
Commissioner of Food and Drugs.

Mr. COCHRAN. Mr. President, it would seem prudent that the safeguards we have adopted twice, by unanimous votes, should also be applied to

this proposal. That is why I offer 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 considering 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 change of drug reimportation laws must assure safety from this threat. Limiting reimportation to drugs from Canada does not necessarily solve that problem.

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.

More recently, in letter dated November 25, 2002, Asa Hutchinson, then Administrator of the Drug Enforcement Administration at the US Department of Justice, reiterated this position with respect to any type of proposal that might limit the ability of the FDA to inspect and assure the safety and compliance with Federal law of products that would be brought back into the United States.

I ask unanimous consent that Administrator Hutchinson's letter be printed in the RECORD.

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

U.S. DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT ADMINISTRATION,
Washington, DC, November 25, 2002.

Hon. THAD COCHRAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR COCHRAN: The purpose of this letter is to respond to your inquiry regarding the position of the Drug Enforcement Administration (DEA) with respect to any proposal to limit the authority of the Food and Drug Administration (FDA) to inspect shipments of prescription drugs that are imported into the United States.

In general, DEA opposes any such limitations because they would hinder the ability of federal 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. Since its creation in 1906, the FDA has served as the American public's watchdog to ensure safe, medically approved prescription drugs. In undermining the FDA's ability to do its job, we risk undermining the public health and safety.

First, a brief explanation of DEA's role in this issue: DEA's statutory authority is limited to controlled substances (drugs of abuse). DEA is the primary agency responsible for enforcement of the Controlled Substances Act (CSA). Controlled substances can be viewed as a subset of prescription drugs. All legal (pharmaceutical) controlled substances are prescription drugs (e.g., OxyContin, Percocet, Demerol, Valium). However, most prescription drugs are not controlled substances (e.g., Claritin, Prozac, Viagra, erythromycin, insulin). Nonetheless, for the following reasons, limiting FDA's authority to inspect shipments of imported prescription drugs could potentially lead to an increase in the illegal importation of controlled substances into the United States.

DEA is currently facing enforcement challenges on many fronts with respect to controlled substance importation and smuggling. Several foreign countries have been identified as the source of a large amount of controlled substances that have been illegally imported. Additionally, the United States Customs Service (USCS) inspectors on the southern and northern borders must determine whether each traveler entering the United States with a drug is complying with the Federal Food, Drug and Cosmetic Act (FDCA) and the CSA. Information obtained from the USCS indicates that there is an increased volume of prescription drugs being imported through the mail as a result of the Internet. Sometimes the drugs are counterfeit; other times the drugs are real drugs, including controlled substances, sold without the required prescription. Although the CSA clearly prohibits importation of controlled substances in this manner, the FDA and USCS must inspect each package to ascertain the contents. Identifying a drug by its appearance and labeling is not an easy task. From a practical standpoint, inspectors cannot examine drug products and accurately determine the identity of such drugs or the degree of risk they pose. This is particularly true since these drugs are often intentionally mislabeled. Persons who are willing to illegally ship controlled substances to the United States are unlikely to honestly label their packages as containing controlled substances,

Therefore, in order to support DEA's efforts to curtail the illegal importation of controlled substances into the United States, it is crucial that FDA retain its authority to inspect all packages that purport to contain ''prescription drugs.'' If federal law prohibited the FDA from inspecting foreign shipments of prescription drugs, making an exception in the law that would allow the FDA to inspect controlled substance shipments would serve little purpose. The foreign shipper could simply label the package ''prescription drugs—noncontrolled substances'' and the FDA would be powerless to take any investigative steps or to assist the DEA in intercepting these illegal shipments.

I trust that this has been helpful in explaining he DEA's position on this issue. Please let me know if there is anything else I may do to assist you in the future.

Sincerely,

ASA HUTCHINSON,
Administrator.

Mr. COCHRAN. Mr. President, William Hubbard, FDA's Associate Commissioner for Policy and Planning, and the FDA's authority on the topic of reimportation of pharmaceuticals, has testified a number of times before Congress regarding the dangers of reimported products and the inability of the U.S. regulatory system to assure the safety of products brought into this country. Most recently, this month before the House Committee on Government Reform, Dr. Hubbard testified

(T)he overall quality of drug products that consumers purchase from United States pharmacies is very high. The public can be confident that the drugs they use are safe and effective. However, FDA cannot offer the same assurances to the public about the safety of drugs they buy from foreign sources.

There are a number of reasons why these products are not safe. Counterfeiting of drugs is common throughout the world and the transshipment of these counterfeit products through Canada is one of the most serious dangers.

A recent example of the dangers of counterfeiting is the FDA alert issue on May 23 of this year regarding counterfeit version of the cholesterol lowering agent, Lipitor. This product is taken by over 18 million Americans. This investigation is currently ongoing and FDA is still trying to determine the extent of this case.

In March, the FDA discovered counterfeit versions of the drug Procrit which had been contaminated with bacteria or in some cases the product contained no active ingredient.

There are numerous other examples. 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, and to find those drugs that are dangerous

that are being brought into this country.

It will create a new opportunity for transshipping drugs from all over the world into our country which will be a great danger to the citizens of our country.

The National Association of Boards of Pharmacy, the body that represents the state boards of pharmacy in all 50 United States, as well as eight Canadian Provinces has stated in March of this year

> Of utmost concern is the lack of ability to determine the actual country of origin. An order for what is purported to be a Canadian drug may never be filled by a legitimate Canadian pharmacy with a Canadian drug or even be filled in Canada.

NABP, representing the boards that regulate the practice of pharmacy, has also recently joined the Canadian National Association of Pharmacy Regulatory Authorities in endorsing a statement opposing illegal importation of prescription drugs.

The Canadian government itself has stated publicly that drug products shipped to Canada for resale in other countries do not fall under the Canadian regulatory system, and they can provide no assurance as to the safety or authenticity of such drugs.

The conditions contained in my amendment, which would be added to the legislative proposal before the body, are the same as those previously adopted twice by this Senate. They were adopted both times by unanimous votes of the Senate.

I ask my colleagues to again support this amendment.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I was interested in the statement by the majority leader. This, of course, is not the amendment the Senate previously considered. It is not the amendment to which the Senate previously agreed. It is not the provision of law that the Secretary of Health and Human Services has refused to implement in two administrations. It is not that at all.

First, we will sort out the facts.

Let me make a case for the amendment itself. My colleague just won a debate we weren't having. His debate is about a piece of legislation the Senate passed a couple of years ago. I supported that, and I believe the Health and Human Services Secretary and the FDA made a mistake in not implementing it. Nonetheless, that was all a couple of years ago.

Yes, this particular amendment we offered deals with the reimportation of prescription drugs, but it deals only with the reimportation of prescription drugs from the country of Canada—only from the country of Canada.

The Senate previously addressed this issue of reimportation in 2000 by saying reimportation from other countries—as long as it was an FDA-approved drug and brought here under conditions of safety—would be appropriate. We have already said the HHS and FDA did not implement the previous legislation. But now, we will narrow this legislation very dramatically and provide reimportation only from the country of Canada.

I will explain why that is important.

First, miracle drugs offer no miracles to those who cannot afford them. If we don't do something to make drugs more affordable, seniors in the country lose, and others who need prescription drugs and can't afford them lose.

We should and must put some downward pressure on drug prices.

I understand the pharmaceutical manufacturers do not like that. I understand why they resist it. If I were in their position, I would certainly resist it as well.

I don't try to paint with a dark brush all of those who are on the other side of the issue. I think the pharmaceutical industry does many good things. They do a lot of very important research, some of which is original and some of which they take from the National Institutes of Health. They create medicines that are very important for the American people.

I also said the other day that some of the pharmaceutical companies have been providing free and discounted drugs to the lowest income Americans. Five and a half million people have benefitted from free medicines from American drug companies. I commend those companies. I don't have the names of all the companies. Good for them. It is a step in the right direction. They ought to be commended and saluted for their program to help the lowest income Americans.

But the other issue is the larger one of the price of prescription drugs. The fact is, we need to try to do something that puts some downward pressure on prices. Let me describe, if I might, what the problem is. Let me do it with some bottles of medicine.

I ask unanimous consent to be able to show some bottles of medicine on the Senate floor. These are empty bottles.

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

Mr. DORGAN. This is Zocor. A very famous football coach advertises this at halftime at football games. He says he takes Zocor. It is quite a good medicine, I am sure. These are two bottles for Zocor—one from the United States and one from Canada. The same pill is put in the same bottle, manufactured in the same place, by the same company. In both bottles is an FDA-approved drug. The only difference is, when that medicine is sold in the United States to U.S. consumers, it costs $3.03 per tablet. In Canada, the same pill, in the same bottle, made by the same company, cost $1.12 cents per tablet—$3 versus $1. The same pill, same company, different countries. That is Zocor.

This is a drug called Lipitor. It has the same purpose as Zocor—to reduce cholesterol. You can see that it is sold in the United States and in Canada. These are bottles from each country. They are identical bottles, made by the same company, again only the cost is different—$1 per tablet for the Canadians, and $1.86 for the U.S. consumer. The same drug, same pill, manufactured in the same FDA-approved plant, put in the same bottle, but different prices.

This is Vioxx used for arthritis. As you can see, same pill, made by the same company, put in identical bottles. The difference? It costs $2.20 if you buy it in the United States. If you are a Canadian customer, it costs 78 cents for the same tablet—$2.20 versus 78 cents for the same medicine.

Let me use one more example, if I might.

This is Prevacid: Those who are afflicted with ulcers would take this drug. As you can see, once again, the same bottle, identical shape. The difference? It costs $3.58 for the American consumer, and $1.26 for the Canadian consumer—same pill, same bottle, same company, but a different price.

Let me tell you about being in a little one-room drugstore in Emerson, Canada, 5 miles north of the United States. Just 5 miles north of the Canadian border, there is a drugstore. I accompanied a group of seniors to the one-room drugstore in Emerson, Canada, just to make a point.

The point was very simple. The medicines those seniors purchased in Canada—the identical medicines to what they buy in the United States and for which there is no safety concern or issue because the chain of custody is identical in Canada—cost much less.

It begs the question. Why not let the market system resolve these issues? As long as you have the safety of supply and the closed chain of custody which you can be confident in—and you certainly do with Canada because their system is very comparable to ours—allow people to decide where they want to purchase their prescription drugs. If they decided they would purchase their prescription drugs where they are less expensive, it forces repricing of prescription drugs in this country.

Let me use some charts to show what is happening. How much more does the U.S. consumer pay? More than everyone else in the world by far. If we pay $1 for a pharmaceutical product, that same product is 62 cents in Canada. You can see what it is around the globe in different countries—in England, 69 cents, Germany, 65 cents, France, 55 cents, and Italy, 52 cents.

Let me show a chart with specific medications.

I just showed these: U.S. price versus Canadian price for Prevacid, Zocor, Paxil—all heavily used drugs and costing nearly 40 percent more in the United States than in Canada.

Now let me quote, if I might, President George W. Bush during the third Presidential debate in St. Louis, MO.

During the Presidential debates, President Bush was asked about this. Here is what 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 makes sense.

What he was saying there is that the reimportation of prescription drugs makes sense. That is what he said in the third Presidential debate.

I am not making this up. These are the President's words from the debate—prescription drugs coming back into the country would make sense. If I could put words in his mouth, I would believe, of course, that he would say it makes sense, if this is safe.

But, nonetheless, this President, in a debate, said reimportation makes sense.

Mr. JEFFORDS. Mr. President, will the Senator yield for a question?

Mr. DORGAN. I would be happy to yield.

Mr. JEFFORDS. I was obviously on this issue with the Senator from North Dakota. We were forced into providing an ''out'' for them so we could get the bill to the floor that said the Secretary would have the authority to be able to set the bill aside and prevent this coming in. I don't think they would be required to make any rationalization. But, obviously, it was something we had to accept at the time in order to get the bill voted on. And then what happened?

Mr. DORGAN. Well, Mr. President, the second-degree amendment that was attached then dealt with safety and so on. What happened was, the Department of Health and Human Services and the FDA indicated they would not implement the law, so it was not implemented. But it is important to point out that this piece of legislation dealt with the importation of prescription drugs from many other countries.

We have narrowed this amendment to the country of Canada, to allow the reimportation of drugs only from Canada. And because Canada has an identical chain of custody to this country, there can be no question as to the safety of allowing licensed distributors and pharmacists to be able to access, from a licensed pharmacy in Canada, FDA-approved prescription drugs. So that is why I do not have a problem accepting the second-degree amendment offered by the Senator from Mississippi.

I cannot think of anybody at HHS or the FDA who can make a credible case that there is a safety issue by allowing a licensed American pharmacist to access prescription drugs from a licensed pharmacy in Canada. There is no safety issue there. It is gone, finished.

So we, I hope, will adopt this. I believe there is no justification for HHS or the Food and Drug Administration to fail to implement this legislation.

Mr. JEFFORDS. I thank the Senator.

Mr. DORGAN. Mr. President, let me conclude quickly and quote what Health Canada's Associate Director General said:

As soon as any drug crosses the border into Canada, it has to meet all the regulations of our laws. . . .

What they are saying in Canada, with that statement, is that they do not have drugs ricocheting around their country that are counterfeit drugs or non-approved drugs. They have a drug safety system very much like ours, in which drugs that go from an inspected plant into this system, all the way through to the local licensed pharmacy, so that you have a safety circumstance that everyone understands.

Let me continue. It was referenced a bit ago that all of the FDA—or virtually all—of the former FDA Commissioners, oppose this. Let me tell you what former FDA Commissioner David Kessler said:

I believe the importation of these products could be done without causing a greater health risk to American consumers than currently exists.

That is David Kessler, former FDA Commissioner.

Let me continue. William Hubbard, FDA Senior Associate Commissioner, September 5, 2001, in a hearing that I chaired before the Senate Commerce Subcommittee on Consumer Affairs said:

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

Simple and easy to understand, I think.

Finally, let me describe the systems in the United States and Canada. Drugs must be proven to be safe and effective. We are talking only about FDA-approved drugs. There are good manufacturing practices required in both countries. There is appropriate labeling required in both countries. There is the inspection of manufacturers, pharmacies, and drug wholesalers in both countries. Pharmacists and wholesalers must be licensed in both countries. And there is a chain of custody required between the pharmacist, the wholesaler, and the drug manufacturers in both countries. There is a regulatory requirement for postmarketing surveillance required in both countries. And a national mechanism for drug recall exists in both countries.

This is a chart that shows the same thing: The regulation in the United States and the regulation in Canada, from the production of the drug to the licensing of the pharmacist, are the same. There isn't any way, in my judgment, that restricting reimportation to medicines from Canada will allow the HHS or FDA folks to say this does not work. Of course, it works. Of course, it will not compromise the safety of the American consumer. The question is, Will we be able to have a circumstance where the American consumer can access lower cost prescription drugs?

It is not my intention—and it has never been my intention—to force U.S. consumers to go outside of this country to access a supply of prescription drugs. It is my intention to find ways to put downward pressure on these prices by injecting competition that will force a re-pricing of drugs in this country.

Now, every year, spending on prescription drugs in this country is increasing 15 percent, 16 percent, 18 percent, every year. Just about every year, there are double-digit increases in the cost of prescription drugs. If we do not do something about this, we will hook a hose up to the Federal tank and suck this tank dry. I guarantee it.

Now, let me end as I began. If I were representing the pharmaceutical industry, I would fight like the dickens to price drugs however I wished to price them. That is in their interest. It is in their stockholders' interest. I understand that. It is in their company's interest. But there is a limit.

This increase every year—15, 16, 18 percent—comes from two main factors: one is increased utilization, the other is price inflation. The fact is, if we do not find some way to moderate these price increases, this system of ours isn't going to work.

I started by saying that I think the prescription drug industry, the pharmaceutical manufacturers in this country, provide a significant service to the American people by doing the research and providing prescription drugs that are, in many cases, breakthrough drugs. I might say at least a fair amount of that which they do comes from National Institutes of Health research which is financed by the U.S. taxpayer. I do not complain about that. Good for them. And I want those companies out there.

I want the NIH and the pharmaceutical manufacturers searching for the cure for diabetes and for cures for cancer and searching for new pharmaceutical products that can help the American people. I want that to happen. I do not want to shut off research.

The argument is made that if somehow the American people do not pay the highest prices in the world, it will shut down research on new drugs. That is not true. The fact is, European drug companies spend more on research on drugs than companies do in the United States. There is more research on drugs that occurs in Europe than in the United States, and prices are lower in Europe than in the United States.

I just do not think it is right. I do not think it is right for the U.S. citizen to pay the highest prices for prescription drugs in the entire world. I just do not believe that is right.

Now, I understand all the arguments that are going to be raised by my colleagues who oppose this and I would just ask them, what happened to your faith in the market system? I hear a lot about this market system: Let the market system work.

As long as you have the safety of the drug supply, and a protected chain of custody—and that exists in Canada; no one can come to this floor and say it does not—why not let the market system work?

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

Mr. DORGAN. Of course. I am happy to yield.

Mr. SANTORUM. Mr. President, if a drug is shipped from outside of Canada to Canada for resale in the United States, does that go through the same handling that the Senator from North Dakota has discussed?

Mr. DORGAN. Yes. As I indicated in one of the charts I presented, the Canadian official said that any drug that crosses into Canada is treated just the same as the drugs that enter the United States. As you know, there are many drugs that are imported into this country. Just as is the case for the importation of drugs into the United States by the drug manufacturers, drugs that are imported into Canada from other sources of production are certified as safe by the Canadians—just as ours are certified by the FDA.

Mr. SANTORUM. If they are for the purposes of being resold in the United States, not in Canada, are they also certified by the Government?

Mr. DORGAN. First of all, the only way they can be reimported into the United States would be if a licensed pharmacist or a licensed distributor in the United States purchases them from a licensed pharmacist or distributor in Canada. So at that point, they have entered the stream of prescription drugs in the Canadian system. At that point, the Canadians say: We assure the safety of the chain of custody of those prescription drugs just as you do in the United States.

I find this debate interesting because I was up on the border of Canada one day. This was before mad cow disease occurred in Canada. My heart goes out to the Canadian ranchers for having discovered one instance of mad cow disease. Do you know what we do with Canada with respect to meat. We say: We have reciprocal inspection procedures for meat. You inspect it and that is good enough for us. What we want you to do is cut one little strip off the meat and lay it in the back of the truck, and we will open the back of the truck and see if it looks decent and smells all right, and then you just run the truck through. Why? Because we have reciprocal inspections. We say: If it is good enough for you, it is good enough for us.

We have identical chains of custody for prescription drugs in Canada and the U.S., but we won't say: If it is good enough for Canada with an identical chain of custody for prescription drugs, it is good enough for us. That doesn't make sense to me.

There is only one reason we won't say that. That is because some are willing to support the notion that the U.S. customer, the U.S. citizen, should pay the highest prices for prescription drugs. I happen to think that is wrong. I believe our citizens ought to pay a good price. Miracle medicines are not cheap. We ought to pay a good price and a fair price. Should we pay the highest price in the world? I don't believe so.

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

Mr. DORGAN. I am happy to yield.

Mr. HARKIN. I thank the Senator for yielding. I compliment him on his amendment. I see seniors from our State sometimes trying to get up to Canada and buy drugs, the same drugs you pointed out, and paying one-third as much as in the United States. The Senator pointed out that one of the arguments we often have here for this higher drug price in the United States is so the drug companies can engage in research. And we want them to do that research. They do a lot of good research, as the Senator just stated. They develop new drugs, and sometimes those drugs don't pan out, and they need to cover the expense of bringing new drugs on the market. We are all for that.

But I ask the Senator from North Dakota, is it not a fact that last year the major drug companies in the United States spent more money on advertising to the public than they did on research, that they actually spent more money advertising prescription drugs which you and I can't even buy unless we get a prescription? Yet we see full-page ads in USA Today, three and four-page spreads in Time and Newsweek magazine, full pages in the New York Times.

I ask the Senator, what sense does it make if, in fact, they are going to charge us high prices for drugs in the United States and they are using it just to advertise for drugs we can't even buy unless we get a prescription? Isn't it a fact they actually spent more money on advertising than they did on research?

Mr. DORGAN. I believe that is the case. I don't have the numbers in front of me. I believe Senator STABENOW referred to that earlier. My understanding is that the expenditures on advertising and promotion exceed the expenditures on research.

Let me make two additional points and then yield the floor. I support research and development, R&D, tax credits for industries, including for the pharmaceutical industry. They benefit greatly from them. I have always supported those tax credits. I think it makes sense to provide credits and incentives for the development of new drugs.

Second, when these drugs are produced and then sold, I don't think we ought to pay the highest prices in the world.

Let me give one more example, if I might. A woman with breast cancer needs Tamoxifen. With a prescription to go buy Tamoxifen, you have one of two choices, if you live near the border. You can pay $10 for a supply of Tamoxifen in the United States, or you can go to Canada and buy exactly the same amount of Tamoxifen for $1—$10 or $1. Why should you have to fight breast cancer and fight these pricing policies at the same time? It is not fair. It doesn't make sense that we should pay the highest prices in the world.

Again, the majority leader started off by saying we have passed this before and it doesn't work. Let me correct it again to say: Legislation limited to Canada has not been enacted before. We passed something else before. You are right, it was not implemented. It was reimportation from other countries in the world, provided it was an FDA-approved drug. That was not implemented.

This will be reimportation from Canada, so the legislation has been dramatically narrowed to a country that has an identical chain of supply for which there can be no safety concerns about unsafe drugs. We are only talking about having licensed pharmacists and licensed distributors accessing those drugs from licensed pharmacists or distributors in Canada.

I am not interested in any way ever compromising the supply of pharmaceutical drugs in America. I wouldn't offer this in a million years if I felt it did that. I know it doesn't. There isn't any way anyone in this Chamber can demonstrate that there is a safety issue with respect to the medicines sold in Canada. You might be able to demonstrate there is a safety issue dealing with Bali or Honduras or Guatemala or Zaire, but you can't do it with Canada. You just can't. And so that is why I have no difficulty accepting the second-degree amendment offered by my colleague from Mississippi.

There is not a safety issue with respect to this narrow amendment. There is only this issue: Shall the American people be able to see a repricing of prescription drugs that results in price fairness with respect to what U.S. and Canadian consumers are charged for identical drugs put in identical bottles produced by the same company?

Mr. HARKIN. Will the Senator yield?

Mr. DORGAN. I am happy to yield.

Mr. HARKIN. The Senator really has made an eloquent case for why we ought to have free trade with Canada in drugs as long as they meet the same requirements. I ask the Senator, do we not in fact have a free trade agreement with Canada?

Mr. DORGAN. Yes, we have free trade with Canada. It actually isn't free trade. We could spend a long time talking about wheat and other issues. We have a free trade agreement with Canada, but it excludes prescription drugs. Why? Because a piece of legislation was passed a decade and a half ago that said the only entity that will be allowed to reimport prescription drugs into the United States is the manufacturer of that prescription drug. That is what perverts the market. If you assume that you have a safe supply of drugs in both countries, why then would consumers simply not decide where to purchase the drug in whatever represents their best interests? Why would they not be able to make their own choice under a free trade agreement? It is perverted by this previous legislation that prohibits the reimportation except by the manufacturer.

What we are saying now is, we would allow the reimportation by the licensed pharmacies. We are not talking about somebody shuffling around in a T-shirt who knows nothing about prescription drugs. We are talking about a licensed pharmacist or a licensed distributor who does this for a living. We are saying they have the ability to go to Canada and access medicines from a licensed pharmacist or a licensed distributor.

I would love to have somebody make a persuasive case that somehow that compromises safety. I don't think the case exists.

Mr. HARKIN. If the Senator will yield for another question, I thank the Senator for yielding again. The Senator continues to make an excellent point here that seems to be lost on the proponents of this bill on the other side.

I continue hearing how this is a bill that is supposed to promote competition. It is supposed to promote free enterprise and the marketplace. Yet here, as the Senator from North Dakota has pointed out, in one place where the marketplace really could save seniors money, by opening up the marketplace for these drugs to come in from Canada as long as they meet all of our FDA requirements, on this the other side says, no, we don't want the marketplace to work in this case.

It kind of gives lie to all of the arguments about how this bill is to promote competition in the marketplace on drugs for the elderly. Quite frankly, it seems to me this bill is to promote higher prices and to ensure the elderly really do not get the best deal they could possibly get in buying prescription drugs which would mean they would not be able to buy them from Canada, which distorts the marketplace.

Again, I thank the Senator for his well-reasoned arguments and his well-reasoned amendment. With this amendment, we ought to strike a blow for the marketplace and let the marketplace work by allowing our seniors to be able to purchase these drugs under this so-called free trade agreement that we have with Canada.

I compliment the Senator from North Dakota for this amendment.

Mr. DORGAN. Mr. President, let me say I will not put this entire report in the record, but we asked the Congressional Research Service, the CRS, to do a comparison of U.S. and Canadian requirements for approving and distributing prescription drugs. This is by the nonpartisan Congressional Research Service. They prepared a memorandum comparing the U.S. and Canadian systems for both approving and distributing prescription drugs. Essentially this report affirms that, in all aspects of the U.S. and Canadian drug systems, drug approval, drug manufacturing, drug labeling, drug distribution, the U.S. and the Canadian systems are similar in all respects.

There just is not a circumstance here where someone can say the U.S. system is terrific and the Canadian system is not. Both countries have chains of custody that I think give people in Canada and the U.S. assurance of safety.

Perhaps before I give up the floor, I should mention this has been something Republicans and Democrats have worked on over a period of time. We have debated these issues before, but not this amendment because this is narrowed to Canada. I would be remiss if I didn't mention our late colleague, Paul Wellstone. If he were in the Chamber, he would be sitting in that back seat, and he either would have offered the amendment, perhaps, or be waiting to be among the first to speak. He, like many others of us—particularly in northern States—felt strongly that the reimportation of prescription drugs was a way for senior citizens, yes, but all Americans, to access the same prescription drugs at a fairer price.

My expectation is that when we finish this debate and have a vote—I believe we will vote on this tomorrow—this amendment will be further amended by the second-degree amendment of Senator COCHRAN, which I indicated I would accept. I don't believe there is a need to vote on that. I believe that amendment will be subject to a recorded vote tomorrow.

I hope my colleagues will do as we have done previously on broader legislation. At least with this narrower bill, let's decide to pass this and see if this can help provide some downward pressure on prescription drug prices.

Ms. STABENOW. Will the Senator yield for a question?

Mr. DORGAN. Yes, I am happy to yield for a question.

Ms. STABENOW. I appreciate that. I wanted first to compliment my friend from North Dakota, who has worked so diligently on this issue. I am very proud to be a cosponsor of the amendment.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator can only yield for a question.

Mr. DORGAN. I was yielding for the purpose of a question.

Ms. STABENOW. I was in the middle of saying I wanted to ask is it not true that even though the report you just indicated made it clear the safety provisions, the oversight, is the same between Canada and the U.S., isn't it true that even in light of that, you have gone the extra mile to put into place basically a 1-year provision for reimportation, and then at the end of that time the program would stay in effect, unless the Secretary submits a certification that in fact there is a problem, that based on experience, based on evidence that the benefits do not outweigh the risks? Isn't that correct that you in fact have gone that extra step, that extra mile to make sure even though we know it is safe, it is the same, that we give a safety valve so that the Secretary in fact could step in and certify if there was a problem?

Mr. DORGAN. Mr. President, Senator STABENOW has done a service by pointing out something in the amendment I did not point out. The other change is that this would be a 1-year pilot program, when approved by the Senate. The certification will still be that this is safe because, clearly, we have identical systems in the U.S. and Canada.

In addition, after a 1-year pilot project, there will be a 6-month period in which the Secretary of Health and Human Services will certify if there is a problem, if in fact there is one. I expect there will not be. At that point, this program will continue. At least it creates a specific 1-year pilot project and an evaluation, so there is a failsafe system if there would be any problem at all. I would not expect a problem—particularly because we have narrowed this—with respect to Canadian drugs.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Mr. President, I rise in opposition to the Dorgan amendment, although as modified by Senator COCHRAN's amendment, I will not oppose it.

Senator COCHRAN's amendment goes to the whole point here, which is that reimportation of drugs is unsafe. I am not the one saying that. I think most Members here are very concerned about the safety aspects of reimportation. We have three Secretaries of Health and Human Services, 10 former FDA commissioners, the U.S. Customs Service, the White House, DEA, CMS, Canadian Pharmacy Regulatory Agency, U.S. Pharmacy Regulatory Agencies, and 44 U.S. pharmacist groups, voicing safety concerns about the reimportation of drugs.

I am satisfied Senator COCHRAN's amendment will sufficiently reflect the concern of Members of this body and of these organizations about the issue before us. So I am going to set that aside. I could argue until the cows come home how this is an unsafe and unwise practice to engage in. But with this amendment, we will leave it up to the Secretary to determine as to what he believes—and he was here a minute ago. We have a statement from him already saying he does not believe it is safe. I am comfortable leaving it in the hands of someone who will study this issue in depth with respect to safety.

I want to dispel a couple of myths that have been created during this debate. One of the myths is that American pharmaceutical companies spend more money on advertising than they do on research. As most people who have followed the pharmaceutical industry and followed this debate know, the pharmaceutical industry is the most research-intensive industry in our country. I have always said I find it remarkable that we are here on the floor of the Senate all the time beating up on the pharmaceutical companies, saying they make too much money or they spend too much money on advertising or they don't spend enough money on research and development, and we need to whack them here and

whack them there until they become like the steel industry, where they become—or other industries—less and less profitable, and then we pass loan guarantee programs to prop them up. That is sort of the way we do things here. If anybody is doing well, whack, we are going to take a shot at them and say they are doing too well for everybody's good.

Let me just suggest the pharmaceutical industry is doing well because they are leading the world in curing disease and treating very serious health problems. They are doing it because of the enormous amount of research they are doing, not because of the money they are spending on advertising. General Motors spends more money on advertising—some $4 billion every year. That dwarfs almost all of the spending by the pharmaceutical industry with respect to advertising. Yet I don't hear the Senators from Missouri or Michigan or any others out here complaining we pay too much for cars. Cars are as much of a necessity for most people as pharmaceuticals. Why don't we hammer General Motors, Ford, and those other folks for wasting this money on advertising.

Companies spend money on advertising because they have an obligation to sell their product. The way you sell your product is by promoting the value that product hopes to bring to an individual's life—the positive attributes of the product. Pharmaceutical companies have the right to do that through advertising to the general public, which may not be informed about new therapies that are available, as well as through direct advertising to physicians who prescribe the medicine. That is a proper role, I believe, in informing the public. We want them to be informed.

I cannot imagine we would want a public that would not want to know what some of the more recent developments and potential improvements to their lives that are available to them. Some have suggested their spending on advertising is more than they are spending on research and development. That is not true. I know that was said in passing. Someone said: I think this is the case. Let me clarify for the record so we do not have this common misstatement that I think this may be the case. Let me tell you what the facts are.

I have a chart. It is just a piece of paper. I do not have it blown up. The black line is the spending on research and development, and the light gray line is the total promotion. Total promotion means, yes, advertising, but it also means the free samples of drugs many receive when they go to the doctor's office. That goes in promotion. That is actually, in a sense, free drugs for the purposes of advertising and promoting the product. All that is included in here.

You can see that research and development while, yes, advertising is going up, research and development is going up even further. In 2001, $30 billion was spent on research and development and a little over $10 billion on advertising—three to one. I daresay General Motors does not spend three to one on research and development versus their advertising. I daresay most companies and most industries do not come close to spending that amount of money. But you know what. They are the bad guys. They are the guys we have to hit upside the head. Why? Why do we have to hit them upside the head? Because they are increasing their prices too much. It is too costly, and we need these products.

Let's look at why they are increasing their prices and why you can go to Canada, Germany, or other places, and receive these drugs for less money. There are a couple of reasons.

No. 1, there was an excellent article in the ''Weekly Standard'' just the other day talking about the incredible cost of getting drugs approved by the FDA.

For a company which starts out with thousands of compounds with which they are experimenting, researching, trying to work themselves through the process to determine what is a viable compound to experiment with and to move forward with, they start out with thousands, tens of thousands. They narrow it down to a few hundred. They do some more intensive research on those. They get to about four or five they do some trials on and some tests on and even further research. They come down to usually one drug where they go through the extensive process of clinical trials and testing.

By the way, the reason Europe, Canada, and other countries around the world get drugs years before we do, in some cases, is because of the incredible costly process the very people who are complaining the drugs cost too much have supported, the extensive approval process that jacks up the price of those drugs in this country.

It costs $1 billion on average for a drug to go from that basic research of compounds all the way through the process of determining whether it is effective, whether it is safe, what conflicts there are. All the issues they have to deal with, it costs about $1 billion in this country.

It does not cost $1 billion in Canada. It does not cost $1 billion in Europe. It does not cost $1 billion in Mexico. It costs $1 billion here because of the extraordinary lengths to which we go to make sure the drugs here are, what? Let's hear that word again. Safe. That those drugs are safe. We put a premium value on, yes, efficacy. They have to be effective. They have to treat what they say they are treating, and do so effectively, but they also have to be safe. So we put a high value on safety, and we require these companies to go through enormous hoops to make sure, in this country, before a drug is sold, we know it is safe.

We are suggesting two points: No. 1, safety is a highly valued commodity when it comes to drug use, and that reimportation is unsafe. No. 2, one of the reasons reimportation is so popular is because the cost of the drugs are cheaper. One of the reasons they are cheaper is because they do not have to go through the safety measures they are put through in this country.

You require them to prove it is safer, and then you say: Gee, why are you charging us more money? Why don't we just get them from this other country, that, by the way, does not require you to go through those hoops. So they do not pass on the costs to these other countries.

There is another reason. The other reason is because in Canada, Mexico, most of the world, they set prices. They set prices. They say: You want to sell drugs in our country? Fine. Pfizer, you want to sell a drug in our country? No problem. Here is what we will pay you.

Pfizer says: Wait a minute, we have all these costs. I want to make a profit.

Fine, if you want to make a profit, here is what we will pay you.

We charge $3 for this drug in the United States. You are only offering to pay us $1.

Well, we have looked at it and your manufacturing costs are 50 cents; $1 is a pretty good price. You will make 50 cents on every pill.

Pfizer says: That is our manufacturing cost. We have hundreds of billions of dollars in research costs. We have litigation costs we have to be concerned about. We have advertising and other related costs that are built into the cost of this drug. You are only giving us the manufacturing cost.

If you don't like the deal, you cannot sell your drug. So if you want to sell your drug and make your 50 cents, sell your drug. If you don't, see ya.

The drug company has to make a decision: Do I agree to sell based on the price the Government wants to give me or am I shut completely out of that market?

A lot of drug companies say: OK, I am not making the money I could in this country because we do not have those kinds of price caps on our drugs yet, and they say: At least I am making some margin. OK, I will agree to sell there. If they say no, they do not have any market share at all.

That is a best case scenario. A worst case scenario in Canada is: I have a breakthrough drug, and there are no other drugs like it in the world. It is a new class. It is, in fact, one of these great discoveries that we hope for every day. They go up to Canada and say: We spent over $1 billion researching, coming up with this great breakthrough drug for a cure or for a treatment for this illness.

Canada says: Great, we would love to sell that drug. There isn't any other drug out there that does this. Yes, you want to charge us $10 a pill, that is nice; we will pay you $5.

The drug company says: Well, that is nice, 10.

Canada says: No, you didn't hear me, 5.

The drug company says: I am just not going to sell the drug.

A lot of drug companies will sell it anyway. Why? Because they feel a social responsibility to have that drug available, as we see with the AIDS drugs in Africa that are being sold at well below the costs in any other country in the world. They may feel a social responsibility to sell it, and, in many cases, they do.

Let's assume for some reason this company says: No, I do not feel any social responsibility here; I am going to play hard ball. What does the Canadian Government do? What do they by law have the right to do? They have the right to steal that patent, make the drug in Canada, and sell it for whatever price they want.

That is a pretty strong bargaining position. It is wonderful to stand out here on the floor of the Senate and beat up on these companies for selling drugs for less money in Canada, for less money in Mexico, for less money in Germany. Why?

No. 1, it is a one-sided bargaining situation. You either take the price we give you or you are out of the market. If we want your drug anyway, we will steal your patent. Not a lot of bargaining power. Plus, by the way, the United States costs so much more because of the FDA process, not to mention the litigation costs on top of the research and development costs.

The litigation costs in this country, because of runaway malpractice suits and liability suits, product liability suits, class action suits, the costs associated with drugs are higher here on top of that.

So what do we do? We blame the pharmaceutical company. We blame them because Canada sets prices. We blame them because we have an extensive and very costly FDA process. We blame them because we cannot put our tort liability system in place. It is their fault because they want to advertise their product. God forbid that someone knows what my product is. This is the bad work that is being done.

Now what are we going to do? We are going to say that, yes, well, maybe you are right, Senator, maybe it does cost more to bring a market here. I think everybody would admit that, yes, our litigation system is more costly; yes, Canada sets prices and blackmails them if they do not go along. We agree with all of that, but you know what, it is still not fair, because our seniors—and not just seniors but anybody—our people in America deserve the same price they get in Canada.

Okay. Let's make a decision. Let's make a decision that, in a sense, we are going to set prices in this country, that we are going to adopt the Canadian formula. Now, obviously not every drug is sold in Canada. So there are a lot of drugs that will not be affected by this reimportation because Canada does not pay for every drug. There are certain drugs that just are not sold up there. Why? Because the drug company decided they were not going to play ball and sell at a price that is well below what they believe is a profitable price for them to sell. So we are only talking about a certain group of drugs. We understand that.

We saw an amendment earlier today that is going to make sure these research-oriented drug companies, the ones that are creating the new therapies for the future, now that their patents expire on time, they have no patent extensions, even though some may be worthy or not; we are going to tighten down on that so generics can get into the business. Generics, by the way, make no breakthrough drugs, do no research on new therapies to treat diseases that are heretofore untreated or not sufficiently treated, but we are going to squeeze down these drug companies that are making these research investments and doing these kinds of innovative therapies. We adopted that earlier. Now we are going to whack them again and we are going to basically take the Canadian prices that were set in Canada and have them apply in the United States, so there will be free trade.

I heard people say free trade, free trade with a country that sets prices. Now, I would suspect the Senator from North Dakota would not be for free trade if they set the price of wheat in Canada at 50 percent below the price of wheat in the United States. I do not think the Senator from North Dakota would call that free trade—I could be wrong—or if we set the price of timber at half, by law, in Canada, of what the product was here. I do not think the Senator from Iowa would consider that free trade if they set the price of corn or the price of milk in Canada, by law, at half the price of the product in this country. I do not think we would be up here extolling the virtues of Canadian free trade. I know for a fact the Senator from North Dakota would not because he is on the floor with great frequency extolling the evils of free trade in Canada, particularly when it comes to wheat. They do not set the price of wheat in Canada, but he is for free trade on a product that is artificially priced below the market to come into this country. Interesting economic theory but certainly not consistent economic theory.

So what happens? We now have this product coming into this country at below what arguably it could cost to get that product approved and researched, with the liability costs, all the other costs associated. Now what would be the result? If it is that pervasive, we may force the drug companies to lower their prices. It could happen. In either event, we are going to take a significant piece of the market share away from the pharmaceutical companies selling drugs in this country.

What is the effect of that? Well, the effect of that is obviously lower profits for pharmaceutical companies. There are a lot of folks, I guess, who do not want people to be profitable, not at the expense of our consumers who want to buy pharmaceuticals. In the end, the result is this: We have to make a decision as to whether we want an industry that is going to spend 30-plus-billion dollars a year in finding the next cure, in doing the next level of research for that disease someone in our family may have or some neighbor may have, or whether we are more concerned with having cheap drugs today.

Let's understand, with eyes wide open, what we are balancing. We subsidize the world's research. Admit it. I accept that. People say we pay more for drugs here than everybody else in the world. All we are doing is subsidizing the drug companies in this country and the rest of the world is riding along on the money we give drug companies by paying higher prices for drugs. They piggyback on us, and that is not fair. Okay. You are right. What do you want to do about it?

Well, one thing we could do is talk to our trade officers and get them to pound away at these other countries so they do not set formularies and artificially low prices. We could do that. Do we tell Canada they cannot blackmail our companies by threatening to make the drug and steal the patent? We could do that. Short of that, which is not happening right now and this debate is happening right now, we have to make this decision, and the decision is this: Do we want to eliminate the research and development of new drugs and new therapies to solve new problems or problems that exist, diseases that exist, and, yes, subsidize the world in the research and development or in exchange for that next generation of drugs coming on line next year, are we willing to trade cheaper drugs today for no cure tomorrow or cheaper drugs today instead of the cure tomorrow, 3, 4, or 5 years from now?

That is a legitimate debate. I say to the Senator from North Dakota if he wants to enter into that debate—and the Senator from Michigan who is going to speak next, if she wants to enter into that debate—I will accept that debate. I will truly accept the integrity of people who say it is worth it to have cheaper drugs today to get more drugs to people today who need them than to develop the next generation of drugs down the road for people who will need them then. That is a legitimate argument to make.

I assume many Americans would agree with that argument, particularly if they are the people who do not have the money to afford the drugs they need today. There are probably a great number of Americans who would say that is a good tradeoff.

I come down on the other side. I do not believe it is a good tradeoff. The reason I do not believe it is a good tradeoff is I think there is a better way to solve what seems to be an intractable problem: either research, innovation, new disease treatment, or cheaper drugs.

Interestingly enough, the solution is what we are talking about in this Chamber this week and next week, and that is drug coverage. The solution is, let's provide drug coverage to lower the cost out of pocket to the consumer, particularly catastrophic drug coverage.

In my mind, the most important thing we are doing, not some of what I consider very broad coverage that we have in this bill, but most important is including the catastrophic coverage. If we have a high drug user or the low-income subsidies in this bill for low-income individuals, those are the people I am most concerned about. They are the ones who, I argue, are the most compelling cases for saying we need cheaper drugs now as opposed to cures later.

If we can solve those compelling cases of the low-income individual and the high user of pharmaceuticals, if we can solve those two problems, then we take a lot of pressure off this issue of cures tomorrow versus drugs now.

This amendment does not belong. It is an anachronism. We get to the heart of the problem that this amendment attempts to solve. I believe it solves it in the wrong way.

I also believe reimportation is unsafe. It is unfair to an industry in this country which is much maligned—until, of course, you get that diagnosis. Once you get that diagnosis and you find out within the last few years a little white pill that keeps you alive, that keeps you walking, keeps you breathing, keeps you eating, once you find out there is an industry out there that you never had a good word for up until that moment, who you thought were bad people because they were raking these people over the coals with all this money they were making, until you found out because of the research and development that went on, your life will continue and you will be able to see your children grow up or you will be able to see and play with your grandchildren, all of a sudden these companies are not so bad after all.

I know this is not a popular view for Members of the Senate to hold. I have been told on numerous occasions defending drug companies is not a term extender for Senators. I understand that. This is not a populist issue. I accept it. But I have the gift in my State of having thousands of employees who go to work every day with the focus on creating the next little pill, the next little serum that will save somebody's life. They are proud of the work they do. They have a right to make money and do it. They have an absolute right to make money and do it. I will stand by their right to do that. It is an industry that not just makes money, but we are saving people's lives. We are changing people's lives. We are giving that grandson the opportunity to know his grandma. We should be willing to pay for it.

We should not be blackmailed by other countries that want to use us for their research ground. We have some work to do. In my opinion, we have work to do in the international trade arena to go after these countries that do use us as the funding of their laboratories. But the mistake is not to adopt their policies. It is to get them to change their policies. What this does is adopt a flawed, fatal system for far too many people.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Mr. President, it is hard to know where to begin. I would like to talk about some of the facts and realities for folks who are struggling to pay for those medications that are being developed or being advertised on television.

I hope we will remember in these debates we are not talking about automobiles or tennis shoes or peanut butter or any other optional product. We are talking about lifesaving medicine.

I celebrate the fact we have lifesaving medicine and that we have those who have dedicated their lives to that research. We have a lot of such individuals in Michigan. I am very proud of them and the work they do.

At the end of the line, if you cannot afford the medicine, it does not matter. So price does matter. Affordability does matter. Competition to bring prices down does matter.

I am very pleased a little earlier this evening we voted together in a bipartisan way to close loopholes the brand-name companies have been using to game the system, to keep competition off the market, and generic drugs. We passed a very important amendment to this bill. I commend, again, all who have worked very hard on that. The system has been out of whack. I suggest it is out of whack in a number of other ways.

First, it is absolutely true that the most profitable, successful industry in this country is the pharmaceutical industry. No question about it. It is great they are doing well. Any other business in this country would love to have their situation. They are, arguably, the most highly subsidized industry by taxpayers in this country. They have a set of rules that up to this point have been highly in their favor to allow them to keep the competition off the market. It is a great deal if you can get it.

I know we have hundreds if not thousands of folks working here, lobbyists, making sure we keep that good deal for them. I appreciate that. Unfortunately, that good deal for them, that great deal for them, has been at the expense of every other business trying to provide health care for their employees, every other employee trying to keep their health care and not lose their job because of rising health care costs, every senior, every family in this country. The debate about pricing is about not only making sure we have a healthy pharmaceutical industry but we have other healthy businesses and consumers who help pay the tab for that research and can afford to buy the product at the end of the line.

What do I mean by that? I have said this before. We start with a lot of the basic research in this country being paid for by American taxpayers through the National Institutes of Health. I am proud we have greatly increased the amount of money going into basic research. We have done that on a bipartisan basis. It makes a difference. We are very close on many different illnesses from Parkinson's to Alzheimer's to diabetes, critical research. We need to be doing more. But that is done by American taxpayers, investing our money. Because we benefit, we understand how critical this is.

That information, that research, is then given to the pharmaceutical companies who then develop it. We give them a writeoff for their research, tax deductions, tax credits for new research, all of which I support, as well as deductions for their advertising, their marketing, their administration, their other business expenses. Tax deductions, tax credits, are subsidies from American taxpayers. So we have a real stake in this operation. We are already helping pay for it.

Once the drug has been developed, because it is very expensive for new breakthrough drugs, because it is very expensive, we have a policy of creating a patent for up to 20 years to limit the competition so that company can, in fact, be covered at cost, because with new lifesaving drugs it is very expensive.

We have a stake in this. We have a stake in it. We helped pay for it. We helped create rules that are favorable to the companies, so that, in fact, they can succeed. The deal, though, I believe, is that at the end of that process the American consumer, the American senior should be able to afford to buy that product that they helped pay to develop, to research, to make happen. That should be the deal.

That is the point. In too many cases right now that is just not happening. We get to the end of the line, and there are many ways in which the companies sue currently to keep generics off the market or keep the border closed so we can't buy them from Canada or do a variety of other things to make it difficult for the competition to come in and to keep the prices low. They make sure Medicare doesn't negotiate on behalf of all the seniors of the country to be able to force a group discount. There are a wide variety of methods to make sure the rules stay the way they are and we are all paying a big price for that, I believe.

We certainly want this industry to be successful. I think it is clear by the rules, the subsidies, the support that has been there and will continue to be there. But this is not a pair of tennis shoes. It is not an automobile, as much as coming from Michigan I want everybody to buy a new automobile every single year, an American-made automobile. But if you don't, you will not

lose your life. But if you don't get your cancer medicine, you might. This is very different.

Let me speak to the issue of advertising. Since 1996, the FDA has taken the cap off of direct consumer advertising, as we know, radio and television, other direct consumer advertising. We know, we have seen advertising skyrocket. We do not have to debate that. All you have to do is turn on your television set. If not every commercial, it is every other commercial—they are very nice commercials—but they are commercials for prescription drugs. We do not have to argue about whether advertising has gone up. Every single person in this country knows that advertising has gone up.

You do not have to tell a doctor that marketing has gone up. My doctor talks to me about the line of drug reps at the door to come in and promote particular medicines.

We know from studies that have been done, and FCC filings, that about 2.5 times more is claimed under the line item for ''advertising, marketing, and administration'' than is claimed under research.

What I find very interesting is that I keep hearing that more is spent on research than on advertising and marketing. Last year, I offered legislation to say OK, if that is true, then let's just cap the amount you can write off for advertising and marketing to the same level you can write off for research on your income tax form. It should not matter to anybody because they spend more on research. You would have thought I had proposed the worst thing you could possibly propose. It was adamantly and is still adamantly opposed by industry. It should not matter if they are spending more on research than on advertising and marketing.

I would like to speak to the business at hand here, the question of allowing Americans to buy American-made drugs, subsidized by Americans, the research funded in part by Americans, at the price they are sold in every other part of the world—half the price we pay here.

This particular amendment is a very conservative, cautious amendment. It focuses only on Canada. We know, in fact, there is importation already back and forth from Canada. Drugs are already frequently imported into this country but predominantly by manufacturers. They are already bringing them back across the border. 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.

It is ironic that the drugmakers are saying drugs cannot safely move between the border between the two countries. What they are saying is they don't want individuals to be able to do it or pharmacists to be able to do it or wholesalers to be able to do it, but they do it every day.

Also, we hear there is a difference in terms of oversight and inspections. According to the CRS, our Food and Drug Administration already inspects pharmaceutical production lines in Canada for 341 prescription drugs run by about 30 drugmakers. So they are already doing it for the pharmaceutical industry. We pay to send FDA inspectors to Canada to inspect already.

Another report dated September 2001, a report by our Congressional Research Service—again, the nonpartisan Congressional Research Service—confirms that:

> The U.S. and Canadian systems for drug approvals, manufacturing, labeling and distribution are similarly strong in all respects. Both countries have similar requirements and processes for reviewing and approving pharmaceuticals, including ensuring compliance with good manufacturing practices. Both countries also maintain closed drug distribution systems [which is very important] 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 the chain of distribution.

So that is the reason this amendment is narrowly focused on Canada because we are talking about a system that is very similar, almost exactly the same in terms of the safety and the rigorous oversight. We are also talking about a process that is already going on, it is just going on by the manufacturers and not by licensed pharmacists or by individuals or by wholesalers.

I think this amendment is very conservative because the amendment not only has Senator COCHRAN's provisions in terms of certification, but this is an amendment that would affect 1 year. We are going to affect things for a year, to open the border to Canada. After that 1-year period, the program would stay in effect unless the Secretary submits a certification to Congress that, based on substantial evidence and the experience of the 1 year, the benefits of reimportation do not outweigh the risks. So there are multiple protections in this amendment, and strict FDA oversight is in this amendment.

I think this is particularly important to do in the context of the prescription drug legislation that we are working on and that will be passed by this body because the bill in front of us to provide a Medicare prescription drug benefit does not take effect until 2006. So other than a discount card, which is not new to seniors, those who have been listening to the debate we have been having all week and anticipating help right away are going to be sorely disappointed because there will not be a prescription drug benefit until 2006. In the meantime, we can help not only seniors but families and businesses and everyone who is involved in paying for prescription drugs right away, immediately. It doesn't cost anything to open the border to Canada for prescription drugs for pharmacists and for individuals. We can do it now. If there is an evaluation that there is a problem, it can stop. But we know, based on information about the inspection systems, based on what is already occurring, that it is highly unlikely that there would be a problem.

I think it is critically important that we give major help now. We can cut prices in half; in some cases much more. I have had the opportunity to go with a number of different seniors to Canada where they have met with a Canadian physician and received a prescription and gone to a Canadian pharmacy. We have been shocked at the difference in prices for literally the very same drug. It is particularly significant in Michigan where we can look right across the river which you can swim across, and go from Detroit to Windsor and see that kind of a price difference. We have many seniors now looking to Canada for opportunities to see Canadian doctors because they are so desperate to get help.

Let me mention just a couple of things. Again, we are not talking about some optional product where people are advertising and making good profits. We wish them well. That is the American way. That is the capital system. Good for them. But we are talking about a health care system where we are not seeing doctors being reimbursed, nor hospitals, nor nursing homes, nor home health agencies. The only part of the system that is exploding in cost and which is driving up the cost of the health care system is in the area of pharmaceutical drugs. This is not optional. It is medical. It should be viewed as part of the health care system. That is what we are debating today.

Let me mention Tamoxifen. Tamoxifen is a very important drug in battling breast cancer. I had an opportunity to visit with Barbara Morgan from Michigan when she went to Canada and visited a Canadian doctor and going through the process there where she was able to get her monthly Tamoxifen for $15 instead of $136. That is a huge difference for her. She and her husband are retired on average means. She did not expect to get breast cancer after retirement. They had, like many others, been saving up to do things in their retirement. They now find themselves spending money on her treatment and on her prescription drugs. These are not theoretical discussions about people. This is not a theoretical debate about allowing Americans to get American-made, American-subsidized prescription drugs from Canada. This is very real. It can literally make the difference between life and death for people when they are struggling for critical lifesaving medicines.

That is why I feel so strongly about this amendment. That is why I am hopeful the Secretary will look at the evidence, will look at the narrow construct of this amendment and be willing to work with us, be willing to allow the borders to be opened for 1 year. We

are asking for 1 year with all of the safety precautions that are in this amendment—just 1 year to allow our seniors and others to be able to see a dramatic cut in the prices they have to pay for their medicines; 1 year to try this and to evaluate the issues that have been raised by those who are opposed.

I appreciate the time. This is, I believe, a very serious part of this debate. If we want to make the difference right now for people, right now doesn't involve money in the budget resolution. It doesn't involve waiting until 2006. If we want to help folks right now, the way to do that is to give them the opportunity to get their prescription drugs at the lowest possible price. That is what this amendment will do.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I don't see any more speakers who wish to speak on the second-degree amendment. Am I correct in suggesting that the regular order is now to vote on the second-degree amendment?

The PRESIDING OFFICER. The second-degree amendment is the pending question.

Mr. BAUCUS. Mr. President, I think we are ready to vote.

AMENDMENT NO. 947

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 947) was agreed to.

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

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

Mr. VOINOVICH. Mr. President, the Finance Committee has laid before the Senate a bipartisan bill that will finally provide every senior access to affordable prescription drugs. Passing this long-awaited legislation is one of the best things we can do right away to help solve the health care crisis in this country.

I applaud the efforts of the committee and specifically commend the leadership of the chairman and ranking member, Senator GRASSLEY and Senator BAUCUS, in developing this critical legislation.

The bill reported out of the Finance Committee, S. 1, is the culmination of years of hard work in the Senate to bridge the gap between the Medicare of 1965 and the Medicare for today and the future.

Currently, seniors are paying too much for their needed prescription drugs out-of-pocket. The cost of these life-saving drugs is increasingly becoming a large burden for seniors, with some even traveling to Canada to find cheaper drugs. Seniors should not have to go to a foreign country to receive the drugs that their doctors prescribe. We need to provide an environment where America's seniors don't have to go to Canada.

The bill reported out of the Finance Committee accomplishes that.

This bill not only provides every senior access to affordable prescription drugs, but it will also provide seniors access to benefits that a modern health plan should have, such as preventive care and disease management—options that Medicare does not currently provide. Moreover, these additional benefits are provided by giving seniors a choice and control over their prescription drug plans and health care providers.

These changes will only improve and strengthen Medicare. As my colleagues know, when Medicare was enacted in 1965, Congress made a commitment to our Nation's seniors and disabled to provide for their health security. Unfortunately, that security is on shaky ground because Medicare has not kept up with the evolving nature of health care.

The delivery of health care has vaulted ahead so dramatically 38 years after the inception of Medicare, that this system which was once sufficient is now antiquated and ineffective.

For example, conditions that used to require surgery or in-patient care can now be treated on an out-patient basis with prescription drugs. But more than the progress that has evolved from the utilization of prescription drugs, medicine has too evolved to the extent that preventive care can now eliminate the need for extensive reliance on the health care system. It is time for Medicare to reflect the realities of today's health care delivery system.

My colleagues from the Finance Committee have found a solution that is a good compromise and is a result that can be agreed to by both Democrats and Republicans. Is this bill a panacea for seniors' health? No. But it is a quantum leap forward from a system that has been stuck in a time when the Ed Sullivan Show and the Dick Van Dyke Show were seen as original programming in America's living rooms.

While the Senate has finally begun its debate on Medicare I would be remiss if I did not take a step back and point out the roadmap that has lead us to this point.

The President deserves great credit in providing in his budget substantial funding to add a prescription drug benefit to Medicare. The amount the President allocated, $400 billion, illustrates his commitment to our nation's seniors. Time and again, the President has called for strengthening and improving Medicare.

Additionally, this year we are operating under a budget resolution. Last year, the Senate operated without one because we never voted on the fiscal year 2003 budget resolution—the first time the Senate has not done so since 1974.

The Senate got the job done this year. Through the leadership of Chairman NICKLES of the Budget Committee, the Senate laid out a blueprint for future spending that has brought us to where we are today.

The Senate is standing at the brink of providing seniors access to affordable prescription drugs. This is long overdue, and we cannot delay any further.

Over the past year, I have traveled throughout Ohio holding health care roundtables to hear what the citizens in my State are saying. These roundtables have included seniors that inevitably tell me it is past time that Congress added a prescription drug benefit to Medicare.

I believe this is the year Congress will deliver on its longstanding promises.

I am ready to go to my constituents in Ohio and say we were finally able to move past partisanship and provide real security for their health.

While it is vital that we pass a prescription drug benefit this year, it is also vital that we pass one that is fiscally responsible. Ideally, seniors would receive the assistance they need to have access to every medicine prescribed by their doctor. Unfortunately, we live in the real world and are subject to limited resources.

I would like to take a few moments to shed some light on our Government's current fiscal condition. As recently as fiscal year 2000, the Federal Government had a combined surplus of more than $100 billion. Every penny of payroll tax was retained in the Social Security trust fund and the General fund was generating enough revenue to fully fund its contribution to Medicare and still pay down the National Debt.

As my colleagues know, this rosy budgetary picture is long gone.

According to the Congressional Budget Office's latest monthly budget estimate, May 2003, the unified deficit for fiscal year 2003 will exceed $400 billion even after borrowing every penny of this year's Social Security trust fund surplus.

With this in mind, it is imperative that we act not only to provide Medicare benefits for today's beneficiaries, but also for the baby boomers that will arrive in 2011.

The Finance Committee bill strikes a balance between providing seniors and the disabled access to needed prescription drugs today and doing so in a fiscally sensible way that would allow benefits to extend to future generations.

Senator GRASSLEY and the Finance Committee have put before the Senate a bill that will cost $400 billion as scored by CGO.

The natural question that I think the American people would like to know is what does $400 billion buy? In my opinion, $400 billion provides a real prescription drug benefit that is affordable to both the beneficiaries and the Federal Government.

First of all, seniors would get assistance immediately through the prescription drug card. And our neediest seniors would receive an additional $600 on top of the discounts Medicare will provide through this card.

When the prescription drug program begins in 2006, under the Finance Committee bill, premiums would average $35 a month.

After a $275 deductible, the government would cover half of all prescription drug costs up to $4,500.

Now, critics of this approach will claim that the so-called ''doughnut hole'' after $4,500 will be the financial ruin of every senior. The truth is that the vast majority of seniors—80 percent—would never even hit the hole.

As a matter of fact, for 2003, the Kaiser Family Foundation estimates that the average Medicare beneficiary will consume approximately $2,300 in pharmaceuticals. And should seniors consume over $5,800 in prescription drugs, the Federal Government would pick up 90 percent of drug costs.

While this benefit will greatly help seniors throughout the Nation, there are still some seniors for whom the $35 per month premium and additional cost-sharing is too high. For those individuals, the bipartisan Finance Committee bill provides protections that will allow access to prescription drugs.

For those seniors under 135 percent of poverty, $12,123 for an individual and $16,362 or a couple, the Finance Committee bill would provide a full subsidy for monthly premiums. In addition, the government would cover 95 percent of their prescription drug costs to the initial benefit limit and 97.5 percent above the stop-loss limit.

And for those seniors between 135 and 160 percent of the poverty level, S. 1 would provide assistance with their monthly premiums on a sliding scale. In addition, these individuals would pay no more than 50 percent of their drug costs once the $250 deductible has been reached.

When we talk about dollars being spent, we should also point out to seniors that they will receive more bang for their buck under the Finance Committee bill through Medicare Advantage.

Under Medicare Advantage, seniors will not just receive direct assistance from the government to cover their prescription drug bills. Rather, private health plans will have to compete for beneficiaries and will attempt to attract seniors by providing the best health care plan—including prescription drugs and possibly preventive care, disease management, vision and dental services.

To the advantage of both Medicare beneficiaries and the Federal Government, this competition will decrease the price of prescription drugs and permit all parties to stretch their dollars further.

This body has been playing this political posturing game with senior's health care for too long.

I am tired of explaining partisanship as the excuse for the Senate's failure to pass a prescription drug benefit, which has forced the least of our brothers and sisters to choose between food and prescription drugs.

I am pleased that the Senate will have the opportunity to show the American people, especially our nation's seniors and disabled that we are serious about enacting legislation to provide a prescription drug benefit this year.

The bill before us seems to have broad support from both sides of the aisle. The President is ready and willing to sign a bill into law this year. It is time to get the job done.

ORDER OF PROCEDURE

Mr. ALEXANDER. Mr. President, I ask unanimous consent that today after the consideration of S. 1, the Senate proceed to the consideration of Calendar No. 140, S. 504, and that it be considered under the following limitation: no amendments be in order, and there be 45 minutes equally divided for debate between Senator ALEXANDER and the ranking member or his designee; provided further that at the expiration of that time, the bill be read a third time, and the bill be set aside; provided that the Senate resume consideration of the bill upon convening on Friday, June 20, and that the time until 9:15 be equally divided for debate; further, that at 9:15 a.m. the Senate proceed to a vote on passage of the bill, with no intervening action or debate.

I also ask unanimous consent that following that vote, the Senate resume consideration of S. 1 and Dorgan amendment No. 946, and there then be 4 minutes of debate equally divided prior to the vote in relation to the amendment, with no further amendments in order to the amendment prior to the vote.

Finally, I ask unanimous consent that following the Harkin amendment, the next sequence of Democratic first-degree amendments be the following: Conrad, 2-year fallback; Pryor, reimportation; Kerry, grant program; Clinton, study; and Graham, premium.

The PRESIDING OFFICER. Is there objection?

The Democratic whip.

Mr. REID. Mr. President, I would ask the Senator to modify the request in this manner: First, I would control the time, rather than the ranking member, on the minority side on this bill.

The PRESIDING OFFICER. Is there objection to the modification?

Mr. ALEXANDER. Mr. President, I have no objection to the modification.

Mr. REID. Secondly, Mr. President, we have checked with the majority, and they have no problem with the fact that Senator PRYOR would offer his amendment on Monday rather than tomorrow. Even though he is in order following Senator CONRAD, I ask that he be allowed to offer his amendment on Monday.

The PRESIDING OFFICER. Is there objection to the modified request?

Mr. REID. No objection.

Mr. ALEXANDER. No objection.

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

AMERICAN HISTORY AND CIVICS EDUCATION ACT OF 2003

Mr. ALEXANDER. Mr. President, I ask that the Senate proceed to S. 504, as under the order.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 504) to establish academies for teachers and students of American history and civics and a national alliance of teachers of American history and civics, and for other purposes.

The PRESIDING OFFICER. Who yields time?

The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I yield myself such time as I may consume.

Mr. President, this week there was a great celebration of National History Day. There were high school students from all over the country in our offices and at the University of Maryland.

Last Friday, when I was sitting where the distinguished Senator from Minnesota now sits, presiding over the Senate, I had the privilege of hearing Senator BYRD deliver an address about Flag Day.

Since 9/11, President Bush has spoken more regularly about the American character. Suddenly, in our country there is a lot of interest in what it means to be an American.

In the mid-1990s, I read a book by Samuel Huntington, a professor at Harvard, called ''Clash of Civilizations.'' A lot of people read that book in terms of understanding in what conflicts the United States, the West, might find in future years. But I read it for a different reason. It made me think that if the new world order was to be a group of civilizations whose differences began with their cultures, their religions, and a variety of other things that made them unique—it made me think if we were moving into that kind of an era, then maybe we ought to have a better understanding of just what made our culture unique. What did it mean to be an American?

I was invited to hold a professorship at Harvard University and taught in the John F. Kennedy School of Government there. And the course I taught was on the American character and on American Government. In that course, the graduate students applied the great principles which unite us as a country to the great controversies which we in the Senate debate—about race-based scholarships, about military tribunals, about faith-based institutions—and the conflicts of those principles. The students were fascinated by that.

And then suddenly I found myself, last year, in a Senate race that I did

not expect to be in. And like most candidates for the Senate, as the Chair well knows, I spoke about a number of different things. Sometimes I spoke about our colleagues on the other side of the aisle. Sometimes I spoke about taxes, about judges, about education.

But, Mr. President, there was one sentence I could say during that campaign to any audience, anywhere in my State of Tennessee, that brought the greatest response. I could barely get it out of my mouth before there would be some response from the audience—of heads nodding or some kind of applause—and it was this sentence: It is time to put the teaching of American history and civics back in its rightful place in our schools so our children can grow up learning what it means to be an American.

That is why today I stand before you to support S. 504, the American History and Civics Education Act of 2003, which we will be voting on in the morning as the first order of business.

It will help put the teaching of American history and civics back in its rightful place in our schools. It will set up summer residential academies for students and teachers: 2-week academies for teachers—say, at a university—and 4-week academies for students of American history and civics. And it would join the variety of efforts that the President and this Congress on both sides of the aisle have been acting upon with increasing frequency to underscore American history.

It is modeled after the Governor's Schools which exist in the State of Tennessee and many other States across this country. And it is premised on the idea that if 200 teachers go to the University of Tennessee or a university in Nevada or a university in California, and spend 2 weeks with outstanding leaders, talking about the great principles and the great stories and the key events of our history, that they will be inspired to do an even better job of teaching that during the next year to their students.

I introduced this bill and support it on behalf of 36 Senators, including the Democratic whip, who is the chief cosponsor, and has been from the very first day of its introduction, which I, as a new Senator, greatly appreciate. It also includes Republican and Democratic leaders whom I will mention in just a moment: The majority leader; Senator GREGG, the chairman of the relevant committee; Senator BURNS, the chairman of the relevant Appropriations subcommittee; Senator KENNEDY, the ranking member of our committee; and Senator BYRD, who has been a pioneer in supporting this kind of legislation.

Mr. President, we need this bill, and we need additional attention to American history because, first, when our values are under attack, we need to understand clearly what those values are. And, second, we should understand what unites us as Americans.

Our diversity and variety in this country is an enormous strength. It is a tremendous strength. We are a nation of immigrants with people from everywhere, but our greater strength—our greatest accomplishment—is we have been able to take all of that variety and diversity and turn it into one country—''e pluribus unum.''

We need to understand what those values are. And we need to put into context the terror of the time. I have heard a great many people on television say these are the most dangerous times our country has ever faced. Well, only if you have never had 1 minute of American history would you believe that. We need for our young people to know that there have been struggles from the very beginning.

But our young people do not know the story of this country as well as they should. Too many of our children do not know what makes America exceptional. National exams show that three-quarters of our fourth, eighth, and twelfth graders are not proficient in civics knowledge, and one-third do not even have basic knowledge, making them civics illiterates.

Until the 1960s, civics education, which teaches the duties of citizenship, was a regular part of almost every high school's curriculum.

But today's college graduates probably have less civic knowledge than high school graduates of 50 years ago. Reforms have resulted in the widespread elimination of required classes and curricula in civics education. Today, more than half the States have no requirements for students to take a course even for one semester in American government.

That is not the way it has always been. From the beginning of our Nation, we have generally understood what it means to be an American, and that has been a preoccupation of Americans: Think of our Founders, writing those letters, holding those debates, making sure we knew what it meant to be an American; Thomas Jefferson in his retirement years in Monticello taking his guests through his home and pointing to portraits on the wall of the leaders from whom he had gotten many of his ideas so they would understand what he had in mind when he helped create this country.

When we had a huge wave of immigration more than a century ago, just as we do today, our national response was to teach new Americans what it means to be an American. Because you don't become an American by your color or by your ethnicity or by being born here. You become one because you believe a few things. If you move to Japan, you don't become Japanese. If you move to France, you don't become French. If you move to America and want to be a citizen, you must become an American. That is the way our country works.

We created the common school, today's public schools, to teach reading, writing, and arithmetic to immigrant children as well as what it means to be an American, with the hope that they might go home and teach their parents. That was what Albert Shanker, former president of the American Federation of Teachers, said about the creation of common schools.

Then of course in World War II, President Roosevelt made sure that every GI who stormed the beaches at Normandy understood what the four freedoms are. We have not always been complete in our understanding of what it means to be an American. Sometimes we have gone to excess. We didn't teach the stories of African Americans well. We undervalued the contribution of the Spanish to our culture. And in the 1950s, we were embarrassed, as we look back, by McCarthyism. But that is no excuse for what is going on today: dropping civics, squeezing American history out of the curricula, and when it is in, it is watered down. Too often the textbooks are so dull, nobody would want to study them. All the talk is about victims and never about the heroes. The schools have become politically correct. The teachers are reluctant to teach the great controversies. But what is American history if it is not the story of great controversies and great conflicts of principles and great disappointments with not reaching our great dreams and great stories and great heroic efforts?

Our students need to know that Kunta Kinte came to this country in the belly of a slave ship and that his seventh generation grandson, Alex Haley, wrote the story of Roots about the struggle for equality and freedom. They need to know that Thomas Jefferson owned slaves and that he wrote the Declaration of Independence, as it is taught at the Ben Hooks Center at the University of Memphis.

We are a work in progress. We have never been perfect. They need to know about the Pilgrims who were Christians, and they need to know about the Presbyterians, my ancestors, the Scotch Irish who fought a Revolutionary War because they were tired of paying taxes to support the bishop of a church to which they didn't belong. They need to know about the religious character of our country and about the importance of the separation of church and state. They need to know about our love of liberty and about the incarceration of Japanese Americans in World War II.

The response to putting the teaching of American history and civics back in its rightful place in our schools has been overwhelming. Not just the Democratic whip, Mr. REID, has sponsored this, but 36 Senators from both sides of the aisle, leaders of both sides. And in the House of Representatives, ROGER WICKER of Mississippi is the lead sponsor of the same bill. He called tonight and said they have 160 sponsors in the House, Democratic and Republican leaders.

I offer my special thanks to a few Senators in addition to Mr. WICKER for

his leadership. To Senator FRIST, the majority leader, for scheduling the bill in the midst of a lot of other important business and for cosponsoring it. To Senator GREGG, chairman of our committee, for moving it through. Especially to Senator REID, for his understanding of American history, his leadership, his being here tonight, and his serving as the principal cosponsor of the legislation. To Senator KENNEDY, who has gone out of his way not just to support the bill but to attract other cosponsors. He has had a long interest in this subject. To Senator BURNS, on the Appropriations Committee, for his strong support. And to Senator BYRD, who took the time to come to the hearing and to testify. Senator BYRD is, of course, the author of the Byrd grants which are already being used in many of our schools.

The kind of American history we are talking about is the traditional kind, the study of the key persons, the key events, the key ideas, and the key documents that shape the institutions and democratic heritage of the United States of America. We spell out in our legislation that by key documents, we mean the Constitution and its amendments, and the Declaration of Independence, for example. By key events, we mean the encounter of Native Americans with European settlers and the Civil War and the civil rights movement and the wars. By key ideas, we mean the principles that we almost all agree on in this body: Liberty, equal opportunity, individualism, laissez-faire, the rule of law, federalism, e pluribus unum, the free exercise of religion, the separation of church and state, a belief in progress. We agree on those principles.

Our politics is about applying those principles. That is what our politics is about. The key persons, the heroes, the men and women of this country from its founding until today, the scientists, inventors, pioneers, the advocates of equal rights, and artists who have made this United States of America.

There are a great many efforts heading in the same direction. This is only one part. The President's efforts, the Library of Congress' efforts, the Byrd grants, the James Madison study, the National Endowment for Humanities which would award these to residential academies, to educational institutions, and nonprofit organizations. All are working hard in this way. We are adding to that.

In conclusion, I will mention two things. I was in a Foreign Relations Committee hearing the other day. We were talking about what we might expect with the reconstruction of Iraq. One witness said that we would be fortunate in our nation building there if the three grand divisions of Iraq, the Kurds, the Sunnis, and the Shiites, the geographical areas, could agree on two things: One would be how to split up the oil money, and two would be on a federation that would basically keep them safe and independent in their own areas. And maybe we would have some semblance of democracy so they could choose their leaders.

I was thinking about how much we take for granted, how much more we are able to look forward to. There is no chance in Iraq of e pluribus unum, not for the foreseeable future. There is no general agreement on those principles I just read.

We have a marvelous country and a great story. We should be teaching it.

The last thing I would like to say is the first thing I mentioned: We need to put the terror in which we find ourselves today in context. Those who say this is the most dangerous time in our history have had no American history. What about the Pilgrims who died in the first winter? What about the soldiers at Valley Forge who walked across the ice with their bare feet? What about the Native Americans and the European settlers killing each other's children? That was terror. What about the African Americans who came in the slave ships? What about the brothers who killed each other in the Civil War? What about the millions who stood in line in the Depression? What about in the 1950s and 1960s, when we all stood within 30 minutes of a nuclear missile from the Soviet Union?

We have had greater terrors face the United States. This is a time of struggle. It is a time when we should stop and think about what it means to be an American so that we can teach our children and so that we can continue our country.

I yield the floor.

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. Mr. President, I can remember when I served in the House of Representatives on the Foreign Affairs Committee. Mr. Kissinger came before the committee. The chairman of the committee, Mr. Solarz from New York, said: I don't know how to refer to you. Dr. Kissinger, is it Mr. Ambassador? Is it Mr. Secretary? Kissinger didn't hesitate a second, and he said: Your Excellency would be fine.

I am reminded of this when I think of Governor ALEXANDER, Secretary ALEXANDER, and Senator ALEXANDER—a man with a great resume who is now a Senator. The background certainly is one where this legislation came, as a matter of fact, from somebody who served our country as the Governor of a very important State, who served as Secretary of Education, and now as a Senator. When this distinguished Senator came forward with this legislation, I knew right away that it was good, based on his experience and background. I felt inclined to move on this legislation to be a prime cosponsor of it. I am happy to do that.

It is important to the point where we are now. Tomorrow we will pass this bill, and it will become law. I think we have such momentum here that this isn't something we are going to just issue a press release on as having authorized this legislation. We have support so that we are going to appropriate the money. As the Senator from Tennessee has announced, Senator ROBERT BYRD, the ranking member and long-time chairman of the Appropriations Committee, supports this legislation. We are going to move forward and not only authorize but appropriate money for this most important program.

The bill itself, if you look at it—and then read this bill, we have a Medicare bill here that is some 700 pages long—is just a few pages long, seven or eight pages. It may not seem like much, but for me it is very important. For the American people, it will be very important because this little bill will allow as many as 7,200 teachers every summer, every year, to be updated on what they should be teaching their young folks. The 7,200 teachers each were under this legislation—the Chairman of the National Commission on Humanity has the ability to select 12 different academies, 1 for teaching history and civics congressionally, the other with a Presidential background. Each of these academies will be chosen, 12 in each category, and they could have up to 300 teachers to participate. That is 7,200. It adds up quickly. In 10 years, that is 72,000. I think that is remarkable.

It is important because teachers have so many burdens. They have paperwork, and now with Leave No Child Behind, they are so immersed in teaching children how to pass tests that they don't have a lot of time to teach sort of outside the box. This allows them to do that, to be reinvigorated and take a look at what is happening around the world, what has happened that they have missed.

So this little bill that is going to become law very quickly—because the House already has over a hundred cosponsors—is important legislation. I commend and applaud my distinguished friend, the Senator from Tennessee, for his work in this area. I hope this is the first of many pieces of legislation the Senator introduces, based on his experience and background as Secretary of Education for this wonderful country.

As my friend has indicated, the education of America's children has to be one of our priorities. It is one of our priorities. We have to make sure that children are our future. In order for them to be our future, we need to give the people who are teaching them the tools they need to teach them to be good leaders.

Teachers and administrators have many important responsibilities to achieve that end, including providing students with the basis to pursue higher education, helping them develop their individual potential, and preparing them for successful careers.

As has been indicated in the introductory remarks by my friend from Tennessee, America is a nation of immigrants. Our schools have helped instill in our diverse population a sense of what it means to be American, and

we have prepared our youth for the responsibilities of citizenship. But we can do better. That is what this legislation is all about.

We need to reaffirm the importance of learning American history and maintaining the civic understanding, recognizing that diversity and tolerance are at the core of that understanding.

Many individual districts and schools within those districts, such as those in the State of Nevada, have recognized the importance of civics education and have designed curricular programs to highlight students' knowledge of civics and history.

One young man who has the unusual name of Trey Delap, a fine young man from Boulder City, which is right near Hoover Dam—where growth has slowed slightly, unlike the surrounding area—describes himself as an average high school kid from a small town. Boulder City is not too small, but the school isn't really big. He dreamed of doing other things all of his life, but certainly never, ever thought about anything dealing with government, until he participated in a program called We The People. It is a program offered through the Center for Civic Education that allows students to study civics and then share their knowledge through competitions such as the one held in Washington. They have State competition and, if they do well there, they can come to Washington.

His first assignment as part of this We The People program began with the question: What is the role of a citizen in a democracy? He pondered this question, and he discovered that his true passion was government.

Defining the role of a citizen led him to question his own responsibility as a citizen and the importance of understanding what our Constitution stands for. This is a high school kid.

In this program, Trey was able to celebrate his 18th birthday in our Nation's Capital, while he voiced his opinion about the role of being a citizen in front of lawyers, judges, and congressional staff during a congressional debate. We The People is a great program, but only a few are allowed to participate in it.

What we are talking about tonight with this legislation is that schools all over America would have similar programs, in effect, because we would have teachers who are having a shot of adrenaline, updating the education they received going through their educational programs in college. This bill would establish a network of teachers sharing ideas about history and civics programs.

S. 504 would accomplish these goals that I have talked about by creating grants for teachers, and the students would come and participate in the program. With teachers in so many areas not sharing information among themselves, they teach information not consistent with prescribed curriculum. So we should have networks like the one proposed here for all students.

Another reason, frankly, that I jumped aboard this program was that Senator Paul Simon and I—we served as Lieutenant Governors together, served in the House of Representatives together, and we served here together—had the idea that what we needed to work on was to do something about science and math. We lose so many science and math teachers because they cannot make enough money teaching in high school. It has to be for the love of teaching that they stay, because math and science is so acceptable by outside industry. That is the only reason they stay in teaching—they love it.

Senator Simon and I had the idea of creating summer workshop programs so that math and science teachers during the summer, or with year-round school systems, whenever there was a break, had summer workshops to attend to update their skills but be paid for doing so. This would also give them some extra money.

Math and science teachers make the same as somebody who teaches PE. PE is important, and we have good teachers teaching physical education. But realistically, we need more math and science teachers than we do physical education teachers.

Well, Senator Simon and I worked hard, but we could never get the program funded.

This program, while it is not like the program Senator Simon and I sponsored, it is as I feel about this Medicare bill. This Medicare bill is not something I love, but it is, as we heard so many times, the proverbial camel with his nose under the tent. We can make this Medicare bill better.

With this program I am confident we are going to pass and fund, maybe we can go back to what Senator Simon and I wanted to do: to do something to enrich math and science teachers' lives, not only enrich them academically but also monetarily. I hope that is something my friend from Tennessee will take a look at and work with me.

As we work to make sure all schoolchildren—and especially I am concerned about those in Nevada—are connected to the Internet—and we have programs doing that—and are connected to the future, I also want them to be connected to America's past and to know the common values of histories binding together all who live in this great Nation.

We learn from history. I love history. I love to study history, and I want young people also to have a love of history. That can come about with one good teacher. One good teacher can change a young person's life, just like Trey's life in Boulder City. His life was changed by having someone telling him that Government is important. Government is important, history is important, this legislation is important, and I hope we have a resounding vote, which I am confident we will, tomorrow morning.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I thank the Senator from Nevada for his leadership and for his comments. I look forward to working with him on math and science and other education issues. I especially appreciate his commenting on the teachers.

He noted perhaps 72,000 teachers. Even though this is just a pilot program for a few years, if for 10 years 72,000 teachers of American history and civics went to summer residential academies, called Presidential Academies of American History and Civics, they should be inspired to be even better teachers.

One of the things I most enjoyed doing as Governor was creating the Governor's School for Teachers of Writing which was run by Richard Marius of Harvard. Every summer 200 teachers would gather at the University of Tennessee. He would lead them. He taught Harvard freshmen in their writing program.

What happened was, if you put the teachers together, they taught one another. They became inspired. They developed better lesson plans, and they went back to their classrooms fired up and much better teachers.

I have great confidence in our teachers. I believe if we afford an opportunity for them to come together in many places across the country, and for 2 weeks focus on how to teach the great stories of American history, that by itself will help put it in its rightful place. When we add to that 4-week schools that students of American history and civics will attend, it will double our punch.

I appreciate that sponsorship. I look forward to the Presidential Academies for Teachers of American History and Civics and the Congressional Academies for Students of American History and Civics.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

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

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. ALEXANDER. Mr. President, I ask unanimous consent that the Senate proceed to a period for morning business.

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

BIRTHDAY OF AUNG SAN SUU KYI

Mr. McCONNELL. Mr. President, on June 19, 1945, Burmese democracy leader Aung San Suu Kyi was born in Rangoon, Burma, to Ma Khin Kyi and Aung San.

Some speculate that she was destined to be a defender of freedom in Burma, as her father was the commander of the Burma Independence Army. Tragedy struck the family exactly 1 month after Suu Kyi's second birthday when General Aung San was assassinated. The family's loss was mourned by the entire nation.

As Burma's military leaders were to find out decades later, Suu Kyi has freedom and justice coursing through her veins. She has been a tireless advocate for the rights and welfare of the Burmese people and has sacrificed—along with other Burmese democrats—much in struggle for democracy in Burma.

Suu Kyi is a symbol of courage and determination for the world's oppressed. She is a shining example that principles are stronger than repression. Suu Kyi and other democrats have yet to surrender to the State Peace and Development Council, SPDC, despite relentless attempts by the junta to bend and break their will.

How is Suu Kyi celebrating her 58th birthday? Most likely, she is not. I suspect she is alone and in Insein prison.

In the wake of a violent ambush by the junta on her convoy on May 30, Suu Kyi was arrested by the SPDC. Although U.N. Special Envoy Razali briefly saw her 2 weeks ago—and conveyed to an anxious world that she was not physically injured in the attack—we haven't seen or heard from her since.

The International Committee of the Red Cross, ICRC, requested a meeting with Suu Kyi, but the thugs in Rangoon refused. Unbelievable, outrageous—but not surprising considering the regime's track record.

It should not be lost on anyone that the denial of an ICRC visit means Suu Kyi is being treated worse than a prisoner of war.

The best gift the free world can give Suu Kyi on her birthday is a full court press on the junta. Sanctions, import bans, and statements condemning the SPDC's outrageous actions will help buoy the spirits of the Burmese people and confirm that the international community is on their side.

The best gift the administration can give Suu Kyi is an import ban and the downgrading of diplomatic relations with the SPDC. The White House should not wait for the House to act on its legislation but should implement a ban on imports immediately.

Finally, the best gift I can give Suu Kyi is a commitment to continue to stand with her and the people of Burma for as long as it takes for freedom's triumph. She and her compatriots continue to be in my thoughts and prayers.

TRIBUTE TO JANINE JOHNSON

Mr. REID. Mr. President, we make many different kinds of speeches on the Senate floor. Some of those speeches seek to advance legislation and amendments and some aim to commemorate historic events. None are as sad as those we make in the memory of a member of the Senate family who has left us. On May 29, 2003, Janine Johnson, Assistant Counsel in the Senate's Office of Legislative Counsel, passed away. Janine was 37 years old.

Many of us and our staffs knew Janine personally. Some of us only knew her only by her initials that appeared on the legislation and amendments we introduce here on the floor. She served the Senate for nearly 13 years, doing much of her work for the Senate Committee on Environment and Public Works, the Agriculture Committee and the Energy Committee.

Over the years, Janine prepared thousands of bills for me and for the other members of the Environment Committee. Her expertise in those matters made my job easier and the jobs of the staff easier on countless bills. Janine was an expert drafter on matters of critical concern to the committee. She drafted several generations of Water Resources Development Acts. She drafted our last transportation bill, the mammoth Transportation Equity Act for the 21st Century, and was in the process of drafting a new transportation bill when she fell ill. She drafted many parts of the last Farm bill, including the nutrition title of that bill. I mention that because I am told that no one has found a single drafting error in the hundreds of pages of that title.

That is very rare, but I am told by her colleagues that Janine's way was the way of a perfectionist.

And to her about Janine's history is to hear that it was a way of life. Janine was a native of Winchester, MA. She graduated first in her class from Winchester High School and ultimately graduated with high honors from Harvard Law School in 1986. She went on to clerk for the Honorable Cecil Poole on the U.S. Court of Appeals for the Ninth Circuit. Following her clerkship, she came to the Senate Office of Legislative Counsel. In addition to serving as Assistant Counsel, she was active in shaping the office itself. She interviewed new attorneys for the office, and she had an unparalleled ability to recognize those who would maintain the high standards of the Senate. That legacy will live on in the colleagues and friends she helped to bring into the Senate family.

According to Janine's friends here in the Senate, she loved life outside the Senate as much as her work within it. Janine loved theater, music and swing dancing. I am told that she loved living here in Washington, DC, where one of her favorite times of year was the spring because of her love of our cherry trees and the Cherry Blossom Festival.

The cherry blossom Janine admired is the most beautiful flower in Japanese culture. It symbolizes the Japanese values of simplicity, purity and fleeting beauty. Many poets have described the pink and white blossoms as a metaphor for life, beautiful and simple, yet at the same time sadly ephemeral and fleeting.

Janine's friends in the Senate would say that she was like the flowers she loved to see, but that her memory will not be ephemeral to the Senate, to her work here, or to the many friends and family she leaves behind.

Mr. WARNER. Mr. President, I come to the floor this morning to pay tribute to a very talented, kind and generous member of our Senate family, Janine Johnson. Sadly, at the far too young age of 37, Janine passed away. For the past 13 years, Janine served as Assistant Counsel in the Senate's Office of Legislative Counsel. Some of us were privileged to work with her directly and benefit from her skill and keen intellect.

While many of us over the years have recognized the well-deserved contributions of our staff in our personal offices or on committees, we all know that we depend highly on the exceptional professional judgment and tireless efforts of the staff in the Senate Legislative Counsel's office. While Janine did not work for an individual Senator or Committee, it is without question that Janine was devoted to the institution of the Senate, skilled in the intricacies of the law, and served the Senate with distinction.

Janine was the primary Legislative Counsel for many issues under the jurisdiction of the Committee on Environment and Public Works. It was during my tenure as Chairman of the Transportation Subcommittee that my staff and I were privileged to work with Janine. She was our counsel for the development of the National Highway System Act of 1995, and later on the landmark Transportation Equity Act for the 21st Century, commonly referred to as TEA–21. Also, during my chairmanship, Janine guided us on the development of several Water Resource Development Acts, that were enacted on a biennial cycle.

It was during those long days and weeks in working in committee, on the Senate floor and later in conference on TEA–21 that we witnessed the exceptional skill, thoroughness and professionalism that Janine brought to every issue. The surface transportation bill expired in the fall of 1997. The Congress passed a 6-month extension bill and we came back in early 1998 to renew our efforts on a full 6-year reauthorization bill. Janine was there with the committee every step of the way.

The staff recollections of Janine's contributions to the development of TEA–21 are unmistakable. I hear of her deep commitment to the law, to turning vague concepts into statute, and faithfully executing the views of the committee and Senator's agreements on complex policy issues. Most importantly, I hear staff use heartfelt words

to describe Janine's grace, her delicate nature, her respect for her colleagues, her genuine kindness, and her commitment to the work at hand. I'm told that on many occasions when staff completed work for the night, usually past midnight, and left sections for Janine to draft that often her work was on their desks by 9:00 the next morning. She was always willing to stay long past when the Metro closed, as long as she had a ride home.

We, in the committee, relied heavily on Janine's legal abilities, her legislative drafting precision and we were fortunate to have her as a star on our team—although for far too short a time.

Janine's academic achievements are superior, graduating with high honors from Harvard Law School in 1986 and then clerking for the Honorable Cecil Poole on the U.S. Court of Appeals for the Ninth Circuit. With her exceptional qualifications, I'm confident that she would have been successful in any career path she chose. Fortunately, for us, she came to the Senate and for 13 years we have all been more successful because of her.

The poet Albert Pike has said:

What we have done for ourselves alone dies with us; what we have done for others and the world remains and is immortal.

Janine has certainly touched many of us in lasting ways. The Senate is grateful for her service and we share our condolences with her friends and family.

Mr. JEFFORDS. Mr. President, as Senators, we are accustomed to the glare of the public spotlight and there are even some members of Congress who crave such attention. In general though, we are here because we share a deep desire to serve our country and to help ensure that our government and its laws are true to the spirit of America.

We sometimes forget that we are also part of a Senate community filled with people who believe in that same kind of public service. Though they do not share the spotlight with us, we could not do our jobs without them and the nation would suffer.

So, I want to recognize the contributions made by all staff, and in particular the experts in the Office of Senate Legislative Counsel that help keep us true to the law, its structure and its functioning. They help put our ideas into real form and maintain the integrity of the code.

That is why it is very very difficult today to note the passing of Janine Johnson, Assistant Counsel in Office of Legislative Counsel. She was an integral and crucial part of that office.

Her professionalism, her deft grasp of complicated statutes, her work ethic, and above all, her pleasant manner and bearing, will be sorely missed by that office, but also by me, my office and in particular, my Environment and Public Works Committee staff.

Many of my staff have worked with Janine for a decade or more and have been uniformly impressed by her unparalleled skill and commitment to her job.

Janine had a knack for taking even the most complicated concepts and proposals and breaking them down into manageable parts. Then, she found ways to integrate them into existing statutes. To many staff, she was a legislative magician.

One did not need to know Janine for very long to see that she shone with a pure and intense inner light that made the way clearer and easier for others. But, the memory of her kindness and delicate humor will live on and inspire those who follow her.

Janine was a talented woman and a lawyer's lawyer. She had a green thumb and many days brought one of her prized amaryllis plants in to brighten the front office. She also spoke many languages, including beginning Russian which I believe she started in Middlebury, VT.

The Senate has suffered a great loss with the passing of Janine Louise Johnson. I wish her family and friends all the best in coping with the pain. However, I want to note that her significant contributions to the Senate and to the nation will not be forgotten and that she should serve as a model for us all.

Mr. COCHRAN. Mr. President, it is with sadness that I join my colleagues to mourn the premature passing of a dedicated member of the Senate staff.

Ms. Janine Johnson was an Assistant Counsel in the Office of the Legislative Counsel. She was a 1986 graduate of Harvard College and a 1989 graduate of Harvard Law School.

Her responsibilities included drafting legislation in areas that are within the Agriculture Committee's jurisdiction. Her thoughtful work and dedicated service to members of the Senate are reflected in legislation such as the 1996 and 2002 farm bills and the 1998 child nutrition reauthorization.

The work of the Office of the Legislative Counsel often goes unnoticed and under appreciated, but it is talented attorneys like Ms. Janine Johnson who provide such a valuable service to the Senate. I extend my sympathies to Ms. Johnson's family and friends.

VOTE EXPLANATION

Mrs. DOLE. I want to explain why I was necessarily absent from the June 13 vote on the confirmation of R. Hewitt Pate to be an Assistant Attorney General for Antitrust. At the time the vote took place, I was speaking to the Flue Cured Tobacco Stabilization Corporation, a group of more than 500 North Carolina tobacco farmers, in Raleigh, NC. My attendance at the event was important in order to listen to the major concerns of our State's tobacco farmers, as well as to address one of North Carolina's top priorities, a tobacco quota buyout, which is critical to the livelihood of all tobacco farmers and the economic security of our State.

Had I been present, I would have voted for Mr. Pate.

HONORING OUR ARMED FORCES

Mr. LUGAR. Mr. President, 2 months ago when President Bush declared an end to combat operations in Iraq, I rose to pay tribute to the seven service members with Indiana roots who sacrificed their lives in Operation Iraqi Freedom. I observed that while these seven fine young men were engaged in a noble and worthy cause—making the world safer for all freedom-loving peoples—their deaths again showed us that freedom never comes without a heavy price in human lives.

At the time I delivered those remarks, I and all Americans understood that there would still be dangerous times ahead for our service members, but we sincerely hoped there would be no more reports of American service members killed in combat operations.

Today, I am sad to report, our troops in Iraq are still very much at risk of injury or the ultimate sacrifice as they work to restore order and a civil society in this troubled country. It seems that almost every day we receive news of soldiers being ambushed or attacked in hit-and-run type incidents. More than 40 American troops have fallen since May 1st. We are still suffering combat casualties, and it is obvious that reconstruction of Iraq is going to be a lengthy and difficult process.

During these past 2 months, three of those who fell were brave young men with Indiana roots. Three more Indiana families have been devastated by the loss of a loved one. Today, I would like to pay tribute to these three fine young men.

Marine Lance Corporal Matthew R. Smith of Anderson, IN, was killed on May 10 in Kuwait when the Humvee he was riding in struck a trailer in a military convoy. Matthew, a Marine Corps Reservist, was 20 years old and a sophomore at Indiana University. He went overseas with his unit in February and had traveled all the way to Baghdad while providing support to Marine combat forces.

On the day Matthew died, his father, David Smith, received the first letter from his son since he went overseas. Matthew wrote that he was proud to be in Iraq as a marine fighting for his country's freedom.

Matthew Smith will be missed.

Army Private Jesse Halling of Indianapolis was killed on June 10 in the city of Tikrit when his military police squad became engaged in a firefight after being ambushed. Jesse was in the turret of a Humvee firing a machine gun at their attackers when a rocket-propelled grenade struck the vehicle. His commander has recommended him for a Silver Star Medal for bravery under fire.

Jesse was 19 years old and had enlisted in the Army right after his graduation from Ben Davis High School, where he had participated in Junior

ROTC. His friends remember him as a fun-loving teenager with a passion for motorcycles. His fellow soldiers will remember him as a hero whose quick actions may well have saved the lives of others.

Jesse Halling will be missed.

Army Private Shawn Pahnke of Shelbyville was killed on June 16 in Baghdad, felled by a sniper round fired in the dead of night at the Humvee he was riding in. Shawn was 25 years old. He had joined the Army to become a crew member on an M–1 Abrams tank and was serving with the 1st Armored Division in Germany before deploying to Iraq.

Shawn leaves behind a wife, Elisha, and a 3-month-old son, Dean Patrick, whom he never had a chance to see. Shawn was in Germany when the baby was born, but the staff at Major Hospital in Shelbyville hooked up a phone connection to the delivery room so that Shawn could hear his child's first cries.

Shawn Pahnke will be missed.

All of Indiana mourns for the loss of these brave young men. Our hearts go out to these families.

HONORING COMPANY A, 8TH TANK BATTALION, MARINE FORCES RESERVE

Mr. BAYH. Mr. President, on behalf of the State of Indiana, I wish to recognize Maj. William P. Peeples of the U.S. Marine Corps Reserves and his fellow marines of Company A, 8th Tank Battalion, on the successful completion of their mission while serving in Operation Iraqi Freedom. Major Peeples is from Indianapolis, IN, and it is with sincere pride that I congratulate him on a successful tour of duty leading his division through its service in Iraq.

The unit was among the first involved in fighting when Operation Iraqi Freedom began this March. Some members from the 3rd Platoon also assisted special forces with the rescue and recovery of PFC Jessica Lynch and other remembers of her unit.

We are indebted for the many contributions and tremendous sacrifices, past and present, that the men and women of the Marine Corps have made in service to our great Nation. The strength, courage, and character they exemplify can only inspire the admiration and appreciation of all Americans.

Through their rapid mobilization and superior performance in the line of duty, the marines of Company A, 8th Tank Battalion, serve as shining examples of the Corps' motto ''First to Fight.'' I know I speak for all Hoosiers when I thank the returning members, and welcome them back home.

HONORING PRIVATE SHAWN D. PAHNKE

Mr. BAYH. Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave young man from Shelbyville, IN. Private Shawn D. Pahnke, twenty-five years old, was killed in Baghdad on June 17, 2003 when he was shot in the back by an Iraqi sniper. Shawn joined the Army with his entire life before him, with a young wife and a newborn son at home. He chose to risk everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

Shawn was the eighth Hoosier soldier to be killed while serving his country in Operation Iraqi Freedom. Today, I join Shawn's family, his friends, and the entire Shelbyville community in mourning his death. While we struggle to bear our sorrow over his death, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is this courage and strength of character that people will remember when they think of Shawn, a memory that will burn brightly during these continuing days of conflict and grief.

Shawn Pahnke wrote to his family only weeks before his death, telling them that he was proud to serve in the Army and to follow in the footsteps of his father, a Vietnam War veteran, and his grandfather, a World War II veteran. Shawn grew up in Manhattan, IL and graduated form Lincoln Way High School in New Lenox, IL. He then joined the Army and served as part of the 1st Armored Division's 1st Brigade. Shawn leaves behind a wife, Elisha and their three-month-old son, Dean Patrick, who was born after Shawn was sent to Friedberg Army Base in Germany. He also leaves behind his parents, Tom and Linda Pahnke and two older brothers.

As I search for words to do justice in honoring Shawn Pahnke's sacrifice, I am reminded of President Lincoln's remarks as he addressed the families of the fallen soldiers in Gettysburg: ''We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say her, but it can never forget what they did here.'' This statement is just as true today as it was nearly 150 years ago, as I am certain that the impact of Shawn Pahnke's actions will live on far longer than any record of these words.

It is my sad duty to enter the name of Shawn D. Pahnke in the official record of the United States Senate for his service to this country and for his profound commitment to freedom, democracy and peace. When I think about this just cause in which we are engaged, and the unfortunate pain that comes with the loss of our heroes, I hope that families like Shawn's can find comfort in the words of the prophet Isaiah who said, ''He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.''

May God grant strength and peace to those who mourn, and may Gold bless the United States of America.

THE BUDGET DEFICIT

Mr. HOLLINGS. Mr. President, it is said that editorialists can editorialize but can't take criticism. Not true. Chairman Donald Graham and editorial page editor Fred Hiatt readily accepted the following Washington Post editorial this morning for which I profoundly thank them. Otherwise, since I referred to Pete Peterson, in fairness let me also include his column in the RECORD.

I ask unanimous consent the articles be printed in the RECORD.

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

[From the New York Times, June 8, 2003]

DEFICITS AND DYSFUNCTION

(By Peter G. Peterson)

I have belonged to the Republican Party all my life. As a Republican, I have served as a cabinet member (once), a presidential commission member (three times), an all-purpose political ombudsman (many times) and a relentless crusader whom some would call a crank (throughout). Among the bedrock principles that the Republican Party has stood for since its origins in the 1850's is the principle of fiscal stewardship—the idea that government should invest in posterity and safeguard future generations from unsustainable liabilities. It is a priority that has always attracted me to the party. At various times in our history (especially after wars), Republican leaders have honored this principle by advocating and legislating painful budgetary retrenchment, including both spending cuts and tax hikes.

Over the last quarter century, however, the Grand Old Party has abandoned these original convictions. Without every renouncing stewardship itself—indeed, while talking incessantly about legacies, endowments, family values and leaving ''no child behind''—the G.P.O leadership has by degrees come to embrace the very different notion that deficit spending is a sort of fiscal wonder drug. Like taking aspirin, you should do it regularly just to stay healthy and do lots of it whenever you're feeling out of sorts.

With the arrival of Ronald Reagan in the White House, this idea was first introduced as part of an extraordinary ''supply-side revolution'' in fiscal policy, needed (so the thinking ran) as a one-time fix for an economy gripped by stagflation. To those who worried about more debt, they said, Relax, it won't happen—we'll ''grow out of it.'' Over the course of the 1980's, under the influence of this revolution, what grew most was federal debt, from 26 to 42 percent of G.D.P. During the next decade, Republican leaders became less conditional in their advocacy. Since 2001, the fiscal strategizing of the party has ascended to a new level of fiscal irresponsibility. For the first time ever, a Republican leadership in complete control of our national government is advocating a huge and virtually endless policy of debt creation.

The numbers are simply breathtaking. When President George W. Bush entered office, the 10-year budget balance was officially projected to be surplus of $5.6 trillion—a vast boon to future generations that Republican leaders ''firmly promised'' would be committed to their benefit by, for example, prefinancing the future cost of Social Security. Those promises were quickly forgotten. A large tax cut and continued spending growth, combined with a recession, the shock of 9/11 and the bursting of the stock-market bubble, pulled that surplus down to a mere $1 trillion by the end of 2002. Unfazed by this turnaround, the Bush administration proposed a second tax-cut package in 2003 in the face of huge new fiscal demands, including a war in Iraq and an urgent ''homeland

security'' agenda. By midyear, prudent forecasters pegged the 10-year fiscal projection at a deficit of well over $4 trillion.

So there you have it: in just two years there was a $10 trillion swing in the deficit outlook. Coming into power, the Republican leaders faced a choice between tax cuts and providing genuine financing for the future of Social Security. (What a landmark reform this would have been!) They chose tax cuts. After 9/11, they faced a choice between tax cuts and getting serious about the extensive measures needed to protect this nation against further terrorist attacks. They chose tax cuts. After war broke out in the Mideast, they faced a choice between tax cuts and galvanizing the nation behind a policy of future-oriented burden sharing. Again and again, they chose tax cuts.

The recent $10 trillion deficit swing is the largest in American history other than during years of total war. With total war, of course, you have the excuse that you expect the emergency to be over soon, and thus you'll be able to pay back the new debt during subsequent years of peace and prosperity. Yet few believe that the major drivers of today's deficit projections, not even the war on terror, are similarly short-term. Indeed, the biggest single driver of the projections, the growing cost of senior entitlements, are certain to become much worse just beyond the 10-year horizon when the huge baby-boom generation starts retiring in earnest. By the time the boomer age wave peaks, workers will have to pay the equivalent of 25 to 33 percent of their payroll in Social Security and Medicare before they retire just to keep those programs solvent.

Two facts left unmentioned in the deficit numbers cited above will help put the cost of the boomer retirement into focus. First, the deficit projections would be much larger if we took away the ''trust-fund surplus'' we are supposed to be dedicating to the future of Social Security and Medicare; and second, the size of this trust fund, even if we were really accumulating it—which we are not—dwarfed by the $25 trillion in total unfinanced liabilities still hanging over both programs.

A longer time horizon does not justify near-term deficits. If anything, the longer-terms demographics are an argument for sizable near-term surpluses. As Milton Friedman put it, if you cut taxes without cutting spending, you aren't really reducing the tax burden at all. In fact, you're just pushing it off yourself and onto your kids.

You might suppose that a reasoned debate over this deficit-happy policy would at least be admissible within the ''discussion tent'' of the Republican Party. Apparently, it is not. I've seen Republicans get blackballed for merely observing that national investment is limited by national savings; that large deficits typically reduce national savings; or that higher deficits eventually trigger higher interest rates. I've seen others get pilloried for picking on the wrong constituency—for suggesting, say, that a tax loophole for a corporation or wealthy retiree is no better, ethically or economically, than a dubious welfare program.

For some ''supply side'' Republicans, the pursuit of lower taxes has evolved into a religion, indeed a tax-cut theology that simply discards any objective evidence that violates the tenets of the faith.

So long as taxes are cut, even dissimulation is allowable. A new Republican fad is to propose that tax cuts be officially ''sunsetted'' in 2 or 5 or 10 years in order to minimize the projected revenue loss—and then to go out and sell supporters that, of course, the sunset is not to be taken seriously and that rescinding such tax cuts is politically unlikely. Among themselves, in other words, the loudly whispered message is that a setting sun always rises.

What's remarkable is how so many elected Republicans go along with the charade. The same Republican senators who overwhelmingly approved (without a single nay vote) the Sarbanes-Oxley Act to crack down on shady corporate accounting of investments worth millions of dollars see little wrong with turning around and making utterly fraudulent pronouncements about tax cuts that will cost billions, or indeed, even trillions of dollars.

For some Republicans, all this tax-cutting talk is a mere tactic. I know several brilliant and partisan Republicans who admit to me, in private, that much of what they say about taxes is of course not really true. But, they say it's the only way to reduce government spending: chop revenue and trust that the Democrats, like Solomon, will agree to cut spending rather than punish our children by smothering them with debt.

This clever apologia would be more believable if Republicans—in all matters other than cutting the aggregate tax burden—were to speak loudly and act decisively in favor of deficit reductions. But it's hard to find the small-government argument persuasive when, on the spending front, the Republican leaders do nothing to reform entitlements, allow debt-service costs to rise along with the debt and urge greater spending on defense—and when these three functions make up over four-fifths of all federal outlays.

The starve-government-at-the-source strategy is not only hypocritical, it is likely to fail—with great injury to the young—once the other party decides to raise the ante rather than play the sucker and do the right thing. When the Democratic presidential contender Dick Gephardt proposed in April a vast new national health insurance plan, he justified its cost, which critics put at more than $2 trillion over 10 years, by suggesting that we ''pay'' for it by rescinding most of the administrative tax legislation. Oddly, it never occurred to these Republican strategists that two can play the spend-the-deficit game.

Not surprisingly, many Democrats have thrown a spotlight on the Republicans' irresponsible obsession with tax cutting in order to improve their party's image with voters, even to the extent of billing themselves as born-again champions of fiscal responsibility. Though I welcome any newcomers to the cause of genuine fiscal stewardship.

I doubt that the Democratic Party as a whole is any less dysfunctional than the Republican Party. It's just dysfunctional in a different way.

Yes, the Republican Party line often boils down to cutting taxes and damning the torpedoes. And yes, by whipping up one-sided popular support for lower taxes, the Republicans pre-empt responsible discussion of tax fairness and force many Democrats to echo weakly, ''Me, too.'' But it's equally true that the Democratic Party line often boils down to boosting outlays and damning the torpedoes. Likewise, Democrats regularly short-circuit any prudent examination of the single biggest spending issue, the future of senior entitlements, by castigating all reformers as heartless Scrooges.

I have often and at great length criticized the free-lunch games of many Republican reform plans for Social Security—like personal accounts that will be ''funded'' by deficit-financed contributions. But at least they pretend to have reform plans. Democrats have nothing. Or as Bob Kerrey puts it quite nicely, most of his fellow Democrats propose the ''do-nothing plan,'' a blank sheet of paper that essentially says it is O.K. to cut benefits by 26 percent across the board when the money runs out. Assuming that Democrats would feel genuine compassion for the lower-income retirees, widows and disabled parents who would be most affected by such a cut, I have suggested to them that maybe we ought to introduce an ''affluence test'' that reduces benefits for fat cats like me.

To my amazement, Democrats angrily respond with irrelevant cliches like ''programs for the poor are poor programs'' or ''Social Security is a social contract that cannot be broken.'' Apparently, it doesn't matter that the program is already unsustainable. They cling to the mast and are ready to go down with the ship. To most Democratic leaders, federal entitlements are their theology.

What exactly gave rise to this bipartisan flight from integrity and responsibility—and when? My own theory, for what it's worth, is that it got started during the ''Me Decade,'' the 1970's, when a socially fragmenting America began to gravitate around a myriad of interest groups, each more fixated on pursuing and financing, through massive political campaign contributions, its own agenda than on safeguarding the common good of the nation. Political parties, rather than helping to transcend these fissures and bind the country together, instead began to cater to them and ultimately sold themselves out.

I'm not sure what it will take to make our two-party system healthy again. I hope that in the search for a durable majority, Republicans will sooner or later realize that it won't happen without coming to terms with deficits and debts, and Democrats will likewise realize it won't happen for them without coming to terms with entitlements.

Whether any of this happens sooner or later, of course, ultimately depends upon the voters. Perhaps we will soon witness the emergence of a new and very different crop of young voters who are freshly engaged in mainstream politics and will start holding candidates to a more rigorous and objective standard of integrity. That would be good news indeed for the future of our parties.

In any case, I fervently hope that America does not have to drift into real trouble, either at home or abroad, before our leaders get scared straight and stop playing chicken with one another. That's a risky course, full of possible disasters. It's not a solution that a great nation like ours ought to be counting on.

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

[From the Washington Post, June 19, 2003]

DELUSIONAL ON THE DEFICIT

(By Ernest F. Hollings)

Nobody is paying any attention to the budget deficit. Last month the House Budget Committee's Democrats forecast a deficit of nearly $500 billion, and The Post reported the story on Page A4. Last week the Congressional Budget Office reported that the deficit would balloon to a record $400 billion-plus, and The Post again buried the story on A4. Spending trust funds, such as Social Security, is what keeps the estimate at $400 billion. The actual deficit will be approximately $600 billion.

That's a win for Mitch Daniels. The goal of the departed Office of Management and Budget director was to keep any news that could hurt President Bush's reelection prospects off the front page, and The Post willingly aided and abetted him. In fact, when Daniels left two weeks ago to run for governor of Indiana, he told The Post that the government is ''fiscally in fine shape.'' Good grief! During his 29-month tenure, he turned a so-called $5.6 trillion, 10-year budget surplus into a $4 trillion deficit—a mere $10 trillion downswing in just two years. If this is

good fiscal policy, thank heavens Daniels is gone.

Congress is no better than the press. Republicans, totally in control of this town, just casually raised the limit on the national debt by a record trillion dollars so the president could borrow more money to pay for tax cuts. I say casually because the seriousness of this move was passed over and hardly debated. In The Post, this story wasn't even worthy of A4. It was relegated to A8.

Bush and Daniels used to talk about how they would repay the nation's debt more quickly than any administration in history. Before Sept. 11, 2001, the president bragged that his budget reserved $1 trillion for unforeseen circumstances. Perish the thought that the war on terrorism, Afghanistan and Iraq cost $1 trillion. Those factors had an impact, but the real culprit, according to the nonpartisan Concord Coalition, is that this president has cut $3.12 trillion in revenue since taking office. These are the largest tax cuts in history, yet the administration claims they have no relationship to the record deficits reported on Page A4. Amazingly, he asks for more.

The London-based Financial Times, in a front-page lead story, recently reported the Treasury Department projection that at the present rate, fixing the deficit would require ''the equivalent of an immediate and permanent 66 percent across-the-board income tax increase.'' The White House deep-sixed the Treasury study. The Post ignored it.

Former commerce secretary Peter Peterson, a lifelong Republican, says that every time this administration faces a choice, it chooses tax cuts. Between fiscal responsibility and tax cuts, it picks tax cuts. Between preserving Social Security and tax cuts, it picks tax cuts. Between providing necessary funds to fight the war on terrorism and tax cuts, it picks tax cuts. ''Again and again,'' Peterson says, ''they choose tax cuts.''

The question: How huge must the deficit grow for this A4 story to make the front page, and for the public to scream for relief? Across the country teachers are being laid off, there are more kids per classroom, the school year is shorter, and tuition is up at state colleges. Bus service is being cut off, volunteers are running park systems, prisoners are being released, and subsidies for the working poor are being slashed.

How much more must we dismantle before the public cannot stomach this? Will it take a shutdown of all the national parks? Or the release of all federal prisoners because we can't afford to guard them? Or will workers need to pay half their salaries to keep Social Security and Medicare from the chopping block?

I dread to think how bad it has to get before Bush makes some changes. But the Republican leadership in Congress is in lockstep. They've just passed a budget calling for a $600 billion deficit each year, every year, for the next 10 years.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred in Hamilton, NJ. On September 16, 2001, an Arab-American man and his son were verbally accosted and attacked by a man shouting ethnic slurs and wielding a knife. The victim was able to use his cane to protect himself and his son until he was able to wrestle the knife away from the attacker. The perpetrator was eventually arrested by the police.

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 is 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

WHIZ KIDS

• Mr. ALLARD. Mr. President, I rise to tell my colleagues about an extraordinary volunteer program that is dramatically impacting the lives of underprivileged, underachieving students in Denver, CO.

It is called Whiz Kids and, frankly this program is a classic example of what happens when men and women of faith, who love kids, decide to make things happen.

Each week, over 700 volunteers tutor elementary students in the Denver, Aurora, and Jefferson County school districts. Most of the tutoring takes place at urban churches, but at each of 44 sites, Whiz Kids provides books, computers, snacks, club time-spiritual values, a sense of community and, most of all, the love of men and women who care enough about the kids to invest a few hours a week to help them read.

The results have been nothing short of fantastic—the average youngster in Whiz Kids improves his or her reading ability by 1–3 grades each year, according to tracking by Denver Public Schools. The target for Whiz Kids is schools and students with scores below average in CSAP, Colorado's statewide student testing program.

Whiz Kids is an 11-year-old, nonprofit organization which is supported by over 700 volunteer tutors and more than 80 other key volunteer leaders. Each tutor make a 1-year commitment to the program and the tutor retention rate is an amazing 95 percent with 60 percent of volunteer tutors re-upping from one year to the next.

Whiz Kids operates on a shoestring—the total cash budget is only $360,000 per year. But the dramatic results of this tutoring program, and its commendable cost efficiency, have called forth tremendous support from over 150 churches of many denominations.

The Colorado business community has also pitched in to help by donating 120 computers and other in-kind contributions and financial support from companies such as AV Hunter, Best Buy, Janis, JD Edwards, Kinder Morgan, King Soopers, Houghton Mifflin, Western Union, and others.

Additional support comes from the Anschutz Family Foundation, Coors Foundation, Daniels Foundation, El Pomar, Fund for Colorado's Future, Jack A. Vickers Foundation, PK Foundation, Sam S. Bloom Foundation, the Schlessman Family Foundation, Schramm Foundation and TYL Foundation.

The Denver Nuggets donated the entire Pepsi Center to Whiz Kids for a 1-day Slam Dunk Saturday event at which 2,000 mentors and kids gather for basketball clinics and drills. Then, mentors and kids are guests of the Nuggets for the evening game. This is the largest gathering of its kind in the NBA. The Nuggets donate additional tickets for tutors, kids, and their parents throughout the season.

The Denver Broncos donate tickets to their kids camp. Whiz Kids has received the Denver Broncos Quarterback Award 2 years in a row. The Colorado Rapids annually donate game tickets for kids and tutors.

Each year, Whiz Kids holds its year end Run to Read event at Denver's City Park. More than a thousand tutors and kids gather for games, music, and fun to celebrate achievements of the year. Last year, this event also raised pledges of more than $20,000 from tutors to buy additional supplies for the following school year.

From start to finish, kids and tutors have a lot of fun, but the main purpose is completely serious—to get kids who are falling behind in reading back on track. It is a program that is working.

Whiz Kids has been called one of the top three faith-based tutoring programs in America by Tony Campbell of America's Promise. And no wonder, it is already being copied in eight other States.

I hope my colleagues will take a moment to read a recent letter from the Denver Public Schools which describes why Whiz Kids is such an ''excellent model of collaboration'' between the public schools and the private sector.

''To Whom It May Concern: In support of the Whiz Kids Tutoring Program, this letter shall serve to detail the collaborative relationship between our organizations. Whiz Kids Tutoring operates in partnership with the Denver Public Schools Office of Community Partnerships, as an independent agency providing services to our students. Because of this partnership by acting as the interface between the program and the principals and teachers of our district. At the beginning of each school semester, we assist the program by identifying students and facilitating student participation, and by coordinating the participation of DPS liaison teachers. Our office provides additional salary compensation for liaison teachers, based upon the number of sessions attended in a given school year. This compensation totaled over $29,000 for the 2001–02 school year. In addition, our office provides Colorado Bureau of Investigations background screening for all incoming volunteers to the program, and we assist

Whiz Kids with $500 in vouchers for books and other materials for each new study hall session that opens. We also conducted an evaluation of the program (1998/99) in conjunction with the Graduate School of Education at the University of Denver. This study showed us that students engaged with Whiz Kids tutors gained between one and three academic grade levels in reading competencies over a 1-year time frame.

''For their part, Whiz Kids Tutoring provides Denver Public Schools with a wonderful benefit each school year. Nearly 600 of our students receive one-on-one academic support and mentoring each year, making Whiz Kids the largest single provider of such services to the district. The agency provides excellent support and training to its volunteers, which is reflected by the extremely high commitment level the volunteers exhibit. Recruitment, training, and management of all volunteers are provided by Whiz Kids, eliminating any costs to DPS in these areas. Also, by partnering with neighborhood churches and community centers to provide space for group activities, Whiz Kids greatly reduces the overhead costs of the program, which might otherwise be incurred by the district in a school-based operation.

''The relationship between Whiz Kids Tutoring and Denver Public Schools is an excellent model of collaboration and provides a vital service to the children of our district. I appreciate your consideration of the Whiz Kids Tutoring grant proposal and give it my full endorsement as a partner. Should you require additional details regarding our partnership, please feel free to contact me at 303–764–3580. Sincerely, Christine Smith, Director, Denver Public Schools Office of Community Partnerships and Enterprise Activity.''

Mr. President, Whiz Kids is a great program which enriches the lives of students, provides a fulfilling opportunity for volunteers, and gives them a wonderful opportunity to put their faith into action. Every community ought to have a program like this.●

IN RECOGNITION OF THE 100th ANNIVERSARY OF THE VILLAGE OF SOUTH RANGE

● Mr. LEVIN. Mr. President, I am pleased to recognize the Village of South Range, located in the beautiful upper peninsula of my home State of Michigan, as it celebrates its 100th anniversary. South Range is located in the middle of the Keweenaw Peninsula, which makes up the northernmost point of my home State.

The Village of South Range derives its name and much of its history from the copper mining industry that operated in that area from 1840 until the closing of the last mine in 1970. In 1903, the Wheal Kate Mining Company sold off land from its failing copper mining business and created the town of South Range. During the early 1900s, much of the Keweenaw Peninsula was controlled by the copper mining industry. The creation of South Range provided miners the opportunity to individually purchase property that had formerly been owned by the large mining companies.

Over the next 100 years, the residents of South Range watched many of their neighboring towns disappear as American industry declined and no longer needed the resources that this region could provide. However, South Range survived because of the perseverance of the families who lived there and the businesses that grew to support them.

Today, the Village of South Range and its 800 residents enjoy a year-round tourism industry as well as the beautiful surroundings of the Keewenaw Peninsula. People travel from all over the Midwest to enjoy the vibrant fall colors, winter snow sports, and calm summer nights of northern Michigan.

I take great pride in congratulating the Village of South Range as it celebrates its centennial anniversary. The beauty and history of the central Keweenaw Peninsula is truly something to be proud of. I know my Senate colleagues will join me in saluting the Village of South Range and wish its citizens luck as they head into their next 100 years.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 1:41 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. 8. An act to make the repeal of the estate tax permanent.

ENROLLED BILL SIGNED

At 2:59 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 703. An act to designate the regional headquarters building for the National Park Service under construction in Omaha, Nebraska, as the ''Carl T. Curtis National Park Service Midwest Regional Headquarters Building''.

MEASURE REFERRED

The Committee on Environment and Public Works was discharged from further consideration of the following measure which was referred to the Committee on Energy and Natural Resources:

H.R. 856. An act to authorize the Secretary of the Interior to revise a repayment contract with the Tom Green County Water Control and Improvement District No. 1, San Angelo project, Texas, and for other purposes.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

H.R. 8. An act to make the repeal of the estate tax permanent.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–165. A joint resolution adopted by the Legislature of the State of Utah relative to issues relating to undocumented individuals in the United States; to the Committee on the Judiciary.

JOINT RESOLUTION 28

Whereas, the Federal Immigration and Naturalization Service has not addressed the issue of undocumented workers from Mexico and Latin American nations;

Whereas, this is an issue of great concern in the state of Utah;

Whereas, children born in the United States to undocumented individuals are American-born citizens;

Whereas, undocumented workers have been in the United States for five years to 50 years without being deported by the Federal Immigration and Naturalization Service;

Whereas, some American citizens have married undocumented individuals, and some undocumented workers have joined the United States Armed Services;

Whereas, many undocumented individuals have paid taxes; and

Whereas, issues related to undocumented individuals raise complex questions that need to be resolved on the national level:

Now, therefore, be it *Resolved*, That the Legislature of the state of Utah strongly urge the United States Congress to review and consider whether to permit parents of American-born children to become American citizens; whether to permit undocumented individuals who have married American citizens to become American citizens, whether to permit undocumented individuals that have been in the United States for more than five years to be given the opportunity to become an American citizen, and whether to permit undocumented individuals who have joined the United States Armed Services to become American citizens.

Be it further *Resolved*, That the Legislature strongly urges the United States Congress to review and determine the appropriate disposition of family and financial affairs in cases where an undocumented parent purchases a home and is then deported.

Be it further *Resolved*, That the Legislature urges Utah's congressional delegation to work with Congress in resolving these issues and to provide guidance and support in the resolution of these issues.

Be it further *Resolved*, That a copy of this resolution be sent to the President of the United States Senate, the Speaker of the United States House of Representatives, the

Federal Immigration and Naturalization Service, and the members of Utah's congressional delegation.

POM–166. A joint resolution adopted by the Legislature of the State of Utah relative to establishing a wolf management plan, to the Committee on Environment and Public Works.

JOINT RESOLUTION 12

Whereas, wolves have become well established in the Northern Rocky Mountain states of Idaho, Montana, and Wyoming, and dispersing young wolves from these expanding populations are traveling into and attempting to recolonize parts of Utah;

Whereas, the biological status of wolves in the Northern Rocky Mountain Recovery Area has recently exceeded criteria for full recovery under the Northern Rocky Mountain Wolf Recovery Plan;

Whereas, the United States Fish and Wildlife Service has stated that the presence of wolves in Utah is not necessary for the recovery of wolves in the Northern Rocky Mountain Recovery Area;

Whereas, Utah is not a participating state in the Northern Rocky Mountain recovery effort for Gray Wolves;

Whereas, the wolf is currently protected in Utah by state statute as well as by the Federal Endangered Species Act;

Whereas, the state of Utah has a legislated, public process for the purpose of developing policy for the management of protected wildlife, which includes the Regional Advisory Councils and the Utah Wildlife Board;

Whereas, the Utah Wildlife Board has been recognized by the Western Association of Fish and Wildlife Agencies for its ability to resolve complex, controversial wildlife management issues;

Whereas, the Utah Wildlife Board has approved a Policy on Managing Predatory Wildlife Species that provides direction to the Division of Wildlife Resources in managing predatory populations;

Whereas, recent biological assessments recognize that lands within the original boundaries of the Uintah and Ouray Reservation in the Uinta Basin of Utah contain suitable wolf habitat;

Whereas, the state of Utah and the Ute Indian Tribe are party to a Cooperative Management Agreement which recognizes the need for cooperation in the management of wildlife within the original boundaries of the Reservation;

Whereas, citizens and conservation organizations in Utah have invested significant resources to restore populations of wildlife in Utah; and

Whereas, hunting, ranching, and livestock production contribute significantly to the economy, heritage, and quality of life in Utah:

Now, therefore, be it *Resolved,* That the Legislature of the state of Utah urges the United States Fish and Wildlife Service to expedite the delisting process for wolves in the Western Gray Wolf Distinct Population Segment, thereby transferring authority to manage wolves to the states.

Be it further, *Resolved,* That the Legislature urges the United States Fish and Wildlife Service to reject requests to establish additional recovery areas that would include the state of Utah, leaving the entire state in the Western Gray Wolf Distinct Population Segment.

Be it further, *Resolved,* That the Legislature strongly urges the Utah Division of Wildlife Resources to draft a wolf management plan for review, modification, and adoption by the Utah Wildlife Board through the Regional Advisory Council process.

Be it further, *Resolved,* That the Legislature urges that the objectives and strategies of the plan, to the extent possible, be consistent with the wildlife management objectives of the Ute Indian Tribe, prevent livestock depredation, and protect the investments made in wildlife management efforts while being consistent with United States Fish and Wildlife Service regulations and other Utah species management plans.

Be it further, *Resolved,* That the Legislature strongly urges the Division of Wildlife Resources to prepare a grant proposal for consideration by the Department of Natural Resources, within the department's species protection line item, to fully compensate private landowners for losses not covered by other mitigation sources and resulting from depredation to livestock by wolves.

Be it further, *Resolved,* That a copy of this resolution be sent to the United States Fish and Wildlife Service Region Six, the United States Secretary of the Interior, the Utah Wildlife Board, the Utah Division of Wildlife Resources, and the members of Utah's congressional delegation.

POM–167. A concurrent resolution adopted by the Legislature of the State of Utah relative to the space shuttle Columbia; to the Committee on Commerce, Science, and Transportation.

CONCURRENT RESOLUTION

Whereas, at approximately 9:00 a.m. EST on February 1, 2003, the crew of space shuttle mission STS–107 aboard space shuttle Columbia was lost during re-entry into Earth's atmosphere;

Whereas, the nation and the world mourns the loss of Americans Colonel Rick D. Husband, Commander William C. McCool, Lt. Colonel Michael P. Anderson, Dr. Kalpana Chawla, Captain David M. Brown, Commander Laurel Blair Salton Clark, and Israeli Colonel Ilan Ramon;

Whereas, these astronauts were crew members on a space shuttle with a unique and historic heritage;

Whereas, the space shuttle Columbia's maiden voyage was April 12–14, 1981;

Whereas, the space shuttle Columbia has flown 28 flights between 1981 and 2003;

Whereas, the space shuttle Columbia was the first Space Shuttle to fly into Earth's orbit in 1981 and the oldest orbiter in the Shuttle fleet;

Whereas, the space shuttle Columbia became the first reusable spaceship;

Whereas, the space shuttle Columbia was named after the Boston, Massachusetts-based sloop captained by American Robert Gray, who on May 11, 1792 maneuvered the Columbia past the dangerous sandbar at the mouth of a river extending more than 1,000 miles through what is today south-eastern British Columbia, Canada, and the Washington-Oregon border, which river now bears the ship's name;

Whereas, this same 18th century sailing vessel became the first American ship to circumnavigate the globe;

Whereas, the first United States Navy Ship to circle the globe also bore the name Columbia;

Whereas, the command module of Apollo 11, the first lunar landing mission, also bore the name Columbia;

Whereas, the name ''Columbia'' is derived from the name of the famous explorer, Christopher Columbus;

Whereas, Commander Rick D. Husband, 45, was a colonel in the U.S. Air Force, a test pilot and veteran of one spaceflight, was selected by NASA in December 1994 to serve as pilot of the STS–96 and had logged more than 235 hours in space;

Whereas, Pilot William C. McCool, 41, a commander in the U.S. Navy and former test pilot, was selected by NASA in April 1996 and was making his first spaceflight;

Whereas, Payload Commander Michael P. Anderson, 43, a lieutenant colonel in the U.S. Air Force, was a former instructor pilot and tactical officer with over 211 hours in space, having flown on STS–89;

Whereas, Mission Specialist 1 David M. Brown, 46, a captain in the U.S. Navy and a naval aviator and flight surgeon, was selected by NASA in April 1996 and was making his first spaceflight;

Whereas, Mission Specialist 2 Kalpana Chawla, 41, an aerospace engineer and an FAA Certified Flight Instructor, was selected by NASA in December 1994 and had logged more than 376 hours in space, having flown on STS–87;

Whereas, Mission Specialist 4 Laurel Blair Salton Clark, 41, a commander (captain-select) in the U.S. Navy and a naval flight surgeon, was selected by NASA in April 1996 and was making her first spaceflight;

Whereas, Payload Specialist 1 Ilan Ramon, 48, a colonel in the Israeli Air Force and a fighter pilot, was the only payload specialist on STS–107, was approved by NASA in 1998, was making his first spaceflight, and was the first Israeli in space;

Whereas, these men and women knew the dangers and faced them willingly;

Whereas, their courage, daring, and idealism, in service to all humanity, will make us miss them all the more;

Whereas, the crew had eagerly prepared for many years to explore the universe and expand the boundaries of knowledge, establishing new frontiers in research and exploration;

Whereas, these crew members will always be remembered as heroes, pioneers, and valiant explorers on behalf of all;

Whereas, the full impact of this tragedy is only borne by the families of those seven;

Whereas, the tragic loss of the Columbia crew is a painful part of the process of exploration, discovery, and the expanding of man's horizons, and a sobering reminder that the future doesn't belong to the faint-hearted, but to the brave;

Whereas, not since that tragic loss of the crew of the space shuttle Challenger, almost 17 years ago to the day, has America's space program suffered such a great loss;

Whereas, President George W. Bush stated that although the crew did not return safely to Earth, we pray that all are safely home;

Whereas, the flight path of the space shuttle Columbia crossed southern Utah for the intended destination of Kennedy Space Center, Florida;

Whereas, many Utahns witnessed the space shuttle Columbia as it streaked over southern Utah on its eastwardly landing approach; and

Whereas, many Utah citizens have contributed to a wide array of service to the success of the U.S. space program:

Now, therefore, be it *Resolved,* That the Legislature of the state of Utah, the Governor concurring therein, recognize the tragic loss of the crew of the space shuttle Columbia.

Be it further *Resolved,* That the Legislature and the Governor express deep gratitude for the crew's courage and willingness to serve all mankind.

Be it further *Resolved,* That the Legislature and the Governor express sincere condolences to the families of the crew of the space shuttle Columbia, President Bush, Prime Minister Sharon, and the entire U.S. space program family.

Be it further *Resolved,* That a copy of this resolution be sent to the families of the space shuttle Columbia's crew, NASA Administrator Sean O'Keefe, the President of the United States, the Prime Minister of Israel, the Governor of Texas, the Governor of Louisiana, the Governor of Florida, and to

the members of Utah's congressional delegation.

POM–168. A concurrent resolution adopted by the Legislature of the State of Utah relative to the modification of census data collection procedures for the 2010 Census to account for United States Citizens who are living out of the country on a temporary basis; to the Committee on Governmental Affairs.

CONCURRENT RESOLUTION 1

Whereas, in 2000, and every preceding ten years, the United States Census Bureau collected data on the citizens of the United States;

Whereas, census data is used for many purposes, including the apportionment of congressional districts among the states based on population;

Whereas, if 857 more individuals had been approved to be included in the population data collected for Utah in the 2000 Census, the state would have been allocated an additional congressional seat;

Whereas, the United States Census Bureau's technical documentation manual for the 2000 Census states that Americans temporarily overseas are to be enumerated at their usual residence in the United States;

Whereas, U.S. military personnel and federal civilian employees stationed outside the United States and their dependents living with them, were included in the 2000 Census apportionment count;

Whereas, among the several groups and individual citizens from Utah that lived out of the country at the time of the 2000 Census were 11,176 members of the Church of Jesus Christ of Latter-day Saints, serving temporarily as missionaries as evidenced by the Affidavit of Robert B. Swensen, Director of the Missionary Department at the international headquarters of the Church of Jesus Christ of Latter-day Saints which affidavit is attached as Appendix A;

Whereas, members of the church from every state in the union serve these mission;

Whereas, although young females can serve 18-month missions and elderly couples may also serve anywhere from six-month to two-year missions for the church, the vast majority of missionaries are young males ages 19–21 who serve two-year missions;

Whereas, as illustrated in Appendix B, data from Census 2000 Summary File 3 show that male representation in the Utah population ranges from 50–53 percent from birth through 18 years of age;

Whereas, the percentage of males in the Utah population who are 19 years of age drops to just below 46 percent, reaches a low of 42.4 percent at age 20, and increases to 47.7 percent at age 21;

Whereas, beginning at age 22, the male representation in Utah returns to the 50–53 percent range, where it remains through age 49;

Whereas, using the Census 2000 Summary File 3 data, it is estimated that over 17,000 young males ages 19 through 21 were not included in Utah's census count, some of whom were counted in other states' census counts but the vast majority of whom were not counted as they were out of the country temporarily serving missions overseas;

Whereas, the Census 2000 Summary File 3 data clearly demonstrates the impact on the state's population of the many young male members of the Church of Jesus Christ of Latter-day Saints from Utah who temporarily leave the country for mission service and then return;

Whereas, the present questionnaire does not provide for those Americans temporarily living overseas to be enumerated at their usual residence in the United States;

Whereas, the impact of the temporary nature of this missionary service is not being factored into the determination of state population for purposes of allocating congressional seats; and

Whereas, the United States Census Bureau should reexamine the census data collection procedures in order to collect data that captures this portion of the state's population whose absence from the state is only temporary and should not be overlooked when determining the apportionment of congressional seats:

Now, therefore, be it *Resolved*, That the Legislature of the state of Utah, the Governor concurring therein, strongly urge the United States Census Bureau to review its census data collection procedures and make corrections for the 2010 Census, including the census questionnaire, to allow for the collection of data that recognizes the temporary nature of missionary service and permits those individuals out of the country for this purpose to be included in the calculation of state population.

Be it further *Resolved*, That this revised system be used in future census years so that all the states, including Utah, may be granted fair representation when future congressional seats are allocated.

Be it further *Resolved*, That a copy of this resolution be sent to Charles Louis Kincannon, Director, United States Census Bureau; Cathy McCully, Chief, Redistricting Data Office; Donald L. Evans, United States Secretary of Commerce; the House and Senate Congressional Committees chaired by the following: Dan Burton, Chairman, House Committee on Government Reform, Dave Weldon, Chairman, Subcommittee on Civil Service, Census, and Agency Organization, and Susan Collins, Chairman, Senate Committee on Government Affairs; and to the members of Utah's congressional delegation.

POM–169. A joint resolution adopted by the Legislature of the State of Utah relative to the compensation for the impact of federal land ownership on the state's ability to fund public education; to the Committee on Energy and Natural Resources.

JOINT RESOLUTION 14

Whereas, for many years western states have grappled with the challenge of providing the best education for their citizens;

Whereas, western states face unique challenges in achieving this goal;

Whereas, from 1979 to 1998 the percent change in expenditures per pupil in 13 western states was 28%, compared to 57% in the remaining states;

Whereas, in 2000–01, the pupil per teacher ratio in 13 western states averaged 17.9% to one compared with 14.8% to one in the remaining states;

Whereas, the conditions in western states are exacerbated by projections that enrollment will increase by an average of 7.1%, compared to an average decrease of 2.6% in the rest of the nation;

Whereas, despite the wide disparities in expenditures per pupil and pupil per teacher ratio, western states tax a comparable rate and allocate as much of their budgets to public education as the rest of the nation;

Whereas, the ability of western states to fund education is directly related to federal ownership of lands;

Whereas, the federal government owns an average of 51.9% of the land in 13 western states, compared to 4.1% in the remaining states;

Whereas, the enabling acts of most western states promise that 5% of the proceeds from the sale of federal lands will go to the states for public education;

Whereas, a federal policy change in 1976 ended these sales resulting in an estimated $14 billion in lost public education funding for western states;

Whereas, the ability of western states to fund public education is further impacted by the fact that state and local property taxes, which public education relies heavily upon to fund education, cannot be assessed on federal lands;

Whereas, the estimated annual impact of this property tax prohibition on western states is over $4 billion;

Whereas, the federal government shares only half of its royalty revenue with the states;

Whereas, royalties are further reduced because federal lands are less likely to be developed and federal laws often place stipulations on the use of state royalty payments;

Whereas, the estimated annual impact of royalty payment policies on western states is over $1.86 billion;

Whereas, much of the land that the federal government transferred to states upon statehood as a trust for public education is difficult to administer and to make productive because it is surrounded by federal land;

Whereas, federal land ownership greatly hinders the ability of western states to fund public education;

Whereas, the federal government should compensate western states for the significant impact federal land ownership has on the ability of western states to educate its citizens; and

Whereas, just compensation will allow western states to be on equal footing with the rest of the nation in their efforts to provide education for their citizens:

Now, therefore, be it *Resolved*, That the Legislature of the state of Utah urges the United States Congress to appropriate just compensation to the state of Utah for the impact of federal land ownership on the state's ability to find public education.

Be it further *Resolved*, That a copy of this resolution be sent to the President of the United States Senate, the Speaker of the United States House of Representatives, the President of the United States, and the members of Utah's congressional delegation.

POM–170. A joint resolution adopted by the Legislature of the State of Nevada relative to wilderness areas and wilderness study areas; to the Committee on Energy and Natural Resources.

SENATE JOINT RESOLUTION NO. 3

Whereas, The provisions of 16 U.S.C. §§1131 et seq., commonly referred to as the Wilderness Act, establish the National Wilderness Preservation System, which consists of areas of federal public land that are designated by Congress as wilderness areas; and

Whereas, Congress has designated approximately 2 million acres of certain federal public lands in Nevada as wilderness areas; and

Whereas, If an area of federal public land is designated as a wilderness area, it must be managed in a manner that preserves the wilderness character of the area and ensures that the area remains unimpaired for future use and enjoyment as a wilderness area; and

Whereas, A reasonable amount of wilderness area in this state provides for a diverse spectrum of recreational opportunities in Nevada, promotes tourism and provides a place for Nevadans to escape the pressures of urban growth; and

Whereas, In conjunction with the provisions of the Wilderness Act, the Bureau of Land Management of the Department of the Interior in the late 1970s conducted an initial inventory of approximately 49 million acres of federal public lands in Nevada to determine the suitability of such lands for designation as wilderness areas or identification as wilderness study areas and, in 1980, recommended that approximately 5.1 million acres of those lands be identified as wilderness study areas; and

Whereas, Until a wilderness study area is designated by Congress as a wilderness area or released for multiple use, the wilderness study area must be managed in a manner that does not impair its suitability or preservation as a wilderness area; and

Whereas, In 1991, the Bureau of Land Management recommended that Congress designate as wilderness areas approximately 1.9 million acres of the 5.1 million acres of wilderness study areas in Nevada and release the remainder of the wilderness study areas for multiple use; and

Whereas, Although Congress recently enacted the Clark County Conservation of Public Land and Natural Resources Act of 2002, Public Law 107–282 (2002), which released approximately 224,000 acres in Clark County from its current status as wilderness study areas, the recommendations made by the Bureau of Land Management in 1991 have largely not been acted upon by Congress, and the Bureau continues to manage approximately 3.86 million acres of federal public lands in Nevada identified as wilderness study areas; and

Whereas, It is important that decisions concerning whether to designate wilderness study areas as wilderness areas or release those areas for multiple use are made in a timely manner without any unnecessary delays as the identification of federal public lands as wilderness study areas is believed to impose significant restrictions on the management and use of those lands; and

Whereas, It is also important to protect the ecological health and existing and potential economic and recreational benefits of wilderness areas and wilderness study areas in this state by using reasonable and effective methods of fire suppression in those areas; and

Whereas, Because approximately 2 million acres of federal public land in Nevada have been designated as wilderness areas and approximately 8.6 percent of the federal public land in Nevada that is managed by the Bureau of Land Management has been identified as wilderness study areas and because such designation or identification is believed to impose significant restrictions concerning the management and use of such land, including land used for mining, ranching and recreation, the Legislative Commission appointed in 2001 to conduct an interim study of wilderness areas and wilderness study areas in this state; and

Whereas, During the 2001–2002 legislative interim, the subcommittee met several times throughout this state and facilitated important and wide-ranging discussions among many agencies, organizations and persons with diverse interests, perspectives and expertise concerning wilderness areas and wilderness study areas; and

Whereas, The subcommittee received a great deal of valuable input from those agencies, organizations and persons, including many valuable recommendations for Congress to consider in addressing the issues concerning wilderness areas and wilderness study areas in a responsible, reasonable and fair manner; now, therefore, be it

Resolved by the Senate and Assembly of the State of Nevada, jointly, That the members of the Nevada Legislature urge Congress to:

1. Support efforts to ensure that adequate access to wilderness areas and wilderness study areas is afforded to the appropriate agencies and persons so that those agencies and persons may effectively combat fires in wilderness areas and wilderness study areas;

2. Support the use of all reasonable and effective fire suppression efforts in wilderness areas and wilderness study areas without strictly confining such efforts only to the tools determined by the federal agencies which manage federal public lands to be the minimum tools necessary;

3. Accept the recommendation of the Bureau of Land Management to designate 1.9 million acres of certain wilderness study areas in Nevada as wilderness areas while also incorporating in the designation process flexibility to consider relevant information such as growth to ensure the establishment of appropriate boundaries for those areas and recognizing that such consideration may result in a reasonable adjustment of those boundaries;

4. Oppose any efforts to conduct another inventory of the federal public lands in Nevada for purposes of creating wilderness areas or wilderness study areas without first releasing wilderness study areas determined to be unsuitable for designation as wilderness areas;

5. Ensure that more current information is considered before acting on the recommendations of the Bureau of Land Management concerning the designation of wilderness areas in Nevada as the surveys of the Bureau were performed with limited time, resources and technology; and

6. Avoid any unnecessary delays in releasing wilderness study areas for multiple use by establishing a plan for addressing the release of wilderness study areas in a timely manner that includes a schedule or plan for the timely consideration of important issues concerning wilderness study areas; and be it further

Resolved, That the Secretary of the Senate prepare and transmit a copy of this resolution to the Vice President of the United States as the presiding officer of the Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation; and be it further

Resolved, That this resolution becomes effective upon passage.

POM–171. A joint resolution adopted by the Legislature of the State of Nevada relative to wilderness areas and wilderness study areas; to the Committee on Energy and Natural Resources.

SENATE JOINT RESOLUTION 4

Whereas, The provisions of 16 U.S.C. §§1131 et seq., commonly referred to as the Wilderness Act, established the National Wilderness Preservation System, which consists of areas of federal public land that are designated by Congress as wilderness areas; and

Whereas, Congress has designated approximately 2 million acres of certain federal public lands in Nevada as wilderness areas; and

Whereas, If an area of federal public land is designated as a wilderness area, it must be managed in a manner that preserves the wilderness character of the area and ensures that the area remains unimpaired for future use and enjoyment as a wilderness area; and

Whereas, A reasonable amount of wilderness area in this state provides for a diverse spectrum of recreational opportunities in Nevada, promotes tourism and provides a place for Nevadans to escape the pressures of urban growth; and

Whereas, In conjunction with the provisions of the Wilderness Act, the Bureau of Land Management of the Department of the Interior manages approximately 3.86 million acres of federal public lands in Nevada identified as wilderness study areas; and

Whereas, Until a wilderness study area is designated by Congress as a wilderness area or released, the wilderness study area must be managed in a manner that does not impair its suitability for preservation as a wilderness area; and

Whereas, Because approximately 2 million acres of federal public land in Nevada have been designated as wilderness areas and approximately 8.6 percent of the federal public land in Nevada that is managed by the Bureau of Land Management has been identified as wilderness study areas and because such designation or identification is believed to impose significant restrictions concerning the management and use of such land, including land used for mining, ranching and recreation, the Legislative Commission appointed a subcommittee in 2001 to conduct an interim study of wilderness areas and wilderness study areas in this state; and

Whereas, During the 2001–2002 legislative interim, the subcommittee met several times throughout this state and facilitated important and wide-ranging discussions among many agencies, organizations and persons with diverse interests, perspectives and expertise concerning wilderness areas and wilderness study areas; and

Whereas, The subcommittee received a great deal of valuable input from those agencies, organizations and persons, including many valuable recommendations for the Nevada Congressional Delegation and Congress to consider in addressing the issues concerning wilderness areas and wilderness study areas in a responsible, reasonable and fair manner; now, therefore, be it

Resolved by the Senate and Assembly of the State of Nevada, jointly, That the members of the Nevada Legislature urge the Nevada Congressional Delegation to work with all interested Nevadans, land managers, affected parties, local governments, special interest organizations and members of the American public in a spirit of cooperation and mutual respect to address issues concerning the designation of wilderness areas in Nevada; and be it further

Resolved, That the members of the Nevada Legislature urge Congress to:

1. Encourage education at all levels of government and of all affected parties to ensure that facts are accurately presented when wilderness issues are debated and that the applicable laws are properly interpreted when officials carry out legislation concerning wilderness areas and wilderness study areas;

2. Require the development of accurate, consensus-vased maps for boundaries of wilderness areas and wilderness study areas using technologies such as Geographic Information Systems;

3. Oppose the creation of buffer zones around wilderness areas and instead support the requirement of clear and concise boundaries based on recognizable features on the ground, including, without limitation, roads and established drainage routes;

4. Support efforts to ensure that existing roads are not closed to create wilderness areas;

5. Support the implementation of appropriate measures, including, without limitation, the use of roads, to ensure that persons who are elderly or have a disability have continued access to wilderness areas;

6. Support the preservation of roads that do not appear on a map and may not have been documented but that have historically been used to allow persons access to private property;

7. For the purpose of allowing ranchers access to water diversions located near wilderness areas or wilderness study areas, support the use of ''cherry-stem'' roads, which are dead-end roads that would geographically extend into wilderness areas but are excluded from designation as parts of wilderness areas because the boundaries of the wilderness areas are drawn around and just beyond the edges of such roads;

8. Specifically outline and guarantee all preexisting rights of ranchers concerning grazing permits, water permits and access to land and water necessary for ranching via ''cherry-stem'' roads in any legislation concerning wilderness areas and wilderness study areas;

9. Support the use of appropriately managed techniques for managing vegetation, including, without limitation, grazing, and the use of appropriately managed logging as integral tools for reducing potential fire danger in wilderness areas and wilderness study areas;

10. Consider future population growth and urban expansion when designating wilderness areas in Nevada, as Nevada has been the state with the highest percentage population growth in recent years and public lands in Nevada are increasingly impacted by human activity and development;

11. Support the designation of the area of approximately 1,800 acres of land known as Marble Canyon, which is adjacent to the Mt. Moriah Wilderness Area and which appears to have been inadvertently excluded from the Nevada Wilderness Protection Act of 1989, Public Law 101–195, as a wilderness area;

12. Support national and state legislation which explicitly requires that when a decision is made in the public land use planning process which will affect economic activity on public land, consideration must be given as to the effects of the decision on communities that are dependent on natural resources;

13. Hold extensive hearings in Washington, DC., and in Nevada before making any changes to the designation of wilderness areas in Nevada or the identification of wilderness study areas in Nevada or any other changes concerning public lands in Nevada;

14. Use a collaborative process when designating a wilderness study area as a wilderness area; and

15. Support precise specification of the activities that are authorized within wilderness areas and wilderness study areas; and be it further

Resolved, That the Secretary of the Senate prepare and transmit a copy of this resolution to the Vice President of the United States as the presiding officer of the Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation; and be it further

Resolved, That this resolution becomes effective upon passage.

POM–172. A concurrent resolution adopted by the Legislature of the State of Hawaii relative to migration issues and citizens of the Freely Associated States who reside in the State of Hawaii; to the Committee on Health, Education, Labor, and Pensions.

HOUSE CONCURRENT RESOLUTION 62

Whereas, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau (collectively, Freely Associated States), formerly part of the Trust Territory of the Pacific Islands under the United Nations Charter, entered into an agreement with the government of the United States known as the Compact of Free Association (Compact); and

Whereas, the Compact was entered into with these nations in part to terminate the trusteeship, recognize their independence, provide them with critical economic development aid, and allow their people to immigrate freely to the United States; and

Whereas, under the Compact, the United States provides direct economic assistance, federal services, and military protection to these nations, in exchange for defense rights; and

Whereas, the Compact, codified as Title II of Public Law 99–239, was established in 1986 between the United States and the Republic of the Marshall Islands and the Federated States of Micronesia, and in 1994 with the Republic of Palau, codified as Title II of Public Law 99–658; and

Whereas, section 104(e)(1) of Title I, Public Law 99–239, regarding the interpretation of and United State policy regarding the Compact, states that in approving the Compact, ''it is not the intent of the Congress to cause any adverse consequences for . . . the States of Hawaii''; and

Whereas, section 104(e)(4) of Title I, Public Law 99–239, provides that ''if any adverse consequences to . . . the State of Hawaii result from implementation of the Compact of Free Association, the Congress will act sympathetically and expeditiously to redress those adverse consequences''; and

Whereas, section 104(e)(5) of Title I, Public Law 99–239, appropriated funds beginning after September 30, 1985, to cover the costs, if any, incurred by Hawaii ''resulting from any increased demands placed on educational and social services by immigrants from the Marshall Islands and the Federated States of Micronesia''; and

Whereas, section 104(e)(2) of Title I, Public Law 99–239, requires the President of the United States to report annually to the Congress on the impact of the Compact on the State of Hawaii, identifying any adverse consequences resulting from the Compact and making recommendations for corrective action, focusing on such areas as trade, taxation, immigration, labor, and environmental regulations; and

Whereas, section 104(e)(3) of Title I, Public Law 99–239, further provides that in preparing these reports to Congress, the President shall request the views of the government of the State of Hawaii and transmit the full text of those views to Congress as part of those reports; and

Whereas, the interpretation of and United States policy regarding the Compact as set forth in section 104 of Title I, Public Law 99–239, with respect to the Federated States of Micronesia and the Republic of the Marshall Islands, also applies to the Republic of Palau, pursuant to section 102(a) of Title I, Public Law 99–658, thereby making the State of Hawaii eligible for additional funds resulting from increased demands placed on the educational and social services of the State of Hawaii by immigrants from the Freely Associated States; and

Whereas, payments from the United States to the Republic of the Marshall Islands and the Federated States of Micronesia under the Compact of Free Association will end on October 1, 2003, and Compact re-negotiation talks have been continuing; and

Whereas, instead of mitigating the incentive for Freely Associated States citizens to migrate by improving the overall quality of life in the Freely Associated States through increased economic aid, the United States has proposed giving additional funds to regions affected by ''Compact impacts,'' while creating ''various mechanisms'' to ensure that migrants from Freely Associated States are eligible for admission; and

Whereas, although the renegotiated Compacts with the Republic of the Marshall Islands and the Federated States of Micronesia will most likely continue to provide islanders with visa-free entry to the United States, the United States Congress should review the migration issue and increase the amount of aid available for the Compact's educational and social impact on Hawaii; and

Whereas, many residents of the Freely Associated States are attracted to the State of Hawaii due to the State's increased employment and educational opportunities, as well as similar Pacific Island culture and lifestyle; and

Whereas, drawn by the promise of better medical care and a better education for their children, over six thousand Freely Associated States citizens have migrated to and are currently residing in Hawaii; and

Whereas, Freely Associated States citizens that enter the United States may have contagious diseases, criminal records, or chronic health problems—conditions that are normally grounds for inadmissibility into the United States; and

Whereas, the 1996 federal Welfare Reform Act cut off access to federal welfare and medical assistance programs, forcing citizens of the Freely Associated States residing in Hawaii to rely on state aid; and

Whereas, the cost of supporting Freely Associated States citizens residing in Hawaii, largely in healthcare and education, totaled more than $101,000,000 between 1998 and 2002; and

Whereas, Freely Associated States students have higher costs than other students due to poor language and other skills, and because such students enter and leave school a few times each year, their integration into the school system has been difficult; and

Whereas, since the Compact went into effect in 1986 until 2001, Hawaii has spent over $64,000,000 to educate Freely Associated States citizens and their children in public schools, $10,000,000 in 2000 alone; and

Whereas, last year, the number of Freely Associated States students in primary and secondary public schools in Hawaii increased by twenty-eight percent, resulting in costs to the State of over $13,000,000 for school year 2001–2002, and bringing the total costs for education, since 1988, to about $78,000,000; and

Whereas, during the academic school year 2001–2002, the University of Hawaii lost over $1,200,000 in tuition revenue systemwide, as a result of students from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau paying resident rather than non-resident tuition; and

Whereas, inadequate and delayed federal compensation to Hawaii's education system results in a cost to Hawaii's own children and contributes to Hawaii being substantially below many other states in per pupil expenditures for public school children in kindergarten through grade twelve; and

Whereas, state medical assistance payments for Freely Associated States citizens from 1998 to 2002 totaled $14,961,427, and financial assistance payments during the same period totaled $13,378,692, with costs borne solely by the State of Hawaii; and

Whereas, the financial stability and viability of private hospitals and medical providers is threatened by staggering debts and write-offs for medical services provided to Freely Associated States citizens residing in Hawaii, in spite of state Medicaid reimbursements; and

Whereas, between 1998 and 2002, $10.1 million in operating losses attributable to healthcare for Freely Associated States citizens residing in Hawaii were incurred at three Honolulu hospitals (the Queen's Medical Center, Straub Clinic and Hospital, and Kapiolani Medical Center for Women and Children), and these types of losses were also incurred at the twenty other hospitals in the State; and

Whereas, community health centers estimate an annual cost of $420,000 for services to Freely Associated States citizens residing in Hawaii; and

Whereas, the Department of Health has also been significantly impacted by the cost of public health services to Freely Associated States citizens residing in Hawaii, with $967,000 spent on screening vaccination and treatment of communicable diseases and $190,000 spent for immunization and outreach by public health nurses; and

Whereas, inadequate and delayed federal compensation threaten to overwhelm Hawaii's health care systems, leading to potential cutbacks in services and personnel that would impact all of Hawaii's citizens; and

Whereas, it is imperative that Hawaii be granted immediate and substantial federal assistance to meet these mounting costs; and

Whereas, the fact that Micronesians should qualify for federal benefits, while residing in Hawaii and the rest of the United States, can best be summed up by the resolution which was adopted September 9, 2001, in Washington, D.C., by Grassroots Organizing for Welfare Leadership, supporting the insertion of language in all federal welfare, food, and housing legislation, because Micronesians are eligible for these and other benefits as ''qualified non-immigrants'' residing in the United States; and

Whereas, the United States government is not owning up to its responsibility for what the United States did to the Micronesian people by refusing them food stamps and other federal benefits when they came to Hawaii and the rest of the United States seeking help; and

Whereas, the excuse by the United States government to deny any aid to the Micronesians in the United States is the word ''non-immigrant'' used in the Compact of Free Association to describe Micronesians who move to Hawaii and the United States; and

Whereas, Micronesians have also developed high rates of diabetes, high blood pressure, and obesity as a result of American dietary colonialism; and

Whereas, it is the intent of this Resolution to encourage the responsible entities to implement the provisions of the Compact of Freely Associated States, which authorizes compact impact funds to be made available to states that welcome and provide services to the people of the Federated States of Micronesia, Republic of the Marshall Islands, and Republic of Palau, because most of the Freely Associated States citizens who migrate to Hawaii do so for medical problems related to the United States' military testing of nuclear bombs; now, therefore,

Be it *Resolved by the Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2003*, the *House of Representatives concurring*, That the Bush Administration and the United States Congress are requested to appropriate adequate financial impact assistance for health, education, and other social services for Hawaii's Freely Associated States citizens; and

Be it further *Resolved*, That the Bush Administration and the United States Congress are requested to insert language in all federal welfare, food, and housing legislation which says that Micronesians are eligible for federal food stamps, welfare, public housing, and other federal benefits as ''qualified non-immigrants'' residing in the United States; and

Be it further *Resolved*, That the Bush Administration and the United States Congress are requested to restore Freely Associated States citizens' eligibility for federal public benefits, such as Medicaid, Medicare, and food stamps; and

Be it further *Resolved*, That Hawaii's congressional delegation is requested to introduce legislation in the United States Congress calling for further review of the migration issue and for increased aid for the educational and social impact of the Compact of Free Association, and any newly renegotiated Compact, on the State of Hawaii; and

Be it further *Resolved*, That Hawaii's congressional delegates are requested to assure financial reimbursements, through the establishment of a trust, escrow, or set-aside account, to the State of Hawaii for educational, medical, and social services and to Hawaii's private medical providers who have provided services to Freely Associated States citizens; and

Be it further *Resolved*, That certified copies of this Concurrent Resolution be transmitted to the President of the United States; U.S. Secretary of State; President of the U.S. Senate; Speaker of the U.S. House of Representatives; members of Hawaii's congressional delegation, the Presidents of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, and their respective Honolulu Offices; the national negotiating teams of the Compact of Free Association; the Governor; State Attorney General; Directors of Health and Human Services; President of the University of Hawaii; Superintendent of Education; Chair of the Board of Agriculture; Grassroots Organizing for Welfare Leadership; Micronesians United; the United Church of Christ; Hawaii Conference of Churches; and the United Methodist Church of Honolulu.

POM–173. A concurrent resolution adopted by the Legislature of the State of Utah relative to the establishment of requirements that clinical study sponsors perform subgroup analysis of their studies to ensure that the health concerns of women are addressed in clinical trial results; to the Committee on Health, Education, Labor, and Pensions.

CONCURRENT RESOLUTION 2

Whereas, there is a pressing need to collect and assess more accurate data regarding the health of women;

Whereas, subgroup analysis, a statistical procedure, takes data from a general group of study subjects and looks for differences within a subset of those subjects that share a specific characteristic, such as sex, age, or state of disease;

Whereas, studies have shown that, to improve the quality and appropriateness of health services, the gender of those participating in clinical trials must be factored into all levels of biomedical research, creating a new paradigm for data analysis;

Whereas, despite the mounting evidence of the need for subgroup data analysis based on gender, recent reports show that analysis is either not being conducted or not being reported;

Whereas, although a 1993 policy guideline and a 1998 regulation by the Food and Drug Administration recommends that study sponsors perform subgroup analysis of their studies, it is clear that these recommendations are not being followed;

Whereas, a July 2001 report of the General Accounting Office found that about one-third of new drug applications submitted to the Food and Drug Administration by study sponsors failed to provide gender-specific data from subgroup-analysis conducted during the clinical trials; and

Whereas, without subgroup analyses, researchers and clinicians cannot truly assess the safety and efficacy of new drugs for women, and the development of potentially life saving drugs may be abandoned if early trials fail to show efficacy in one gender:

Now, therefore, be it *Resolved*, That the Legislature of the State of Utah, the Governor concurring therein, strongly urge the Food and Drug Administration to strictly enforce requirements that clinical study sponsors perform subgroup analysis of their studies to ensure that the health concerns of women are appropriately addressed in clinical trial results.

Be it further *Resolved*, that a copy of this resolution be sent to the Food and Drug Administration, the Utah Department of Health, and the members of Utah's congressional delegation.

POM–174. A resolution adopted by the House of the General Assembly of the Commonwealth of Pennsylvania relative to pensions and individual retirement accounts; to the Committee on Finance.

HOUSE RESOLUTION NO. 38

Whereas, Under Federal tax relief legislation passed in 2001, pension and Individual Retirement Account (IRA) provisions will sunset on December 31, 2010; and

Whereas, Although the tax-deductible contribution limit for IRA contributions will increase through December 31, 2010, IRA funding limits will actually shrink by 60% in 2011 if pension and IRA provisions sunset as provided in the 2001 tax relief legislation; and

Whereas, People 50 years of age and older have been allowed tax benefits for investing additional funds in their retirement accounts annually as ''catch-up'' contributions, and this practice should continue because it maximizes ''nest eggs''; and

Whereas, Pensions should be portable because the average American changes jobs ten times throughout his career span; and

Whereas, Minimum distribution rules for pensions and retirement accounts should be adjusted to reflect the increase in work years and life expectancy because the population of this country enjoys a longer, more active life than that of a few generations ago and tends to spend more years in the work force; therefore be it

Resolved, That the House of Representatives urge the Congress of the United States to continue to grant pension moneys and Individual Retirement Accounts favorable tax treatment and to repeal the provisions of the 2001 tax relief legislation which impede such favorable treatment; and be it further

Resolved, that copies of this resolution be transmitted to the presiding officers of each House of Congress and to each Member of Congress from Pennsylvania.

POM–175. A resolution adopted by the House of the General Assembly of the Commonwealth of Pennsylvania relative to the repeal of the death tax; to the Committee on Finance.

HOUSE RESOLUTION NO. 70

Whereas, Under tax relief legislation passed in 2001, the ''death tax'' was temporarily phased out but not permanently eliminated; and

Whereas, Farmers and other small business owners will face losing their farms and businesses if the Federal Government resumes the heavy taxation of citizens at death; and

Whereas, Employees suffer layoffs when small and medium businesses are liquidated to pay death taxes; and

Whereas, If the death tax had been repealed in 1996, the United States economy would have realized billions of dollars each year in extra output and an average of 145,000 additional new jobs would have been created; and

Whereas, Having repeatedly passed in the United States House of Representatives and Senate, repeal of the death tax holds wide bipartisan support; therefore be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania urge Congress to vote for the permanent repeal of the death tax; and be it further

Resolved, That copies of this resolution be transmitted to the Pennsylvania Congressional Delegation.

POM–176. A resolution adopted by the House of the General Assembly of the Commonwealth of Pennsylvania relative to limits on the refinancing of long-term debt and on the advance refunding of private activity bonds by state and local government; to the Committee on Finance.

HOUSE RESOLUTION NO. 98

Whereas, As state and local governments begin working on their annual budgets, they are faced with weighing the unpalatable

choices of program cuts, tax hikes or both to make up budget shortfalls as a result of the sluggish economy; and

Whereas, In 1986 the Congress of the United States added a limitation to the Internal Revenue Code of 1986 providing that state and local governments can refinance long-term debt (municipal bonds) only once so that a flood of tax-exempt municipal bonds would not deprive the United States Treasury of tax revenue; and

Whereas, Many state and local governments refinanced their long-term debt during the 1990s to take advantage of the lower interest rates at that time; and

Whereas, The slowdown in the economy has led to even lower interest rates and provides the potential for state and local governments to refinance currently outstanding debt at historically low-interest rates and may hold the answer governments are looking for in an attempt to save badly needed funds; and

Whereas, By Federal law, those same governments now have only one opportunity to take advantage of favorable market conditions and achieve lower borrowing costs; and

Whereas, Section 149(d) of the Internal Revenue Code of 1986 also prohibits the advance refunding of all private activity bonds, other than qualified section 501(c)(3) bonds, if the bonds are to maintain their tax-exempt status; and

Whereas, Private activity bonds are commonly used by state agencies and local governments to finance important initiatives such as housing and redevelopment projects; and

Whereas, Current economic uncertainties increasingly pinch state and local government budgets compounded by the increased and unforeseen burdens of funding safeguards against terrorism; and

Whereas, In order to provide state and local governments with the tools and flexibility they need to face these changing circumstances, additional opportunities are needed to advance the refunding of outstanding debt; therefore be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania urge the President and the Congress of the United States to restructure the requirement in section 149(d) of the Internal Revenue Code of 1986, either legislatively or by regulation, to afford state and local governments the flexibility they need to take advantage of favorable market conditions by providing additional opportunities to advance the refunding of outstanding long-term debt; and be if further

Resolved, That copies of this resolution be transmitted to the President of the United States, to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM 177. A resolution adopted by the House of the General Assembly of the Commonwealth of Pennsylvania relative to a tariff on the importation of milk protein concentrates; to the Committee on Finance.

HOUSE RESOLUTION NO. 106

Whereas, Agriculture is the number one industry in the Commonwealth of Pennsylvania; and

Whereas, Dairy farmers are confronted with the lowest market prices for milk in 20 years as a result of low-cost importing of milk protein concentrates; and

Whereas, Milk protein concentrate is a highly filtered form of dried milk protein; and

Whereas, Milk protein concentrates are imported to make cheese products at a lower cost and with less milk; and

Whereas, There are currently no restrictions on imports of milk protein concentrates; and

Whereas, The influx of milk protein concentrates is a large contributor to the current dairy crisis; and

Whereas, Milk protein concentrates are being imported into the Commonwealth of Pennsylvania and being used in dairy products; and

Whereas, Dairy farmers across the country and especially in the Commonwealth of Pennsylvania are affected by the large amount of imported milk protein concentrates; therefore be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania urge the Congress of the United States to impose a tariff on the importation of milk protein concentrates; and be it further

Resolved, That copies of this resolution be transmitted to the presiding officers of each house of Congress, to the Pennsylvania congressional delegation and to Governor Edward G. Rendell.

POM–178. A joint resolution adopted by the Legislature of the State of Utah relative to the repeal of the individual and permanent Alternative Minimum Tax; to the Committee on Finance.

JOINT RESOLUTION 24

Whereas, in 1969 the United States Congress created the Alternative Minimum Tax to prevent wealthy Americans and corporations from using otherwise available deductions to reduce their income tax liability;

Whereas, today the Alternative Minimum Tax has placed an onerous burden on working middle-class families and productive companies;

Whereas, any family making over $49,000 and deducting their state and local taxes, mortgage interest, children, and college education will be subject to the Alternative Minimum Tax;

Whereas, the Corporate Alternative Minimum Tax targets capital intensive industries that create jobs, raises the incomes of workers, and increases the standard of living for all Americans

Whereas, corporations become subject to the Alternative Minimum Tax during recessions which forces employee layoffs; and

Whereas, it is important to protect working middle-income families and productive companies from tax burdens that only reduce the possibility of economic prosperity instead off encourage it:

Now, therefore, be it *resolved*, That the Legislature of the state of Utah urges the members of Utah's congressional delegation to vote to repeal the individual and permanent Alternative Minimum Tax.

Be it further *Resolved*, That a copy of this resolution be sent to the members of Utah's congressional delegation.

POM–179. A joint resolution adopted by the Legislature of the State of Utah relative to a free trade agreement between the Republic of China on Taiwan and the United States; to the Committee on Finance.

JOINT RESOLUTION 7

Whereas, the United States should promote the values of freedom, democracy, and a commitment to open markets and the free exchange of both goods and ideas at home and abroad;

Whereas, the Republic of China on Taiwan shares these values with the United States and has struggled throughout the past 50 years to create what is today an open and thriving democracy;

Whereas, the United States must continue to support the growth of democracy and ongoing market opening in Taiwan if this relationship is to evolve and reflect the changing nature of the global system in the 21st Century;

Whereas, despite the fact that Taiwan only recently became a member of the World Trade Organization and that it has no formal trade agreement with the United States, Taiwan has nevertheless emerged as the United States' eighth largest trading partner;

Whereas, American businesses and workers have benefitted greatly from this dynamic trade relationship, most recently in the computer and electronics sector;

Whereas, Taiwan is a gateway to other Pacific Rim markets for United States exports, helping to preserve peace and stability within the entire region;

Whereas, United States agricultural producers have been particularly under represented in the list of United States exports to the region, despite the importance of the market for growers of corn, wheat, and soybeans;

Whereas, a free trade agreement would not only help Taiwan's economy dramatically expand its already growing entrepreneurial class, but it would also serve an important political function;

Whereas, the United States needs to support partner countries that are lowering trade barriers;

Whereas, Taiwan has emerged over the past two decades as one of the United States' most important allies in Asia and throughout the world;

Whereas, in the interest of supporting, preserving, and protecting the democratic fabric of the government of Taiwan, it is made clear that the United States supports the withdrawal of missiles deployed as a threat against Taiwan by the People's Republic of China;

Whereas, Taiwan has forged an open, market-based economy and a thriving democracy based on free elections and the freedom of dissent;

Whereas, it is in the interest of the United States to encourage the development of both these institutions;

Whereas, the United States has an obligation to its allies and to its own citizens to encourage economic growth, market opening, and the destruction of trade barriers as a means of raising living standards across the board;

Whereas, a free trade agreement with Taiwan would be a positive step toward accomplishing all of these goals; and

Whereas, the United States should also support the entry of Taiwan into the World Health Organization, the United Nations, and other relevant international organizations:

Now, therefore, be it *Resolved*, That the Legislature of the state of Utah urges the Bush Administration to support a free trade agreement between the United States and Taiwan.

Be it further *Resolved*, That United States policy should include the pursuit of some initiative in the World Trade Organization which will give Taiwan meaningful participation in a manner that is consistent with the organization's requirements.

Be it further *Resolbed*, That a copy of this resolution be sent to the President of the United States, the United States Secretary of State, the Secretary of Health, Education, and Welfare, the Speaker of the United States House of Representatives, the President of the United States Senate, the Government of Taiwan, the World Trade Organization, and the members of Utah's congressional delegation.

POM–180. A resolution adopted by the Senate of the Legislature of the State of Wisconsin relative to the Medicare system; to the Committee on Finance.

SENATE RESOLUTION 7

Whereas, the archaic and complex Medicare reimbursement formula rewards Medicare providers in areas with high historic

health costs while penalizing those providers in low-cost areas for the same services; and

Whereas, Wisconsin and other upper midwestern states have traditionally been paid less per Medicare enrollee due to our efficient, low-cost management of health care services; and

Whereas, Wisconsin receives the 8th lowest Medicare payments per enrollee in the nation; and

Whereas, if Wisconsin received Medicare payments at the national average, an additional $1,000,000,000 in benefits would flow to our seniors and their health care providers; and

Whereas, Wisconsin should no longer be a ''donor'' state by contributing its fair share to the federal program while receiving fewer benefits and lower reimbursements in return; and

Whereas, the failure of Wisconsin Medicare to cover the cost of health care for its beneficiaries shifts the cost burden to employers and the privately insured, translating into a hidden tax increase that contributes to rising health insurance premiums and the uninsured population; and

Whereas, an increase in the uninsured would have a detrimental impact on the health of many Wisconsin citizens, would drive up health care costs, and could lead to a significant rise in the use of government programs such as BadgerCare or Medical Assistance, thus requiring additional funding from Wisconsin taxpayers; and

Whereas, another practical result of this payment inequity is that Wisconsin's seniors are denied access to the broad range of affordable benefits and services that seniors in many other states take for granted; and

Whereas, in places where reimbursement rates are high, such as Florida, Medicare health maintenance organizations can offer their plans without a premium, while in Wisconsin the Medicare population has limited access to health maintenance organization care; and

Whereas, Wisconsin's hospitals are paid 14% less than their costs and thus rank 45th nationally in percentage of costs paid for providing services to Medicare beneficiaries; and

Whereas, Wisconsin physicians are paid approximately one-third less of their costs, and Wisconsin consistently ranks nationally as one of the 10 lowest states in Medicare reimbursement for medical services provided; and

Whereas, the impact of this inequity has not translated into the delay, by 50% of Wisconsin physicians who treat Medicare patients, in the purchase of new and needed equipment; and

Whereas, 15% of physicians have started restricting the number of new Medicare patients that they will accept while another 9% can no longer afford to accept new Medicare patients, despite an aging Wisconsin population; and

Whereas, physicians who are still currently seeing Medicare patients have reduced their number of weekly appointments by 18%; and

Whereas, the Medicare cuts cost Wisconsin physicians $40,000,000 last year, forcing 6% of physicians to close their private practices because they could no longer cover their overhead costs and pay their staff; and

Whereas, the impact of this inequity means the poor, disabled, and elderly will face serious challenges trying to access care; and

Whereas, the impact of this inequity threatens the viability of our health care providers, especially in rural Wisconsin where Medicare enrollees typically constitute over 50% of a hospital's costs; and

Whereas, allowing Medicare reimbursement formula to exist in its current form will guarantee even greater cost-shifting, unending double-digit health insurance premium increases, an increase in the uninsured, a continued decrease in physicians accepting Medicare patients, and fewer hospitals; and

Whereas, Wisconsin hospitals, physicians, and insurers stand united in their effort to ensure that Wisconsin providers receive the payments that they deserve, and that patients receive the benefits that they deserve; now, therefore, be it

Resolved by the senate, That the Wisconsin senate urges the members of the congressional delegation from this state to work to enact legislation that would reform the current Medicare system and create a funding method that will dispense equal benefits regardless of geography; and, be it further

Resolved, That the senate chief clerk shall send copies of this resolution to the President of the United States, the speaker of the U.S. house of representatives, the president of the U.S. senate, and all of the members of the congressional delegation from this state.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 724. A bill to amend title 18, United States Code, to exempt certain rocket propellants from prohibitions under that title on explosive materials.

By Mr. HATCH, from the Committee on the Judiciary, without amendment:

S. 1233. A bill to authorize assistance for the National Great Blacks in Wax Museum and Justice Learning Center.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. McCAIN for the Committee on Commerce, Science, and Transportation.

*Annette Sandberg, of Washington, to be Administrator of the Federal Motor Carrier Safety Administration.

Coast Guard nomination of Rear Adm. (lh) Duncan C. Smith.

Coast Guard nominations beginning Rear Adm. (lh) Sally Brice-O'Hara and ending Rear Adm. (lh) David B. Peterman, which nominations were received by the Senate and appeared in the Congressional Record on May 22, 2003.

Coast Guard nomination of Mary Ann C. Gosling.

*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.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

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. GRAHAM of Florida:

S. 1289. A bill to name the Department of Veterans Affairs Medical Center in Minneapolis, Minnesota, after Paul Wellstone; to the Committee on Veterans' Affairs.

By Mr. HOLLINGS:

S. 1290. A bill to amend the Internal Revenue Code of 1986 to allow an additional advance refunding of tax-exempt bonds issued for the purchase or maintenance of electric generation, transmission, or distribution assets; to the Committee on Finance.

By Mr. GRASSLEY (for himself and Mr. BAUCUS):

S. 1291. A bill to authorize the President to impose emergency import restrictions on archaeological or ethnological materials of Iraq until normalization of relations between the United States and the Government of Iraq has been established; to the Committee on Finance.

By Ms. LANDRIEU:

S. 1292. A bill to establish a servitude and emancipation archival research clearinghouse in the National Archives; to the Committee on Governmental Affairs.

By Mr. HATCH (for himself, Mr. LEAHY, Mr. SCHUMER, Mr. GRASSLEY, Mrs. FEINSTEIN, Mr. DEWINE, and Mr. EDWARDS):

S. 1293. A bill to criminalize the sending of predatory and abusive e-mail; to the Committee on the Judiciary.

By Mrs. MURRAY (for herself, Mrs. BOXER, Ms. CANTWELL, Mr. KENNEDY, Mr. LEAHY, and Mr. PRYOR):

S. 1294. A bill to authorize grants for community telecommunications infrastructure planning and market development, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Ms. MURKOWSKI:

S. 1295. A bill to clarify the definition of rural airports; to the Committee on Finance.

By Ms. MURKOWSKI:

S. 1296. A bill to exempt seaplanes from certain transportation taxes; to the Committee on Finance.

By Mr. HATCH (for himself and Mr. TALENT):

S. 1297. A bill to amend title 28, United States Code, with respect to the jurisdiction of Federal courts inferior to the Supreme Court over certain cases and controversies involving the Pledge of Allegiance to the Flag; to the Committee on the Judiciary.

By Mr. AKAKA (for himself, Mr. LEAHY, and Mrs. BOXER):

S. 1298. A bill to amend the Farm Security and Rural Investment Act of 2002 to ensure the humane slaughter of non-ambulatory livestock, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Ms. SNOWE (for herself and Ms. MURKOWSKI):

S. 1299. A bill to amend the Trade Act of 1974 to provide trade readjustment and development enhancement for America's communities, and for other purposes; to the Committee on Finance.

By Ms. CANTWELL:

S. 1300. A bill to prohibit a health plan from contracting with a pharmacy benefit manager (PBM) unless the PBM satisfies certain requirements, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DEWINE (for himself and Mr. SCHUMER):

S. 1301. A bill to amend title 18, United States Code, to prohibit video voyeurism in the special maritime and territorial jurisdiction of the United States, and for other purposes; to the Committee on the Judiciary.

By Mr. SCHUMER (for himself, Mr. WARNER, Mrs. CLINTON, Mr. BIDEN, Mr. DASCHLE, Mr. BYRD, Mr. KENNEDY, Mr. LAUTENBERG, Mr. LEVIN, Mrs. FEINSTEIN, Mr. REID, Ms. STABENOW, Mrs. LINCOLN, Mr. KOHL, Mr. BAYH, Mr. BREAUX, Mrs. MURRAY, Mr. CARPER, Mr. DODD, Ms. MIKULSKI,

Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mr. WYDEN, Mr. BINGAMAN, Mr. BAUCUS, Mr. FEINGOLD, Mr. CORZINE, Mr. REED, Mr. AKAKA, Mr. PRYOR, Mr. JEFFORDS, Mrs. BOXER, Mr. DURBIN, and Mr. LEAHY):

S. 1302. A bill to provide support for the Daniel Patrick Moynihan Global Affairs Institute; to the Committee on Health, Education, Labor, and Pensions.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CORZINE (for himself and Mr. LAUTENBERG):

S. Res. 176. A resolution recognizing the National Hockey League's New Jersey Devils and National Basketball Association's New Jersey Nets for their accomplishments during the 2002–2003 season; considered and agreed to.

By Mr. DODD:

S. Res. 177. A resolution to direct the Senate Commission on Art to select an appropriate scene commemorating the Great Compromise of our forefathers establishing a bicameral Congress with equal State representation in the United State Senate, to be placed in the lunette space in the Senate reception room immediately above the entrance into the Senate chamber lobby, and to authorize the Committee on Rules and Administration to obtain technical advice and assistance in carrying out its duties; to the Committee on Rules and Administration.

ADDITIONAL COSPONSORS

S. 189

At the request of Mr. WYDEN, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S . 189, a bill to authorize appropriations for nanoscience, nanoengineering, and nanotechnology research, and for other purposes.

S. 300

At the request of Mr. MCCAIN, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 300, a bill to award a congressional gold medal to Jackie Robinson (posthumously), in recognition of his many contributions to the Nation, and to express the sense of Congress that there should be a national day in recognition of Jackie Robinson.

S. 321

At the request of Mr. MCCAIN, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 321, a bill to provide for the establishment of a scientific basis for new firefighting technology standards, improve coordination among Federal, State, and local fire officials in training for and responding to terrorist attacks and other national emergencies, and for other purposes.

S. 346

At the request of Mr. LEVIN, the name of the Senator from Alabama (Mr. SHELBY) was added as a cosponsor of S. 346 , a bill to amend the Office of Federal Procurement Policy Act to establish a governmentwide policy requiring competition in certain executive agency procurements.

S. 451

At the request of Ms. SNOWE, the names of the Senator from Texas (Mrs. HUTCHISON), the Senator from Illinois (Mr. DURBIN), the Senator from New Mexico (Mr. DOMENICI) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. 451, a bill to amend title 10, United States Code , to increase the minimum Survivor Benefit Plan basic annuity for surviving spouses age 62 and older, to provide for a one-year open season under that plan, and for other purposes.

S. 491

At the request of Mr. REID, the names of the Senator from Maryland (Mr. SARBANES), the Senator from Maine (Ms. COLLINS) and the Senator from Pennsylvania (Mr. SANTORUM) were added as cosponsors of S. 491, a bill to expand research regarding inflammatory bowel disease, and for other purposes.

S. 504

At the request of Mr. ALEXANDER, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from Rhode Island (Mr. REED), the Senator from Massachusetts (Mr. KERRY), the Senator from Nevada (Mr. ENSIGN), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Louisiana (Ms. LANDRIEU), the Senator from Michigan (Mr. LEVIN), the Senator from Hawaii (Mr. INOUYE), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Minnesota (Mr. DAYTON), the Senator from Washington (Mrs. MURRAY), the Senator from New York (Mrs. CLINTON), the Senator from Wisconsin (Mr. KOHL) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of S. 504, a bill to establish academies for teachers and students of American history and civics and a national alliance of teachers of American history and civics, and for other purposes.

S. 518

At the request of Ms. COLLINS, the names of the Senator from New York (Mr. SCHUMER) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. 518, a bill to increase the supply of pancreatic islet cells for research, to provide better coordination of Federal efforts and information on islet cell transplantation, and to collect the data necessary to move islet cell transplantation from an experimental procedure to a standard therapy.

S. 564

At the request of Ms. LANDRIEU, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 564, a bill to facilitate the deployment of wireless telecommunications networks in order to further the availability of the Emergency Alert System, and for other purposes.

S. 569

At the request of Mr. ENSIGN, the name of the Senator from Missouri (Mr. TALENT) was added as a cosponsor of S. 569, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 668

At the request of Mr. REED, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 668, a bill to amend the Child Care and Development Block Grant Act of 1990 to provide incentive grants to improve the quality of child care.

S. 778

At the request of Mr. ENSIGN, the names of the Senator from Colorado (Mr. ALLARD) and the Senator from Mississippi (Mr. LOTT) were added as cosponsors of S. 778, a bill to amend title XVIII of the Social Security Act to provide medicare beneficiaries with a drug discount card that ensures access to affordable prescription drugs.

S. 847

At the request of Mr. SMITH, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 847, a bill to amend title XIX of the Social Security Act to permit States the option to provide medicaid coverage for low income individuals infected with HIV.

S. 882

At the request of Mr. BAUCUS, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 882, a bill to amend the Internal Revenue Code of 1986 to provide improvements in tax administration and taxpayer safe-guards, and for other purposes.

S. 982

At the request of Mr. SANTORUM, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. 982 , a bill to halt Syrian support for terrorism, end its occupation of Lebanon, stop its development of weapons of mass destruction, cease its illegal importation of Iraqi oil, and hold Syria accountable for its role in the Middle East, and for other purposes.

S. 982

At the request of Mrs. BOXER, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 982, supra.

S. 1019

At the request of Mr. DEWINE, the names of the Senator from Mississippi (Mr. COCHRAN) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. 1019, a bill to amend titles 10 and 18, United States Code, to protect unborn victims of violence.

S. 1020

At the request of Mr. KOHL, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1020, a bill to amend the Child Nutrition Act of 1966 and the Richard B. Russell National School Lunch Act to improve the school breakfast program.

S. 1021

At the request of Mr. KOHL, the name of the Senator from Michigan (Ms.

STABENOW) was added as a cosponsor of S. 1021, a bill to amend the Richard B. Russell National School Lunch Act to improve the summer food service program for children.

S. 1022

At the request of Mr. KOHL, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1022, a bill to amend the Richard B. Russell National School Lunch Act to improve the child and adult care food program.

S. 1129

At the request of Mrs. FEINSTEIN, the names of the Senator from Louisiana (Ms. LANDRIEU) and the Senator from Vermont (Mr. LEAHY) were added as cosponsors of S. 1129, a bill to provide for the protection of unaccompanied alien children , and for other purposes.

S. 1131

At the request of Mr. SPECTER, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 1131, a bill to increase, effective December 1, 2003, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans.

S. 1200

At the request of Ms. CANTWELL, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 1200, a bill to provide lasting protection for inventoried roadless areas within the National Forest System.

S. 1284

At the request of Mrs. CLINTON, the name of the Senator from Kentucky (Mr. MCCONNELL) was added as a cosponsor of S. 1284, a bill to provide for the establishment of the Kosovar-American Enterprise Fund to promote small business and micro-credit lending and housing construction and reconstruction for Kosova.

S. CON. RES. 25

At the request of Mr. VOINOVICH, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S . Con. Res. 25, a concurrent resolution recognizing and honoring America's Jewish community on the occasion of its 350th anniversary, supporting the designation of an ''American Jewish History Month'', and for other purposes.

S. RES. 151

At the request of Mr. WYDEN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. Res. 151, a resolution eliminating secret Senate holds.

S. RES. 153

At the request of Mrs. MURRAY, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. Res. 153, a resolution expressing the sense of the Senate that changes to athletics policies issued under title IX of the Education Amendments of 1972 would contradict the spirit of athletic equality and the intent to prohibit sex discrimination in education programs or activities receiving Federal financial assistance.

S. RES. 164

At the request of Mr. ENSIGN, the names of the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of S. Res. 164, a resolution reaffirming support of the Convention on the Prevention and Punishment of the Crime of Genocide and anticipating the commemoration of the 15th anniversary of the enactment of the Genocide Convention Implementation Act of 1987 (the Proxmire Act) on November 4, 2003.

S. RES. 169

At the request of Mrs. CLINTON, the names of the Senator from New Jersey (Mr. CORZINE) and the Senator from Oklahoma (Mr. NICKLES) were added as cosponsors of S. Res. 169, a resolution expressing the sense of the Senate that the United States Postal Service should issue a postage stamp commemorating Anne Frank.

S. RES. 170

At the request of Mr. DODD, the names of the Senator from Montana (Mr. BAUCUS), the Senator from Indiana (Mr. LUGAR), the Senator from Louisiana (Ms. LANDRIEU) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of S. Res. 170, a resolution designating the years 2004 and 2005 as ''Years of Foreign Language Study''.

AMENDMENT NO. 930

At the request of Mrs. HUTCHISON, the names of the Senator from California (Mrs. FEINSTEIN), the Senator from Connecticut (Mr. DODD), the Senator from Missouri (Mr. BOND) and the Senator from Rhode Island (Mr. REED) were added as cosponsors of amendment No. 930 intended to be proposed to S. 1, a bill to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes.

AMENDMENT NO. 932

At the request of Mr. ENZI, the names of the Senator from Mississippi (Mr. COCHRAN), the Senator from Georgia (Mr . CHAMBLISS), the Senator from Arkansas (Mrs. LINCOLN), the Senator from Oregon (Mr. SMITH) and the Senator from New Mexico (Mr. DOMENICI) were added as cosponsors of amendment No. 932 proposed to S. 1, a bill to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes.

AMENDMENT NO. 932

At the request of Mr. MILLER, his name was added as a cosponsor of amendment No. 932 proposed to S. 1, supra.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRAHAM of Florida:

S. 1289. A bill to name the Department of Veterans Affairs Medical Center in Minneapolis, Minnesota, after Paul Wellstone; to the Committee on Veterans' Affairs.

Mr. GRAHAM. Mr. President, I rise today to give due recognition to a colleague whose tragic passing is still fresh in our thoughts. Senator Paul Wellstone served 12 honorable years in the Senate for the State of Minnesota before suddenly perishing with his dear wife, Sheila, their daughter, Marcia, three of his staffers, and two pilots in a plane crash last October.

The bill I am proposing today seeks to rename the Department of Veterans Affairs Medical Center in Minneapolis, MN, after Paul Wellstone. His distinguished record of service for veterans clearly demands such distinction. Indeed last October, just weeks before the crash that took his life, Senator Wellstone proclaimed on the Senate floor, ''It has been a labor of love for me working with veterans.''

Paul Wellstone served our Nation's veterans with passion and commitment as a distinguished member of the Senate Committee on Veterans' Affairs. His legacy includes the many veterans today whose lives have been turned around due to his unyielding service on their behalf, such as veterans who are or have been homeless; veterans who are now receiving treatment for their service-related disabilities from exposure to radiation from atomic and nuclear weapons testing; and veterans who suffer from symptoms associated with Persian Gulf War Syndrome.

Year after year, Senator Wellstone rose in this very chamber to try to increase the VA health care budget. In 2000, the Senator was part of an effort to secure the largest one year increase ever for veterans' health care benefits. In 2001, Paul Wellstone successfully pushed through an amendment to the Budget Resolution that provided $17 billion over 10 years to boost health care funding for veterans. And just last June, Senator Wellstone fought to include $417 million for veterans' health care in the Supplemental Appropriations Bill for FY 2002.

In recognition of his tireless advocacy, he was awarded a number of distinctions by various veterans' service organizations, including: the 1995 Legislator of the Year Award from the Vietnam Veterans of America; the 1995 Patriot Award from the Paralyzed Veterans of America; the Congressional Leadership Award from the Forgotten 216th; the 1997 Distinguished Citizen Award from the Minnesota Veterans of Foreign Wars; the 2002 Distinguished Science Award from the Disabled American Veterans; the 2002 Legislative Leadership Award from the National Coalition for Homeless Veterans; and the Vanguard Award for Legislative Achievement by the Non-Commissioned Officers Association.

George Washington once remarked, ''The willingness with which our young people are likely to serve in any war,

no matter how justified, shall be directly proportional to how they perceive the veterans of earlier wars were treated and appreciated by their nation.'' Senator Wellstone knew this all too well and worked to make the Department of Veterans Affairs a more responsive organization.

The Minneapolis VA Medical Center was a source of great pride for Paul. He once described the facility as having become ''the pride and joy of the U.S. Department of Veterans Affairs, and more important, of veterans throughout the region.'' The naming of the Paul Wellstone Department of Veterans Affairs Medical Center will forever honor his commitment to our veterans by distinguishing the very institution that carries on his ''labor of love.'' Mr. President, this is only a small mark of the appreciation that we all owe to an individual who served veterans with such compassion and conviction.

Finally, I thank Frederick ''Rock'' Rochelle—a past President of the St. Paul Chapter of the Vietnam Veterans of America—for working with me on this legislation to honor the memory of Paul Wellstone. I have compiled a list of statements made by friends and colleagues in remembrance of Senator Wellstone.

I ask unanimous consent that the text of the bill and the above mentioned list of statements be printed in the RECORD.

There being no objection, the bill and list of statements was ordered to be printed in the RECORD, as follows:

FRIENDS AND COLLEAGUES REMEMBER SENATOR PAUL WELLSTONE

''As a member of the Senate Veterans Affairs Committee, Senator Wellstone was a tireless crusader for America's veterans, an issue of paramount importance to him. I greatly respected and admired him for his passion, his character and his commitment for the causes in which he believed.''—Secretary of Veterans Affairs Anthony Principi

''His unwavering support year after year of adequate funding for veterans health care, in particular, was something we could always count on. Similarly, he championed the cause of homeless veterans to ensure that they were not forgotten and that their needs were addressed by the nation they served. Though not a veteran himself, he brought energy and commitment to issues important to veterans and their families. He was a fighter and leading voice and, if ever there was a true friend of America's veterans, Senator Wellstone was it.''—W.G. ''Bill'' Kilgore, national commander of AMVETS

''Senator Wellstone has been a strong and vocal supporter of veterans' issues. His leadership will be missed, and all veterans are grateful for his passionate support over the years.''—Thomas H. Corey, national president of Vietnam Veterans of America

''The Veterans of Foreign Wars of the United States are stunned and saddened by the untimely death of Senator Paul Wellstone and his family. When it came to advocacy on behalf of America's veterans, he was second to none. He constantly and consistently crusaded and championed for the many issues that were of vital interest to our veteran population. He was tenacious in his efforts to assure passage of legislation that would provide for those veterans suffering from radiation exposure, Gulf War illness and those in need of VA health care. He will be sorely missed. Our veterans have lost a true hero. Our hearts and prayers are with the Wellstone family.''—Ray Sisk, Commander-in-Chief, Veterans of Foreign Wars

''I always knew on Veterans Day that I would see the senator on that day. We would always go out to the veterans hospital. I would be there, and I never had any doubt that when I got there Senator Wellstone would be there. He was a great advocate for veterans and veteran causes and veterans benefits.''—Former Minneosta Governor Jesse Ventura

''The last speech he gave on the Senate floor, I was there. He said, 'You can call me soft if you want, but I care about veterans in this country.' That was Paul Wellstone. He is someone that looked out for those who didn't have someone representing them and he wasn't afraid. He traveled a road that was less traveled, but he traveled that road with his shoulders back.''—Sen. Harry Reid

''Paul Wellstone was one of the most courageous men I have ever known. He was a distinguished member of the Senate Veterans Affairs Committee, and he fought hard for those who fought for our country.''—Former Sen. Max Cleland

''Paul and I shared many of the same passions in the Senate. We fought together side by side in the fight to save our steel industry and together we were committed to providing our nation's veterans with the benefits they deserve. That was his style. He took on the toughest battles, the ones that required years of effort and diligence, and he always made a difference.''—Sen. Jay Rockefeller

''Paul was a caring, persistent and passionate advocate for veterans, children, the mentally ill, working families, and all those who too often feel that no one in Washington hears their voice. Paul Wellstone was their voice; he was their champion.''—Sen. Daniel Akaka

''Senator Wellstone believed deeply in causes that transcended political lines, partisanship and ideology. I had the privilege of working with him on legislation to end homelessness among our nation's veterans. In our battle to see this legislation enacted, time and time again we were called up on to confront our own parties and colleagues. Each and every time Paul Wellstone proved that his first concern was to help those less fortunate than himself, even if it put his political career at risk.''—Rep. Christopher Smith

''Paul Wellstone was my closest friend in the Senate. He was the most principled public servant I've ever known. Paul truly had the courage of his convictions and his convictions were based on the principles of hope, compassion, the Good Samaritan, helping those left on the roadside of life. His courage is an example for all.''—Sen. Tom Harkin

''Paul Wellstone was the soul of the Senate. He was one of the most noble and courageous men I have ever known. He was a gallant and passionate fighter, especially for the less fortunate. I am grateful to have known Paul and Sheila as dear and close friends.''—Sen. Tom Daschle

''He didn't look ahead to the next election; he looked ahead to the next generation. The women of the Senate called him our Galahad. He supported us and fought with us for child care, access to health care, and better schools.''—Sen. Barbara Mikulski

''In his public service and private friendship, Paul Wellstone embodied the Hebrew ideal of 'tikkun olam,' which means 'to repair the world.' He was one of the most passionate and principled people I've ever known. I feel privileged to have worked with him.''—Sen. Joe Lieberman

''Paul Wellstone had a passion for justice that was evident to all of his colleagues. Throughout his life, Paul was a fighter for the good cause. His passion for justice was only matched by his charm, wit and kindness to his political friends and foes alike.''—Sen. John McCain

''He was a man of enormous ability but most of all, he was a caring person. He was really a special person, a very unique man.''—Sen. Ted Kennedy

''He was a model and an inspiration to all of us who followed in his footsteps. He was my close personal friend and political ally for over 20 years. I will miss him terribly.''—Sen. Mark Dayton

''As fellow members of the Senate health and education committee, I saw firsthand how passionate Paul could be on the issues that were important to him. Paul had a remarkable ability to maintain good relations with colleagues with whom he disagreed.''—Sen. Jeff Sessions

''Paul Wellstone was a passionate public servant who was committed to helping average Americans. His enormous energy, determination and passion made him one of our most respected senators. America will miss a great senator, and I will miss a good friend.''Sen. Bill Nelson.

''He unfailingly represented his views eloquently and emphatically. Paul Wellstone was a courageous defender of his beliefs.''—Former Sen. Jesse Helms

''He was the pied piper of modern politics—so many people heard him and wanted to follow him in his fight. His loss is monumental. I loved his passion, his spirit, and his zest for making peoples' lives better. This is sad beyond any words.''—Sen. John Kerry

''His only interest in power was to help the powerless. He was a happy warrior in the tradition of another great Minnesota senator, Hubert Humphrey. He loved people and he loved campaigning.''—Sen. Patrick Leahy

''Paul Wellstone loved politics and never shied away from a fight for what he believed. I admired that quality greatly. We didn't always agree on issues, but we always walked away from the debate as friends. We enjoyed and respected each other. I'll miss him. This is a great loss.''—Sen. Chuck Grassley

''Nothing was trivial to Paul and no person was unimportant. He was a thoughtful, sensitive, and caring with people as he was astute and serious about ideas.''—Sen. Herb Kohl

''The people of Minnesota, America and the world have lost a friend and a champion of working families, the poor, the disenfranchised and the disabled. Paul's public life was a profile in courage. He spoke, stood and voted on his principles, even at the risk of his political career.''—Former President Bill Clinton

''He was a profoundly decent man, a man of principle, a man of conscience. His passing is a loss not only for his family, friends and constituents, but also for friends of the United Nations.''—UN Secretary General Kofi Annan

''Paul Wellstone was a stand-up guy. He used the power of his office for good. His memory will forever be a blessing to all of us who knew him. And his work will continue to be a blessing to countless thousands of people across the globe who never met him, but whose lives will be forever bettered by his work.''—Secretary of State Colin Powell

''He loved his job because it was the best way he could serve the people of his state and his country. To cite one example among many, Paul was by far the biggest and most energetic champion of quality mental health coverage for all Americans who need it. We worked with him closely on this issue and on behalf of the mental health community has passing leaves us with an irreplaceable loss.''—Former Vice President Al Gore

''Paul Wellstone was one of the most valiant public servants I have ever known. He had a very good mind, but he also had an honest mind. And he served what he believed in, no matter what the challenge.''—Former President Walter Mondale

''Many noted changes in his manner and method after years in Washington, but not much changed at the core of the man. He remained an idealist and an optimist. He laughed easily, often at himself and his 5-foot-5 stature. He always remembered to thank the cooks and servers at a banquet, and to greet the guards at office doors. He remembered names with a facility that reminded old-timers of Hubert Humphrey. Indeed, Wellstone had Humphrey's zeal for politics, policy and—most of all—people.''—Minneapolis Star Tribune.

S. 1289

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, MINNEAPOLIS, MINNESOTA, AS PAUL WELLSTONE DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER.

The Department of Veterans Affairs Medical Center located in Minneapolis, Minnesota, shall after the date of the enactment of this Act be known and designated as the ''Paul Wellstone Department of Veterans Affairs Medical Center''. Any reference to such medical center in any law, regulation, map, document, or other paper of the United States shall be considered to be a reference to the Paul Wellstone Department of Veterans Affairs Medical Center.

By Mr. HOLLINGS:

S. 1290. A bill to amend the Internal Revenue Code of 1986 to allow an additional advance refunding of tax-exempt bonds issued for the purchase or maintenance of electric generation, transmission, or distribution assets; to the Committee on Finance.

Mr. HOLLINGS. Mr. President, I am introducing legislation today that would improve the Internal Revenue Code of 1986 by allowing an additional advanced refunding of tax exempt bonds issued for the purchase or maintenance of electric generation, transmission, or distribution assets. This bill will give municipal utilities additional flexibility in refinancing their debts, so they can respond to favorable market conditions. I ask that the text of this bill be printed in the RECORD.

There being no objections, the bill was ordered to be printed in the RECORD, as follows:

S. 1290

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ADDITIONAL ADVANCE REFUNDING OF ELECTRICITY BONDS.

(a) IN GENERAL.—Subsection (d) of section 149 of the Internal Revenue Code of 1986 (relating to advance refunding) is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (7) the following new paragraph:

''(7) SPECIAL RULE FOR CERTAIN ELECTRICITY BONDS.—

''(A) GENERAL RULE.—In the case of a bond described in subparagraph (B), one additional advance refunding after the date of the enactment of this paragraph shall be allowed under paragraph (3)(A)(i) if the requirements of subparagraph (C) are met.

''(B) BOND DESCRIBED.—A bond is described in this subparagraph if such bond is issued as part of an issue the net proceeds of which are used to finance the costs of electric generation, transmission, or distribution assets owned by the issuer or by a consortium of State or local governments which includes the issuer and which jointly own such assets.

''(C) REQUIREMENTS.—The requirements of this subparagraph are met with respect to any advance refunding of a bond described in subparagraph (B) if—

''(i) no advance refundings of such bond would be allowed under any provision of law after the date of the enactment of this paragraph,

''(ii) the advance refunding bond is the only other outstanding bond with respect to the refunded bond, and

''(iii) the requirements of section 148 are met with respect to all bonds issued under this subsection.

''(D) INAPPLICABILITY TO CERTAIN BONDS.—Subparagraph (A) shall not apply with respect to a bond described in section 1400L(e).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to advance refunding bonds issued after the date of the enactment of this Act.

By Mr. GRASSLEY (for himself and Mr. BAUCUS):

S. 1291. A bill to authorize the President to impose emergency import restrictions on archaeological or ethnological materials of Iraq until normalization of relations between the United States and the Government of Iraq has been established; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, today I rise to introduce the Emergency Protection for Iraqi Cultural Antiquities Act of 2003, the EPIC Antiquities Act of 2003. I am pleased that Senator BAUCUS joins me as an original cosponsor of this important legislation. The EPIC Antiquities Act of 2003 authorizes the President to impose immediate emergency import restrictions on the archaeological and ethnological materials of Iraq. The purpose of this bill is simple—to close a legal loophole which could allow looted Iraqi antiquities to be brought into the United States. Allow me to explain how this might happen.

When Iraq invaded Kuwait in August of 1990, former President Bush issued Executive Orders 12722 and 12744, which declared a national emergency with respect to Iraq. Those orders imposed economic sanctions against Iraq, including a complete trade embargo which automatically prohibited trade in Iraqi antiquities as of that time. The United Nations Security Council adopted Resolution 661 on August 6, 1990, which also imposed economic sanctions on Iraq. The sanctions imposed under the Executive Orders are spelled out in the Iraqi Sanctions Regulations. These regulations are administered by the Treasury Department's Office of Foreign Assets Control, OFAC.

Now until recently, the Iraqi Sanctions Regulations continued to restrict trade with Iraq, including trade in Iraqi antiquities. However, on May 22, 2003, the UN Security Council adopted Resolution 1483, which lifted most sanctions on Iraq. Resolution 1483 also provided that Member States should establish a prohibition on trade in archaeological, cultural, historical, religious, and rare scientific items of Iraq, that may have been illegally removed from the country since the adoption of Resolution 661 back in 1990. On May 23, 2003, OFAC implemented UN Resolution 1483 and issued a General License which lifted most of our trade sanctions with respect to Iraq. Importantly, OFAC's general license continues to ban trade in looted Iraqi antiquities. However, this legal structure that is currently in place is vulnerable to a potential loophole.

It is important to recognize that the legal authority for OFAC's continuing restrictions on trade in Iraqi antiquities derives from the Executive Orders issued in 1990, which are themselves premised upon the existence of emergency conditions with respect to Iraq. It is possible that once an interim government is in place, the President may determine that emergency conditions no longer exist with respect to Iraq and relations between the United States and Iraq will be normalized. At that point, the legal authority for the OFAC restrictions will be terminated. This bill is designed to bridge a potential gap in the protections afforded Iraqi antiquities by allowing the President to impose emergency import restrictions without delay. These emergency restrictions would be authorized for an interim period to extend beyond any termination of the OFAC restrictions, and would remain in place until such time as other, more lengthy, legal mechanisms for the protection of cultural antiquities can be completed. I will elaborate on these other legal mechanisms in a moment.

If Congress does not act to provide the means for establishing the interim ban on trade contained in this bill, the door may be opened to imports of looted Iraqi antiquities into the United States. Already the press has reported allegations that European auction houses have traded in looted Iraqi antiquities. The last thing that we in Congress want to do is to fail to act to prevent trade in looted Iraqi artifacts here in the United States.

The stopgap authority in this bill derives from legislation implementing the U.N. Convention on the protection of cultural property. This bill amends the Convention on Cultural Property Implementation Act, Implementation Act, to allow the President to impose immediate emergency import restrictions with respect to Iraqi antiquities. The Implementation Act already authorizes the President to restrict imports of cultural antiquities, but there is a somewhat lengthy process called for under the Implementation Act before the President may impose such restrictions. Since we passed the Implementation Act in 1983, we have imposed import restrictions on archaeological

or ethnological materials from ten countries to assist in the protection of their cultural property.

Unfortunately, the Implementation Act does not address the unique conditions that prevail in Iraq today. Normally, under the Implementation Act a country formally requests that the United States prohibit stolen or illegally exported cultural antiquities from entering into the United States. The State Department will then publish a Federal Register notice announcing the request. Following publication, a Cultural Property Advisory Committee will investigate and review the request and report its recommendation to the President. With the benefit of the Committee's report, the President can then proceed to negotiate a bilateral agreement with the foreign country. In the past, this entire process has taken at least a year before import restrictions are put in place.

There are two major deficiencies with the current process which necessitate the bill we are introducing today. First, the Implementation Act requires a foreign government to make a formal request to the United States. Right now, there is no Government of Iraq to request such a bilateral agreement with the United States. The second problem is that, even if there were an Iraqi Government in place to make such a request, the administrative process called for under the Implementation Act just takes too long given the present circumstances—although the extent of looting of museums, libraries, and archaeological sites in Iraq may not be as great as was first feared, the fact remains that such looting has occurred and that illicit trade in such antiquities could spread if there is even a temporary lifting of import restrictions.

Now granted, the Implementation Act does authorize the President to impose emergency import restrictions even before a bilateral agreement is finalized. However, before the President can do so, all of the other administrative processes under the Implementation Act must be completed; this includes a three month period for the preparation of a report to the President by the Cultural Property Advisory Committee. Again, the problem here is that the normal process for imposing even emergency import restrictions could take too long.

If the Administration were to normalize relations between the United States and the next Government of Iraq, thereby terminating the OFAC import restrictions, it is possible that looted Iraqi antiquities could begin entering the United States while we sit and wait for a possible bilateral agreement to be finalized. The EPIC Antiquities Act of 2003 solves this problem. This legislation provides a uniquely and narrowly tailored amendment to the Implementation Act which closes the potential legal loophole between the time when relations are normalized and the time when we can undertake and complete the normal processes for the protection of cultural antiquities contained in the Implementation Act.

By extending the President's authority under the Implementation Act for an interim period, this bill is narrowly designed to meet the unique circumstances in Iraq today. The EPIC Antiquities Act of 2003 provides that this extension of the President's authority will terminate one year after relations are normalized, or by September 30, 2004, so that the next Iraqi Government can determine for itself whether to seek a bilateral agreement with the United States, and if so, the President can negotiate such an agreement with the benefit of input from the Cultural Property Advisory Committee—as envisioned by the Implementation Act. In short, our bill does not seek to supplant the established process for protecting cultural antiquities under the Implementation Act; instead, it permits an extra guarantee of protection for Iraq's cultural antiquities in the short term while Iraq completes its transition back into the community of nations.

I thank Senator BAUCUS for his support, and I hope our colleagues can also support this important and timely bill. I hope we are able to move this legislation quickly, perhaps as part of the Miscellaneous Trade and Technical Corrections Act of 2003, which is waiting for full Senate approval.

As we work to reestablish the free flow of trade with a liberated Iraq, I believe it is very important that we in Congress remain mindful of the need to take steps to protect Iraq's cultural heritage. Our bill will ensure that going forward we continue to adhere to the full spirit of Resolution 1483 and avoid any break in the protections afforded to Iraqi antiquities. Our bill also provides an important signal of our commitment to preserving Iraq's resources for the benefit of the Iraqi people. It is time to close the potential gap in protections, and pass the EPIC Antiquities Act of 2003.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1291

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 ''Emergency Protection for Iraqi Cultural Antiquities Act of 2003''.

SEC. 2. EMERGENCY IMPLEMENTATION OF IMPORT RESTRICTIONS.

(a) AUTHORITY.—The President may exercise the authority of the President under section 304 of the Convention on Cultural Property Implementation Act (19 U.S.C. 2603) with respect to any archaeological or ethnological material of Iraq as if Iraq were a State Party under that Act, except that, in exercising such authority, subsection (c) of such section shall not apply.

(b) DEFINITION.—In this section, the term ''archaeological or ethnological material of Iraq'' means cultural property of Iraq and other items of archaeological, historical, cultural, rare scientific, or religious importance illegally removed from the Iraq National Museum, the National Library of Iraq, and other locations in Iraq, since the adoption of United Nations Security Council Resolution 661 of 1990.

SEC. 3. TERMINATION OF AUTHORITY.

The authority of the President under section 2 shall terminate upon the earlier of—

(1) the date that is 12 months after the date on which the President certifies to Congress that normalization of relations between the United States and the Government of Iraq has been established; or

(2) September 30, 2004.

By Ms. LANDRIEU:

S. 1292. A bill to establish a servitude and emancipation archival research clearinghouse in the National Archives; to the Committee on Governmental Affairs.

Ms. LANDRIEU. Mr. President, I rise today on the 138th anniversary of the day that Major General Gordon Granger and his Union soldiers arrived in Galveston, TX. They brought the news that the war had ended and that the enslaved were now free. Since its origin in 1865, the observance of June 19th as African American Emancipation Day, or Juneteenth, is the oldest known celebration of the ending of slavery.

It took two and a half years after the effective date of the Emancipation Proclamation set forth by President Lincoln for the news of freedom to arrive in Texas. Of course, this kind of delay in finding out about new national policy, especially a bold new initiative set forth by Executive Order, would be absurd in our present society. We are now part of the information age and access to the most up-to-date news is commonplace. Unfortunately, African Americans who attempt to trace their genealogy face undue delay in obtaining the necessary documents to try and piece together their unique heritage. For this reason, I am proposing the Servitude and Emancipation Archival Research Clearinghouse, SEARCH, Act of 2003. This bill establishes a national database within the National Archives and Records Administration, NARA, housing various documents that would assist those in search of a history that because of slavery, can not easily be found in the most commonly searched registered and census records.

Traditionally, someone researching their genealogy would try looking up wills and land deeds; however, enslaved African Americans were prohibited from owning property. In fact, African Americans were considered property, so the name of former slave owners would have to be identified with the hopes that the owner kept record of pertinent information, such as births and deaths. In most cases, If records exist, many African Americans were not associated with last names, thus making them more difficult to trace. With slaves not being listed by name, this also precludes the use of the most popular and major source of genealogical research, the United States

Census. Even the use of letters, diaries, and other first-person recordings of slave simply do not exist because slaves could not legally learn to read or write.

We may think after 1865, African Americans could then begin to use traditional genealogical records like voter registrations and school records. However, African Americans did not immediately begin to participate in may of the privileges of citizenship, including voting and attending school. Discrimination meant the prevention of African American siting on juries or owning businesses. Segregation meant segregated neighborhoods, schools, churches, clubs, and fraternal organizations. Therefore, many of the records were also segregated. For example, some telephone directories in South Carolina did not include African Americans in the regular alphabetical listing, but at the end of the book. An African American must maneuver these distinctive nuances in order to conduct proper genealogical research. In my own State of Louisiana, descendants of the 9th Calvary Regiment and the 25th Infantry Regiment, known as the Buffalo Soldiers, would have to know to look in the index of the United States Colored Troops and not the index of the State Military Regiments.

Abraham Lincoln said, ''a man who cares nothing about his past can care little about his future.'' In 1965, Alex Haley stumbled upon the names of his maternal great-grandparents while going through post-Civil War records at the National Archives here in Washington, D.C. This discovery led to an 11-year journey that resulted in the milestone of literary history, Roots. By providing $5 million for the National Historical Publications and Records Commission to establish and maintain a national database, the SEARCH Act proposes to significantly reduce the time and painstaking efforts of those African Americans who truly care about their American past, and care enough to contribute to the American future. This bill also seeks to authorize $5 million for States, colleges, and universities to preserve, catalogue, and index records locally.

In a democracy, records matter. The mission of NARA is to ensure that anyone can have access to the records that matter to them. The SEARCH Act of 2003 helps to fulfill that mission by helping African Americans to navigate the genealogical process, given the circumstances unique to the African American experience. No longer should any American have to wait to find out about information leading to freedom.

I hope my colleagues will join me in celebrating Juneteenth this year by passing this measure, and 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. 1292

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 ''Servitude and Emancipation Archival Research ClearingHouse Act of 2003'' or the ''SEARCH Act of 2003''.

SEC. 2. ESTABLISHMENT OF DATABASE.

(a) IN GENERAL.—The Archivist of the United States shall establish, as a part of the National Archives, a national database consisting of historic records of servitude and emancipation in the United States to assist African Americans in researching their genealogy.

(b) MAINTENANCE.—The database established by this Act shall be maintained by the National Historical Publications and Records Commission.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated—

(1) $5,000,000 to establish the national database authorized by this Act; and

(2) $5,000,000 to provide grants to States and colleges and universities to preserve local records of servitude and emancipation.

By Mr. HATCH (for himself, Mr. LEAHY, Mr. SCHUMER, Mr. GRASSLEY, Mrs. FEINSTEIN, Mr. DEWINE, and Mr. EDWARDS):

S. 1293. A bill to criminalize the sending of predatory and abusive e-mail; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I rise to introduce, with Senators LEAHY, SCHUMER, GRASSLEY, FEINSTEIN, DEWINE, and EDWARDS, the Criminal Spam Act of 2003. This legislation, which enjoys bipartisan support, targets the most egregious types of spammers—those who hijack computer systems and those who use other fraudulent means to send unsolicited commercial electronic mail.

Over the course of the past several years, the amount of unsolicited commercial email, or spam, has grown at an exponential rate. During a recent Senate hearing before the Committee on Commerce, Science and Transportation, Brightmail Inc., a provider of spam filtering software that serves six of the ten largest U.S. Internet service providers, estimated that in April 2003, 46 percent of all email traffic was spam. This figure represented a nearly five fold increase in spam in merely 18 months. At the same hearing, America Online testified that on any given day, it blocks approximately 2.3 billion spam messages.

This tremendous growth rate is due in large part to sophisticated spammers who use abusive tactics to send millions of email messages quickly, at an extremely low cost. By using deceptive methods, these spammers conceal their identities, evade Internet service provider filters, and exploit the Internet by advertising and promoting pornographic web sites, illegally pirated software, questionable health products, pyramid schemes and other ''get rich quick'' or ''make money fast'' scams. The extraordinary volume of spam generated by their schemes imposes significant costs on Internet users, threatens to disrupt Internet services, and undermines the public's confidence in online commerce.

A recent study conducted by the Federal Trade Commission demonstrates the alarming frequency with which spammers are using the Internet to conceal their true identities and the electronic paths of their messages. This study found that 40 percent of email messages contain indicia of falsity in the body of the message; approximately 33 percent contain indicia of falsity in the ''from'' lines of the spam; 22 percent contain indicia of falsity in the ''subject'' line; and some 66 percent contain at least one form of deception.

The Criminal Spam Act of 2003 targets fraudulent and deceptive spam by enhancing the ability of federal law enforcement authorities to prosecute and punish the most egregious wrongdoers. Specifically, the Act makes it a crime to hack into a computer, or to use a computer system that the owner has made available for other purposes, as a conduit for bulk commercial email. The Act also prohibits sending bulk commercial email that conceals the true source, destination, routing or authentication information of the email, or is generated from multiple email accounts or domain names that falsify the identity of the actual registrant.

The Act subjects violators to stiff criminal penalties of up to 5 years' imprisonment where the offense is committed in furtherance of any felony, or where the defendant has previously been convicted of a similar Federal or state offense, and up to 3 years' imprisonment where other aggravating factors exist. It also contains criminal forfeiture provisions and directs the Sentencing Commission to consider enhancements for offenders who obtain email addresses through illegal means, such as harvesting.

The strong deterrent effect of the legislation is further enhanced by civil enforcement provisions that authorize the Department of Justice and aggrieved Internet service providers to bring suit for violations of the Act. In appropriate cases, courts may grant injunctive relief, impose civil fines, and award damages of up to $25,000 per day of violation, or between $2 and $8 per email initiated in violation of the Act.

Recognizing that spammers can send their fraudulent and deceptive messages from any location in the world, the Act directs the Department of Justice and the Department of State to work through international fora to gain the cooperation of other countries in investigating and prosecuting spammers worldwide and to report to Congress about their efforts and any recommendations for addressing international predatory spam.

The Criminal Spam Act represents an important legislative step toward curbing predatory and abusive commercial email. However, broader legislative measures, coupled with technological

solutions, are also needed. Any effective solution to the spam problem requires cooperative efforts between the government and the private sector, as well as the assistance of our international partners.

Recent years have witnessed extraordinary technological advances. These innovations, and electronic communications in particular, have significantly increased the efficiencies, productivity and conveniences of our modern world. The abusive practices of fraudulent spammers threaten to choke the lifeblood of the electronic age. This is a problem that warrants swift but deliberative legislative action. I am committed to working with my colleagues in both Houses to address the spam problem on all fronts.

I ask unanimous consent that a section-by-section analysis be printed in the RECORD.

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

SECTION-BY-SECTION ANALYSIS

SEC. 1. SHORT TITLE

This bill may be cited as the ''Criminal Spam Act of 2003''.

SEC. 2. PROHIBITION AGAINST PREDATORY AND ABUSIVE COMMERCIAL EMAIL

This section targets the four principal techniques that spammers use to evade filtering software and hide their trails. It creates a new federal crime that prohibits hacking into a computer, or using a computer system that the owner has made available for other purposes, to send bulk commercial email. It also prohibits sending bulk commercial email that either conceals the true source, destination, routing and authentication information of the email, or is generated from multiple email accounts or domain names that falsify the identity of the actual registrant. Penalties range from up to 5 years' imprisonment where the offense was committed in furtherance of any felony, or where the defendant was previously convicted of a similar federal or state offense, and up to 3 years' imprisonment where other aggravating factors exist. The U.S. Sentencing Commission is directed to consider sentencing enhancements for offenders who obtained email addresses through improper means, such as harvesting.

In addition, this section provides for civil enforcement by the Department of Justice and aggrieved Internet service providers against spammers who engage in the conduct described above. In appropriate cases, courts may grant injunctive relief, impose civil penalties, and award damages.

SEC. 3. REPORT AND SENSE OF CONGRESS REGARDING INTERNATIONAL SPAM.

Recognizing that an effective solution to the spam problem requires the cooperation and assistance of our international partners, this section asks the Administration to work through international fora to gain the cooperation of other countries in investigating and prosecuting spammers worldwide, and to report to Congress about its efforts.

Mr. LEAHY. Mr. President, I am pleased to be introducing, with Senators HATCH, SCHUMER, GRASSLEY, FEINSTEIN, DEWINE, and EDWARDS, the Criminal Spam Act of 2003. This bill is designed to counter the most objectionable forms of email marketing. In an effort to clear electronic channels for legitimate communications, the bill targets those spammers who deceive Internet Service Providers, ''ISPs'', and email recipients into thinking that messages come from someone other than a spammer—a ploy many spammers use to increase the likelihood that their unwanted ads will evade filtering software and be opened.

Without a doubt, spam is a serious problem today, one that is threatening to undermine the vast potential of the Internet to foster the free exchange of information and commerce. Businesses and individuals currently wade through tremendous amounts of spam in order to access email that is of relevance to them—and this is after ISPs, businesses, and individuals have spent time and money blocking a large percentage of spam from reaching its intended recipients.

Email users are having the online equivalent of the experience of the woman in the Monty Python skit, who seeks to order a spam-free breakfast at a restaurant. Try as she might, she cannot get the waitress to bring her the meal she desires. Every dish in the restaurant comes with Spam; it's just a matter of how much. There's ''egg, bacon and Spam''; ''egg, bacon, sausage and Spam''; ''Spam, bacon, sausage and Spam''; ''Spam, egg, Spam, Spam, bacon and Spam''; ''Spam, sausage, Spam, Spam, Spam, bacon, Spam, tomato and Spam''; and so on. Exasperated, the woman finally cries out: ''I don't like Spam! . . . I don't want ANY Spam!''

Individuals and businesses are reacting similarly to electronic spam. A Harris poll taken late last year found that 80 percent of respondents view spam as ''very annoying,'' and fully 74 percent of respondents favor making mass spamming illegal. They are fed up.

ISPs are doing their best to shield customers from spam, blocking billions of spam each day, but the spammers are winning the battle. Millions of unwanted, unsolicited commercial emails are received by American businesses and individuals each day, despite their own, additional filtering efforts. A recent study by Ferris Research estimates that spam costs U.S. businesses $8.9 billion annually as a result of lost productivity and the need to purchase more powerful servers and additional bandwidth; to configure and run spam filters; and to provide help-desk support for spam recipients. The costs of spam are significant to individuals as well, including time spent identifying and deleting spam, inadvertently opening spam, installing and maintaining anti-spam filters, tracking down legitimate messages mistakenly deleted by spam filters, and paying for the ISPs' blocking efforts.

And there are other less prominent but equally important costs of spam. It may introduce viruses, worms, and Trojan Horses into personal and business computer systems, including those that support our national infrastructure. It is also fertile ground for deceptive trade practices. The FTC recently estimated that 96 percent of the spam involving investment and business opportunities, and nearly half of the spam advertising health services and products, and travel and leisure, contains false or misleading information.

This rampant deception has the potential to undermine Americans' trust of valid information on the Internet. Indeed, it has already caused some Americans to refrain from using the Internet to the extent that they otherwise would. For example, some have chosen not to participate in public discussion forums, and are hesitant to provide their addresses in legitimate business transactions, for fear that their email addresses will be harvested for junk email lists. And they are right to be concerned. The FTC found spam arriving at its computer system just nine minutes after posting an email address in an online chat room.

At a recent FTC forum on spam, experts agreed that the issue is ripe for Federal action. Some 30 States now have anti-spam laws, but the nature of email makes it difficult to discern where any given piece of spam originated, and, thus, what State has jurisdiction and what State law applies. This may explain why spammers continue to flout State laws. For example, several States require that spam begin the subject line with ''ADV,'' but the FTC has found that only 2 percent of spam contains this label.

Technology will undoubtedly play a key role in fighting spam. However, a technological solution to the problem is not predicted in the foreseeable future. In addition, given the adroitness with which spammers adapt to anti-spam technologies, the development and implementation of technological fixes to spam entail constant vigilance and substantial financial investment. This raises the question: Why should individuals and businesses be forced to invest large amounts of time and money in buying, installing, and maintaining generation after generation of anti-spam technologies?

I have often said that the government should regulate the Internet only when absolutely necessary. Unfortunately, spammers have caused this to be one of those times. Congress needs to address the spam problem quickly and prudently, and the Criminal Spam Act, by targeting the most injurious types of spam, is a good start.

The bill that Senator HATCH and I introduce today would prohibit the four principal techniques that spammers use to evade filtering software and hide their trails.

First, our bill would prohibit hacking into another person's computer system and sending bulk spam from or through that system. This would criminalize the common spammer technique of obtaining access to other people's email accounts on an ISP's email network, whether by password theft or by inserting a ''Trojan horse'' program—that is, a program that unsuspecting users

download onto their computers and that then takes control of those computers—to send bulk spam.

Second, the bill would prohibit using a computer system that the owner makes available for other purposes as a conduit for bulk spam, with the intent of deceiving recipients as to the spam's origins. This prohibition would criminalize another common spammer technique—the abuse of third parties' ''open'' servers, such as email servers that have the capability to relay mail, or Web proxy servers that have the ability to generate ''form'' mail. Spammers commandeer these servers to send bulk commercial email without the server owner's knowledge, either by ''relaying'' their email through an ''open'' email server, or by abusing an ''open'' Web proxy server's capability to generate form emails as a means to originate spam, thereby exceeding the owner's authorization for use of that email or Web server. In some instances the hijacked servers are even completely shut down as a result of tens of thousands of undeliverable messages generated from the spammer's email list.

The bill's third prohibition targets another way that outlaw spammers evade ISP filters: falsifying the ''header information'' that accompanies every email, and sending bulk spam containing that fake header information. More specifically, the bill prohibits forging information regarding the origin of the email message, the route through which the message attempted to penetrate the ISP filters, and information authenticating the user as a ''trusted sender'' who abides by appropriate consumer protection rules. The last type of forgery will be particularly important in the future, as ISPs and legitimate marketers develop ''white list'' rules whereby emailers who abide by self-regulatory codes of good practices will be allowed to send email to users without being subject to anti-spamming filters. There is currently substantial interest among marketers and email service providers in ''white list'' technology solutions to spam. However, such ''white list'' systems would be useless if outlaw spammers are allowed to counterfeit the authentication mechanisms used by legitimate emailers.

Fourth and finally, the Criminal Spam Act prohibits registering for multiple email accounts or Internet domain names, and sending bulk email from those accounts or domains. This provision targets deceptive ''account churning,'' a common outlaw spammer technique that works as follows. The spammer registers, usually by means of an automatic computer program, for large numbers of email accounts or domain names, using false registration information, then sends bulk spam from one account or domain after another. This technique stays ahead of ISP filters by hiding the source, size, and scope of the sender's mailings, and prevents the email account provider or domain name registrar from identifying the registrant as a spammer and denying his registration request. Falsifying registration information for domain names also violates a basic contractual requirement for domain name registration.

Penalties for violations of these provisions are tough but measured. Recidivists and those who send spam in furtherance of another felony may be imprisoned for up to five years. Large-volume spammers, those who hack into another person's computer system to send bulk spam, and spam ''kingpins'' who use others to operate their spamming operations may be imprisoned for up to three years. Other offenders may be fined and imprisoned for no more than one year. Convicted offenders are also subject to forfeiture of proceeds and instrumentalities of the offense.

In addition to these criminal penalties, offenders are also subject to civil enforcement actions, which may be brought by either the Department of Justice or by an ISP. Civil remedies are important as a supplement to criminal enforcement for several reasons. First, bringing cases against outlaw spammers is very resource intensive because of the extensive forensic work involved in building a case; providing for civil enforcement will allow ISPs to assemble evidence to make prosecutors' jobs easier. Second, although criminal prosecutions are a critical deterrent against the most egregious spammers, the Justice Department is unlikely to prosecute all outlaw spam cases; civil enforcement, backed by strong financial penalties, will serve as a second layer of deterrence. Third, criminal penalties may not be appropriate in all cases, as for example in the case of teenagers hired by professional outlaw spammers to send out email for them; civil enforcement gives the Justice Department a more complete and refined range of tools to address specific outlaw spam problems.

That describes the main provisions of our bill. In addition, because commercial email can be, and is being, sent from all over the world into the virtual mailboxes of Americans, the bill directs the Administration to report on its efforts to achieve international cooperation in the investigation and prosecution of outlaw spammers.

Again, the purpose of the Criminal Spam Act is to deter the most pernicious and unscrupulous types of spammers—those who use trickery and deception to induce others to relay and view their messages. Ridding America's inboxes of deceptively delivered spam will significantly advance our fight against junk email. But the Criminal Spam Act is not a cure-all for the spam pandemic.

The fundamental problem inherent to spam—its sheer volume—may well persist even in the absence of fraudulent routing information and false identities. In a recent survey, 82 percent of respondents considered unsolicited bulk email, even from legitimate businesses, to be unwelcome spam. Given this public opinion, and in light of the fact that spam is, in essence, cost-shifted advertising, it may be wise to take a broader approach to our fight against spam.

One approach that has achieved substantial support is to require all commercial email to include an ''opt out'' mechanism, that is, a mechanism for consumers to opt out of receiving further unwanted spam. At the recent FTC forum, several experts expressed concerns about this approach, which permits spammers to send at least one piece of spam to each email address in their database, while placing the burden on email recipients to respond. People who receive dozens, even hundreds, of unwanted emails each day would have little time or energy for anything other than opting-out from unwanted spam.

According to one organization's calculations, if just one percent of the approximately 24 million small businesses in the U.S. sent every American just one spam a year, that would amount to over 600 pieces of spam for each person to sift through and opt-out of each day. And this figure may be conservative, as it does not include the large businesses that also engage in online advertising.

A second possible approach to spam—a national ''Do Not Spam'' registry—raises a different but no less difficult set of concerns. The two FTC Commissioners who testified last month at the Senate Commerce Committee's hearing on spam both questioned the potential of a national registry to alleviate the spam problem. Although this approach would place a smaller burden on consumers than would an opt-out system, it would entail immense costs, complexity, and delay, all of which work in the spammers' favor.

A third way of attacking spam—and one that was favored by many panelists and audience members at the FTC forum—is to establish an opt-in system, whereby bulk commercial email may only be sent to individuals and businesses who have invited or consented to it. This approach has strong precedent in the Telephone Consumer Protection Act of 1991, TCPA, which Congress passed to eliminate similar cost-shifting, interference, and privacy problems associated with unsolicited commercial faxes. The TCPA's ban on faxes containing unsolicited advertisements has withstood First Amendment challenges in the courts, and was adopted by the European Union in July 2002.

I have discussed three possible approaches to the spam problem, and there are several others, some of which have already been codified in state law. I encourage the consideration of all these anti-spam approaches in the weeks and months to come.

Reducing the volume of junk commercial email, and so protecting legitimate Internet communications, will

not be easy. There are important First Amendment interests to consider, as well as the need to preserve the ability of legitimate marketers to use email responsibly. If Congress does act, it must get it right, so as not to exacerbate an already terribly vexing problem.

The Criminal Spam Act is a first step in countering spam. If we can shut down the spammers who use deception to evade filters and confuse consumers, we will give the next generation of anti-spam technologies a chance to do their work. Our bill targets the most egregious offenders, it provides a much-needed federal cause of action, and it allows the states to continue to serve as a ''laboratory'' for tough anti-spamming regulation. I urge its speedy enactment into law.

By Mrs. MURRAY (for herself, Mrs. BOXER, Ms. CANTWELL, Mr. KENNEDY, Mr. LEAHY, and Mr. PRYOR):

S. 1294. A bill to authorize grants for community telecommunications infrastructure planning and market development, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mrs. MURRAY. Mr. President, I rise today to introduce legislation to help rural and underserved communities across the country get connected to the information economy.

Today I am introducing the Community Telecommunication Planning Act of 2003. I am proud to have Senators BOXER, CANTWELL, KENNEDY, LEAHY, and PRYOR as original cosponsors. This bill will give small and rural communities a new tool to attract high speed services and economic development.

Representative INSLEE from my home State, along with several other members, will soon introduce a companion bill in the House. I appreciate him working with me to meet this challenge.

I am especially proud of how this legislation came about. For the last four years, I've been working with a group of community leaders in Washington State to find ways to help communities get connected to advanced telecommunications services.

I want to take a moment to thank the members of my Rural Telecommunication Working Group for their hard work on this bill. The members include: Brent Bahrenburg, Gregg Caudell, Dee Christensen, Dave Danner, Louis Fox, Tami Garrow, Larry Hall, Rod Fleck, Ray King, Dale King, Terry Lawhead, Dick Llarman, Jim Lowery, Jim Miller, Joe Poire, Skye Richendrfer, Ted Sprague, Jim Schmit, and Ron Yenney.

We met as a working group, and we held forums around the State that attracted hundreds of people. We've tapped the ideas of experts, service providers and people from across the State who are working to get their communities connected. The result is this legislation, which I am proud to say is part of Washington State's contribution to our national effort to connect all parts of our country to the Internet.

The bill was originally introduced in the 107th Congress. I was able to attach a version of it to the Farm Bill. Unfortunately, the provision was removed during Conference.

This bill addresses a real need in many communities. While urban and suburban areas have strong competition between telecommunications providers, many small and rural communities are far removed from the services they need.

We must ensure that all communities have access to advanced telecommunications like high speed internet access and the wireless Internet. Just as yesterday's infrastructure was built of roads and bridges, today our infrastructure includes advanced telecom services.

Advanced telecommunications can enrich our lives through activities like distance-learning, and they can even save lives through efforts like telemedicine. The key is access. Access to these services is already turning some small companies in rural communities into international marketers of goods and services.

Unfortunately, many small and rural communities are having trouble getting the access they need. Before communities can take advantage of some of the help and incentives that are out there, they need to work together and got through a community planning process. Community plans identify the needs and level of demand, create a vision for the future, and show what all the players must do to meet the telecom needs of their community for today and tomorrow. These plans take resources to develop, and my bill would provide those funds.

Providers say they're more likely to invest in an area if it has a plan that makes a business case for the costly infrastructure investment. Communities want to provide them with that plan, but they need help developing it. Unfortunately, many communities get struck on that first step. They don't have the resources to do the studies and planning required to attract service. So the members of my Working Group came up with a solution: have the Federal Government provide competitive grants that local communities can use to develop their plans. I took that idea and put it into this bill.

After determining what services they need, communities must then go out and make a market case to providers. That is why I've added ''market development'' to the list of allowable uses of grant funding.

While this bill deals with new technology, it's really just an extension of the infrastructure support the federal government traditionally provides to communities.

The Federal Government already provides money to help communities plan other infrastructure improvements—everything from roads and bridges to wastewater facilities. Because today's economic infrastructure includes advanced telecom services, I believe the Federal Government should provide similar support for local technology infrastructure.

In summary, this bill would provide rural and underserved communities with grant money for creating community plans, technical assessments and other analytical work, and it would allow these communities to use the funding to market these plans to providers.

With these grants, communities will be able to turn their desire for access into real access that can improve their communities and strengthen their economies. This bill can open the door for thousands of small and rural areas across our country to tap the potential of the information economy.

I urge the Senate to support this bill, and I look forward to working with my colleagues to see it passed.

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. 1294

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 ''Community Telecommunications Planning Act of 2003''.

SEC. 2. COMMUNITY TELECOMMUNICATIONS PLANNING GRANTS.

(a) AUTHORITY TO MAKE GRANTS.—Each Secretary concerned may, using amounts authorized to be appropriated by the applicable paragraph of subsection (g), make grants to eligible entities described in subsection (b) for the community telecommunications infrastructure planning and market development purposes described in subsection (c).

(b) ELIGIBLE ENTITIES.—An entity eligible for a grant under this section is any local or tribal government, local non-profit entity, cooperative, public utility, or other public entity that proposes to use the amount of the grant for the community telecommunications infrastructure planning and market development purposes described in subsection (c).

(c) COMMUNITY TELECOMMUNICATIONS INFRASTRUCTURE PLANNING AND MARKET DEVELOPMENT.—Amounts from a grant made under this section shall be used for purposes of facilitating the development of a telecommunications infrastructure and market development plan for a locality by various means, including—

(1) by encouraging the involvement in the development of the plan of interested elements of the community concerned, including the business community, governments, telecommunications providers, and secondary and, where applicable, post-secondary educational institutions and their students;

(2) by enhancing the focus of the development of the plan on a wide range of telecommunications needs in the community concerned, including needs relating to local business, education, health care, and government;

(3) by enhancing the identification of a wide range of potential solutions for such needs through advanced telecommunications infrastructure; and

(4) by any other means that the Secretary concerned considers appropriate.

(d) GRANT PRIORITY FOR PLANNING FOR RURAL AND UNDERSERVED AREAS.—In making grants under this section, each Secretary concerned shall give priority to eligible entities that propose to use the grants for community telecommunications infrastructure planning and market development for rural areas or underserved areas.

(e) ADMINISTRATION.—Each Secretary concerned shall establish such administrative requirements for grants under this section, including requirements for applications for such grants, as such Secretary considers appropriate.

(f) DEFINITIONS.—In this section:

(1) RURAL AREA.—The term ''rural area'' means any county having a population density of less than 300 people per square mile as determined in the 2000 decennial census.

(2) SECRETARY CONCERNED.—The term ''Secretary concerned'' means each of the following:

(A) The Secretary of Commerce.

(B) The Secretary of Agriculture.

(C) The Secretary of Education.

(3) UNDERSERVED AREA.—The term ''underserved area'' means any census tract as determined in the 2000 decennial census which is located in—

(A) an empowerment zone or enterprise community designated under section 1391 of the Internal Revenue Code of 1986;

(B) the District of Columbia Enterprise Zone established under section 1400 of the Internal Revenue Code of 1986;

(C) a renewal community designated under section 1400E of the Internal Revenue Code of 1986; or

(D) a low-income community designated under section 45D of the Internal Revenue Code of 1986.

(g) AUTHORIZATIONS OF APPROPRIATIONS.—There is authorized to be appropriated for purposes of making grants under this section—

(1) for the Department of Commerce—

(A) $25,000,000 for fiscal year 2004; and

(B) such sums as may be necessary for fiscal year 2005 and each subsequent fiscal year;

(2) for the Department of Agriculture—

(A) $25,000,000 for fiscal year 2004; and

(B) such sums as may be necessary for fiscal year 2005 and each subsequent fiscal year; and

(3) for the Department of Education—

(A) $10,000,000 for fiscal year 2004; and

(B) such sums as may be necessary for fiscal year 2005 and each subsequent fiscal year.

By Mr. HATCH (for himself and Mr. TALENT):

S. 1297. A bill to amend title 28, United States Code, with respect to the jurisdiction of Federal courts inferior to the Supreme Court over certain cases and controversies involving the Pledge of Allegiance to the Flag; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I rise to introduce today the ''Protect the Pledge Act of 2003.'' The Pledge of Allegiance to the Flag has been an integral part of this Nation's identity since its early days. It was first written by a Baptist minister in 1892 as part of the commemoration of the 400th Anniversary of the discovery of America. For over a century, children and adults have recited this Pledge in schools, in government and military ceremonies, and on other formal occasions. It represents a promise of loyalty to the Flag itself, to the country it represents, and to the government that unites all fifty states. Perhaps more importantly, for many people, its recitation represents as essential element of what it means to be an American.

In United States v. Newdow, the Ninth Circuit jeopardized the integrity of the Pledge of Allegiance. It held that a school district's policy of teacher-led recitation of the Pledge violates the First Amendment Establishment Cause because it includes the phrase ''under God.'' This decision is simply wrong. It claims that the American flag symbolizes monotheism. It does no such thing. The Pledge represents our country, our independence, our government—simply, it represents liberty and justice for all. While the phrase ''under God'' undeniably has some religious connotation, it is a term of art with de minimus theological significance. It is not intended to establish a national religion or to prohibit the free exercise of religious beliefs. The thirty-one words of the Pledge of Allegiance, however, are worthy of reverence and respect. To eliminate the phrase ''under God'' would be equivalent to depicting the flag with forty-nine stars or twelve stripes. It changes the constitution of our American identity.

The ''Protect the Pledge Act of 2003'' prevents further judicial encroachment by eliminating federal jurisdiction of claims that the recitation of the Pledge violates the First Amendment. By passing this legislation, Congress is exercising its Constitutional duty to preserve the separation of powers. When the judiciary has oversteps its boundaries, as it has done in Newdow, Congress must act to protect the sanctity of the Pledge of Allegiance. This bill represents a reasoned response to Newdow. By limiting its scope to federal jurisdiction, it leaves open a potential remedy in state court, thereby obviating any due process concerns.

I am hopeful that my colleagues in both Houses will work expeditiously, on a bi-partisan basis, to enact this important legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1297

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 ''Protect the Pledge Act of 2003''.

SEC. 2. JURISDICTION LIMITATION.

(a) IN GENERAL.—Chapter 99 of title 28, United States Code, is amended by adding at the end the following:

''§ 1632. Jurisdiction limitation

''No court established by Act of Congress shall have jurisdiction to hear or determine any claim that the recitation of the Pledge of Allegiance to the Flag ('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.') violates the first article of amendment to the Constitution of the United States.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 99 of title 28, United States Code, is amended by adding at the end the following new item:

''1632. Jurisdiction limitation.''.

By Mr. AKAKA (for himself, Mr. LEAHY, and Mrs. BOXER):

S. 1298. A bill to amend the Farm Security and Rural Investment Act of 2002 to ensure the humane slaughter of non-ambulatory livestock, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. AKAKA. Mr. President, I rise today to introduce the Downed Animal Protection Act, a bill to provide for the humane treatment, handling, and euthanasia of non-ambulatory, downed, livestock unable to stand or walk unassisted.

Farm animals such as cattle, sheep, swine, goats, horses, mules, and other equines that are too severely distressed and sick to move without assistance are often not handled humanely. Due to the extra effort and cost to individually feed and water non-ambulatory livestock, these animals routinely endure very poor conditions. In most cases, the level of suffering of downed animals is so severe that the most humane solution is to euthanize them as soon as possible. It is important to note that non-ambulatory livestock comprise a tiny fraction, less than one percent, of all animals at stockyards.

The humane euthanasia of non-ambulatory livestock would also protect human health. Many of the downed animals that survive in the stockyard are slaughtered for human consumption. A large majority of these non-ambulatory animals are contaminated with fecal matter, the main cause of Salmonella. U.S. citizen groups, such as the Parents of Sickened Children, have called for improved regulations to stop sickness and death from preventable diseases like Salmonella.

I commend responsible and conscientious livestock organizations and producers such as the United Stockyards Corporation, the Minnesota Livestock Marketing Association, the National Pork Producers Council, the Colorado Cattlemen's Association, and the Independent Cattlemen's Association of Texas for their efforts to address the issue of downed animals. However, the need for stronger legislation to ensure that non-ambulatory animals do not enter our food chain is evident, particularly with the recent discovery of Bovine Spongiform Encephalopathy BSE, in Canada.

The Downed Animal Protection Act will remove the incentive for sending non-ambulatory livestock to stockyards, thereby reducing the risk that these animals will be processed for human consumption and discouraging their inhumane treatment at farms and ranches. My bill will complement the industry's current efforts to address this problem and make the issue of downed animals a priority.

My legislation would set a uniform national standard, thereby removing

any unfair advantage that might result from different standards throughout the industry. Furthermore, no additional bureaucracy will be needed as a consequence of my bill because inspectors regularly visit stockyards and slaughter facilities to enforce existing regulations. Thus, the additional burden on the agency and stockyard operators will be insignificant.

As I stated before, this bill will stop the inhumane and improper treatment of downed animals while also helping to ensure that our food supply remains safe. I encourage my colleagues to support 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:

S. 1298

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 ''Downed Animal Protection Act''.

SEC. 2. UNLAWFUL SLAUGHTER PRACTICES INVOLVING NONAMBULATORY LIVESTOCK.

(a) IN GENERAL.—Section 10815 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1967) is amended—

(1) by redesignating subsection (c) as subsection (f);

(2) by striking subsections (a) and (b) and inserting the following:

''(a) DEFINITIONS.—In this section:

''(1) COVERED ENTITY.—The term 'covered entity' means—

''(A) a stockyard;

''(B) a market agency;

''(C) a dealer;

''(D) a slaughter facility; and

''(E) an establishment.

''(2) ESTABLISHMENT.—The term 'establishment' means an establishment that is covered by the Federal Meat Inspection Act (21 U.S.C. 601 et seq.).

''(3) HUMANELY EUTHANIZE.—The term 'humanely euthanize' means to kill an animal by mechanical, chemical, or other means that immediately renders the animal unconscious, with this state remaining until the death of the animal.

''(4) NONAMBULATORY LIVESTOCK.—The term 'nonambulatory livestock' means any cattle, sheep, swine, goats, or horses, mules, or other equines, that are unable to stand and walk unassisted.

''(5) SECRETARY.—The term 'Secretary' means the Secretary of Agriculture.

''(b) HUMANE TREATMENT, HANDLING, AND DISPOSITION.—The Secretary shall promulgate regulations to provide for the humane treatment, handling, and disposition of nonambulatory livestock by covered entities, including a requirement that nonambulatory livestock be humanely euthanized.

''(c) HUMANE EUTHANASIA.—

''(1) IN GENERAL.—Subject to paragraph (2), when an animal becomes nonambulatory, a covered entity shall immediately humanely euthanize the nonambulatory livestock.

''(2) DISEASE TESTING.—Paragraph (1) shall not limit the ability of the Secretary to test nonambulatory livestock for a disease, such as Bovine Spongiform Encephalopathy.

''(d) MOVEMENT.—

''(1) IN GENERAL.—A covered entity shall not move nonambulatory livestock while the nonambulatory livestock are conscious.

''(2) UNCONSCIOUSNESS.—In the case of any nonambulatory livestock that are moved, the covered entity shall ensure that the nonambulatory livestock remain unconscious until death.

''(e) INSPECTIONS.—It shall be unlawful for an establishment to pass through inspection any nonambulatory livestock.'';

(3) in subsection (f) (as redesignated by paragraph (1))—

(A) in the first sentence—

(i) by inserting ''this section and'' after ''enforcing''; and

(ii) by striking ''subsection (b)'' and inserting ''this section''; and

(B) in the second sentence—

(i) by inserting ''this section or'' after ''violates''; and

(ii) by striking ''subsection (b)'' and inserting ''this section''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) take effect on the date that is 1 year after the date of enactment of this Act.

(2) REGULATIONS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Agriculture shall promulgate final regulations to implement the amendments made by subsection (a).

By Ms. SNOWE (for herself and Ms. MURKOWSKI):

S. 1299. A bill to amend the Trade Act of 1974 to provide trade readjustment and development enhancement for America's communities, and for other purposes; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise to introduce the ''TRADE for America's Communities Act'' in recognition of the critical need to provide economic development assistance to communities, across this Nation, that have been negatively impacted by trade. I am pleased to be joined by Senator MURKOWSKI in offering this critical legislation.

We are faced with a challenge to a U.S. trade program from the international community and with communities that are being left behind in an era of global commerce. Congress must make the difficult decisions to turn these two challenges into opportunities for this Nation. In 1999, I supported the Continued Dumping and Subsidy Offset Act, authored by Senator DEWINE, that used the revenue from countervailing and antidumping tariff duties to provide assistance to the firms that were affected by unfair trade. I supported that bill because it introduced an important policy principle: that the revenue from unfair trade should be used to help those hurt by trade.

Unfortunately, that act ran afoul of our international commitments. In January, the World Trade Organization ruled that this program was in violation of our Antidumping Agreement, and the President requested Congress repeal that program in order to bring the United States into compliance. While I cannot support a full repeal of this program, I believe the bill we are introducing today will bring the United States into compliance with our international obligations, while maintaining the principle that this money be used to help those hurt by trade.

In fact, the TRADE for America's Communities Act builds upon the strong foundation and principles of Senator DEWINE's program and it is my hope that other proponents of the CDSOA will support our efforts to address the needs of these communities. While it is necessary to live up to our international agreements, it is just as imperative that we live up to our responsibilities to the fishing towns, mining towns and mill towns of America where jobs have been lost.

With the momentum provided by the passage of Trade Promotion Authority, the President has put forth an agenda on a bilateral, regional and global basis that promotes the liberalization of trade. As the President has argued, this policy agenda creates new opportunities for prosperity and growth.

At the same time, we must never forget that opportunities of market access, improved consumer choice, and availability of manufacturing inputs, come with the price of transitions, dislocations, and shifts in the U.S. economy. These dynamic changes that are outgrowths from trade are similar to technological advances in productivity that leave workers out of jobs, or plants out of operation. However, while technological advances are the initiative of private enterprise, trade liberalization is the chosen policy of government. Free trade creates opportunities, but it also creates responsibilities that this government must embrace just as firmly as it embraces free trade.

The bill we are introducing today address these issues by giving the Department of Commerce the revenue from these tariffs, which currently goes to corporations, to provide technical assistance to communities that have been negatively impacted by trade, to develop strategic plans that would focus on creating and retaining jobs in a community and promote economic diversification. Once the strategic plans have been approved by the Department of Commerce, grants would be available, based on the needs of the community, to implement economic development projects, improve the local infrastructure, support the establishment of small businesses, and attract new businesses.

In small towns, where the livelihood of the local economy depends on one industry, one plant, or one company, that is suffering under trade liberalization, it can cause devastation when that steel mill, paper mill, or textile mill shuts down. In towns like East Millinocket, ME, where Great Northern Paper went bankrupt, or in Waterville, Maine, where Hathaway shut down their plant and moved shirt production overseas, local economies were sent into disarray. That is just part of the reason I was so adamant in my support last year for improvements in Trade Adjustment Assistance.

Congress did the right thing when we expanded TAA training and benefits in the Trade Act of 2002, but one of the complaints leveled against TAA was the concern over what these workers would be able to do with their new

training in small towns that had few jobs to offer. The ''TRADE for America's Communities Act'' seeks to answer those concerns by ensuring that in towns where there may be few opportunities left, this government takes the first step towards providing hope through economic adjustment assistance.

The ''TRADE for America's Communities Act'' would lay the groundwork for an America where no community is left behind in the march towards a free and open global economy. As the Finance Committee continues its work on trade legislation and the numerous trade agreements being proposed by this Administration, I look forward to the opportunity to address the economic development needs of these communities.

By Ms. CANTWELL:

S. 1300. A bill to prohibit a health plan from contracting with a pharmacy benefit manager (PBM) unless the PBM satisfies certain requirements, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Ms. CANTWELL. Mr. President, I rise today to offer the Prescription Drug Consumer Information Act. I believe this legislation will dramatically improve the way in which prescription drug benefits are provided to our Nation's 40 million senior citizens through the Medicare program.

The Prescription Drug Consumer Information Act is intended to provide some assurances that the billions of dollars being spent on this new prescription drug benefit for Medicare is going as far as possible. The Act is focused primarily on the practices of pharmacy benefit managers, the private companies that would most likely administer the new prescription drug benefit called for under the Prescription Drug Benefits Bill.

PBMs have come to dominate the prescription drug benefit market and subsequently, have been the target of criticism by the employers and health plans that contract with them. The source of the controversy has been the cost cutting practices of PBMs, which have allowed them to make prescription drug coverage more affordable. However, the fact that drug prices continue to rise in the face of these cost-cutting efforts, has led some to question PBM practices in the private sector. As we move forward in providing prescription drug coverage within a government-operated program as large as Medicare it is critical that there be adequate safeguards in place. My bill would provide greater scrutiny and auditing of PBMs contracting with the government and also provide some consumer protections for all Americans who purchase prescription drugs.

The market share of prescription drug benefits managed by PBMs has grown enormously in recent years. Currently, 90 percent of Americans with prescription drug coverage have their benefits administered by a PMB. Of that 90 percent, nearly 70 percent of those people are served by one of the four major PBM companies. PBMs provide benefits to nearly 200 million Americans, including 65 percent of the Nation's senior population. PBMs have become as powerful in the delivery of prescription drug services as the manufacturers which produce medications.

As PBMs have come to dominate the market, they are increasingly drawing the attention of State lawmakers struggling with skyrocketing prescription drug costs for state workers and large programs like Medicaid. As States focus on reducing pharmaceutical costs, suspicions are growing among state lawmakers and health department officials that the ''behind-closed-doors'' practices of PBMs are responsible for some of the escalating costs of prescription drugs. In 2002, Georgia become the first State to regulate PBMs by requiring they be licensed as pharmacies. This year, 19 States have introduced legislation to regulate or license PBMs.

At issue are the rebates, discounts and other savings that PBMs negotiate with drug manufacturers in exchange for giving their medications ''preferred'' status on the PBMs list of available drugs. Those contracts are a primary source of revenue for the PBMs and for the drug manufacturers who see use of their products increase as the PBM steers its massive consumer base toward the preferred drug. However, because PBMs are so secretive about their arrangements with manufacturers, it is difficult for PBM clients to know if a significant portion of the rebates are being passed back to them as the PBM promises.

PBMs also negotiate lower prices with pharmacies but fail to share those savings with consumers, particularly on generic drugs. A recent Wall Street Journal investigation found that for one drug fluoxetine, a generic of Prozac, PBMs were buying the drug from the pharmacy for about 30 cents a pill. However, most of the PBMs clients were paying $1.06 a pill based on the average markup formula. The PBM was pocketing the difference, which was 76 cents per pill. Multiply that by the number of fluoxetine pills dispensed by the PBMs and it is clear that these private companies are getting rich while consumers continue to pay unnecessarily high drug prices. This may be in the best interests of the PBMs shareholders, but it is a disservice to its customers, which turn to PBMs in an attempt to save money and lower drug costs.

Efforts to better understand the PBM industry have reinforced this attitude of secrecy and backroom deals. Last year, Senator DORGAN requested a General Accounting Office study of whether PBMs were sharing the savings achieved through rebates and discounts with the members of the Federal Employees Health Benefits Plan. Unfortunately, the study provided us with little understanding of how the PBM industry operates because GAO was denied access to the financial documents of the PBM companies. GAO had no way of fulfilling its obligation of reporting to Congress because the PBMs refused to disclose any information about rebates, discounts and other savings generated by FEHBP.

Yet, these same companies want the federal government to hand them billions of dollars for a new Medicare drug benefit without providing any accounting of how that money was spent. Allowing the PBMs to operate a government program in such secrecy is outrageous and would set a terrible policy precedent.

The Prescription Drug Consumer Information Act would improve this system with a five-part approach. First, the Act would eliminate potential conflicts of interest by prohibiting cross ownership of pharmaceutical manufacturing companies and PBMs. Second, it would contain costs by requiring that any PBM contracting with Medicare provide any cost savings negotiated with a pharmacy back to the PBM client, be that client an employer, a health plan or the government.

Third, it would require all pharmacies to disclose the retail cost of a prescription drug upon request by a consumer. Several States, including Washington State, Montana, New York, Oregon and Rhode Island, along with the Virgin Islands, currently require pharmacies to make retail prices available to consumers. This provision is desperately needed across the country. A 2002 survey conducted by the Washington State Attorney General's Office found that retail prices on prescriptions could vary as much as $25 within a city and within a pharmacy chain. All consumers should be able to comparison shop for the best price amongst pharmacies in their area but they cannot do that if they do not know the retail price of various drugs.

Fourth, the amendment would require PBMs on an annual basis to make public the percent of rebate received from the manufacturer that is passed back to the client, such as an employer, health plan or the government. The amendment does not require full public disclosure of the PBMs' negotiations with manufacturers because I realize that such a requirement could damage their ability to get good deals from the manufacturer. This disclosure does not have to take an all or nothing approach. The Act allows the PBM to keep private the specifics of their contracts, but at the same time provides senior citizens some assurance that they are benefiting from the savings achieved in those contracts.

Finally, my bill would strengthen the audit requirements for PBMs administering the Medicare drug benefit to ensure that PBMs are passing those rebates and other savings along to consumers. One of the problems for employers and health plans using PBMs now is that it is difficult for them to

confirm that the PBM is meeting its contractual obligations to pass on a portion of its savings. Auditing provisions in my bill include complete disclosure of the amounts and types of rebates. The results of the audit would not become public, to ensure the PBMs ability to continue to negotiate discounted prices. This approach strikes a fair balance between the PBMs rights as private companies and the duty the PBMs have to share any savings generated by the new benefit with Medicare recipients.

Together, these provisions will ensure that senior citizens and the government are getting the most out of every dollar spent on a Medicare prescription drug benefit and that other consumers who purchase prescription drugs are armed with information before spending their hard-earned money. Consumers should have some assurance that the private companies providing prescription drug insurance are not running up costs and cutting down coverage in an attempt to boost their own bottom lines. The Prescription Drug Consumer Information Act provides those assurances and protections.

By Mr. DEWINE (for himself and Mr. SCHUMER):

S. 1301. A bill to amend title 18, United States Code, to prohibit video voyeurism in the special maritime and territorial jurisdiction of the United States, and of other purposes; to the Committee on the Judiciary.

Mr. DEWINE. Mr. President, I rise today, along with the Senator from New York, Mr. SCHUMER, to introduce the Video Voyeurism Prevention Act of 2003. Our legislation would criminalize the appalling practice of filming or photographing victims without their knowledge or consent under circumstances violating their privacy.

Video voyeurism encompasses what is referred to as ''upskirting'' or ''downshirting.'' As the terms imply, this subset of video voyeurism involves the use of a tiny, undetectable camera to film up the skirt or down the shirt of an unsuspecting target, most often a woman. One of my constituents from Ohio became the victim of this shocking invasion of privacy while she was innocently enjoying a church festival with her 16-month old daughter. I would like to read you what she told the Cincinnati Enquirer newspaper in an article published on October 10, 2000:

As I crouched down to put the baby in my stroller, I saw a video camera sticking out of his bag, taping up my dress. . . . It rocked my whole sense of security.

According to an ABCNEWS.com article that also published this story, this particular perpetrator had surreptitiously filmed a total of 13 women that day. Sadly, this is not an isolated event. The widespread availability of low-cost, high-resolution cameras has lead to an increase in the number of high-profile cases of ''video-voyeurism'' all over our country. Reports of women being secretly videotaped through their clothing at shopping malls, amusement parks, and other public places are far too common.

The impact of video voyeurism on its victims is greatly exacerbated by the Internet. As a result of Internet technology, the pictures that a voyeur captures can be disseminated to a worldwide audience in a matter of seconds. A State representative from Ohio, Representative Ed Jerse, stated it best when he told ABC News that when a woman's picture is posted on the Web, her privacy ''could be violated millions of times.''

Fortunately, my home State of Ohio has enacted a law that specifically targets video voyeurism. But Ohio is one of only a few States that have such a law. That means that in most areas around the country, victims of this practice are not only deprived of their security and their privacy but are left without any recourse against their perpetrator. As the defense attorney for one video voyeur aptly observed, ''the criminal law necessarily lags behind technology and human ingenuity.''

Our Video Voyeurism Prevention Act of 2003 seeks to close the gap in the law and ensure that video voyeurs will be punished for their acts. Our bill would make it a crime to videotape, photograph, film, or otherwise electronically record the naked or undergarment-clad genitals, pubic area, buttocks, or female breast of an individual without that individual's consent. This bill would help ensure that when a person has a reasonable expectation that he or she will not be videoed, filmed, or photographed as I have just described, that expectation of privacy will be recognized in and protected by the law. Additionally, our bill would make certain that perpetrators of video voyeurism are punished, by imposing a sentence of a fine or imprisonment for up to 1 year.

Importantly, however, the mens rea requirements included in this bill guarantee that only those who are truly guilty of this crime will be punished. To be charged with video voyeurism, an actor must intend to capture the prohibited image and must knowingly do so.

In closing, I strongly encourage my colleagues to support the Video Voyeurism Prevention Act of 2003. This legislation would help safeguard the privacy we all take for granted and would help ensure that our criminal law reflects the realities of our rapidly changing technology.

I ask unanimous consent that the text of our bill be printed at the conclusion of my remarks.

S. 1301

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 ''Video Voyeurism Prevention Act of 2003''.

SEC. 2. PROHIBITION OF VIDEO VOYEURISM.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 87 the following new chapter:

''CHAPTER 88—PRIVACY

''Sec.
''1801. Video voyeurism.

''§ 1801. Video voyeurism

''(a) Whoever, in the special maritime and territorial jurisdiction of the United States, having the intent to capture an improper image of an individual, knowingly does so under circumstances violating the privacy of that individual, shall be fined under this title or imprisoned not more than one year, or both.

''(b) In this section—

''(1) the term 'captures', with respect to an image, means videotapes, photographs, films, or records by any electronic means;

''(2) the term 'improper image', with respect to an individual, means an image, captured without the consent of that individual, of the naked or undergarment clad genitals, pubic area, buttocks, or female breast of that individual; and

''(3) the term 'under circumstances violating the privacy of that individual' means under circumstances in which the individual exhibits an expectation that the improper image would not be made, in a situation in which a reasonable person would be justified in that expectation.''.

(b) AMENDMENT TO PART ANALYSIS.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 87 the following new item:

''88. Privacy ..... 1801''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 176—RECOGNIZING THE NATIONAL HOCKEY LEAGUE'S NEW JERSEY DEVILS AND NATIONAL BASKETBALL ASSOCIATION'S NEW JERSEY NETS FOR THEIR ACCOMPLISHMENTS DURING THE 2002–2003 SEASON

Mr. CORZINE (for himself and Mr. LAUTENBERG) submitted the following resolution; which was considered and agreed to:

S. RES. 176

Whereas the New Jersey Devils defeated the Anaheim Mighty Ducks 3-0 on June 9, 2003 to win the Stanley Cup in 7 games;

Whereas the New Jersey Nets won the National Basketball Association (NBA) Eastern Conference Championship and reached the NBA Finals for the second consecutive year before losing a closely contested series to the San Antonio Spurs in 6 games;

Whereas the Devils won their third Stanley Cup in the last 9 years, as many as any other team in that period;

Whereas the Devils and Nets have won over the State of New Jersey (where the first professional basketball game took place in 1898) with their skillful offenses and stifling defenses;

Whereas the Devils and Nets have come to epitomize the never-say-die spirit of the people of New Jersey and have both become an important part of the State and its identity;

Whereas the fans of both New Jersey teams have shown the same spirit and determination in support of their teams and deserve commendation for their loyalty in this season's playoffs;

Whereas the Devils had a 12 win, 1 loss record at the Continental Airlines Arena, the most home wins in the history of the Stanley Cup playoffs;

Whereas the Nets swept both the Boston Celtics and the Detroit Pistons during a 10-

game winning streak in this season's playoffs;

Whereas Pat Burns, head coach of the New Jersey Devils, has enjoyed the kind of success that has eluded so many other great coaches, winning his first Stanley Cup title in his first season as head coach of the Devils;

Whereas Byron Scott, head coach of the New Jersey Nets, has guided the Nets to the most wins in franchise history, and has led them to the NBA Finals in 2 of his 3 seasons as head coach;

Whereas Martin Brodeur, regarded by many as the premier playoff goaltender in hockey history, recorded 3 shutouts in the Finals, giving him 7 shutouts during this season's playoffs and 20 during his illustrious postseason career;

Whereas the outstanding playmaking abilities of Jason Kidd, widely regarded as the best point guard in the NBA, has been key to the success of the Nets during the past 2 seasons;

Whereas the outstanding play of Ken Daneyko, Martin Brodeur, Scott Stevens, Sergei Brylin, and Scott Neidermayer has been a vital part of each of the 3 Stanley Cup Championships enjoyed by the New Jersey Devils organization;

Whereas Jason Kidd has superb teammates in Brandon Armstrong, Jason Collins, Lucious Harris, Richard Jefferson, Anthony Johnson, Kerry Kittles, Donny Marshall, Kenyon Martin, Dikembe Mutombo, Rodney Rogers, Brian Scalabrine, Tamar Slay, and Aaron Williams, allowing the team to win its second consecutive NBA Eastern Conference championship; and

Whereas the name of each Devils player will be inscribed on the Stanley Cup, including Tommy Albelin, Jiri Bicek, Martin Brodeur, Sergei Brylin, Ken Daneyko, Patrik Elias, Jeff Friesen, Brian Gionta, Scott Gomez, Jamie Langenbrunner, John Madden, Grant Marshall, Jim McKenzie, Scott Niedermayer, Joe Nieuwendyk, Jay Pandolfo, Brian Rafalski, Pascal Rheaume, Mike Rupp, Corey Schwab, Richard Schmelik, Scott Stevens, Turner Stevenson, Oleg Tverdovsky, and Colin White: Now, therefore, be it

Resolved, That the Senate congratulates—

(1) the New Jersey Devils for their determination, perseverance, and excellence in winning the National Hockey League's 2003 Stanley Cup; and

(2) the New Jersey Nets for their success during the 2002-2003 NBA season.

SENATE RESOLUTION 177—TO DIRECT THE SENATE COMMISSION ON ART TO SELECT AN APPROPRIATE SCENE COMMEMORATING THE GREAT COMPROMISE OF OUR FOREFATHERS ESTABLISHING A BICAMERAL. CONGRESS WITH EQUAL STATE REPRESENTATION IN THE UNITED STATES SENATE, TO BE PLACED IN THE LUNETTE SPACE IN THE SENATE RECEPTION ROOM IMMEDIATELY ABOVE THE ENTRANCE INTO THE SENATE CHAMBER LOBBY, AND TO AUTHORIZE THE COMMITTEE ON RULES AND ADMINISTRATION TO OBTAIN TECHNICAL ADVICE AND ASSISTANCE IN CARRYING OUT ITS DUTIES

Mr. DODD submitted the following resolution, which was referred to the Committee on Rules and Administration:

S. RES. 177

Resolved, That (a) a Member of the Senate or any other person may not remove a work of art, historical object, or an exhibit from the Senate wing of the Capitol or any Senate office building for personal use.

(b) For purposes of this resolution, the term ''work of art, historical object, or an exhibit'' means an item, including furniture, identified on the list (and any supplement to the list) required by section 4 of Senate Resolution 382, 90th Congress, as enacted into law by section 901(a) of Public Law 100–696 (2 U.S.C. 2104).

(c) For purposes of this resolution, the Senate Commission on Art shall update the list required by section 4 of Senate Resolution 382, 90th Congress (2 U.S.C. 2104) every 6 months after the date of adoption of this resolution and shall provide a copy of the updated list to the Committee on Rules and Administration.

AMENDMENTS SUBMITTED & PROPOSED

SA 936. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes; which was ordered to lie on the table.

SA 937. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill S. 1, supra; which was ordered to lie on the table.

SA 938. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill S. 1, supra; which was ordered to lie on the table.

SA 939. Mr. DASCHLE (for himself, Mr. NELSON of Nebraska, Ms. MIKULSKI, and Mr. JOHNSON) proposed an amendment to the bill S. 1, supra.

SA 940. Mr. KERRY submitted an amendment intended to be proposed by him to the bill S. 1, supra; which was ordered to lie on the table.

SA 941. Mr. WYDEN (for himself, Mrs. MURRAY, and Mr. SMITH) submitted an amendment intended to be proposed by him to the bill S. 1, supra; which was ordered to lie on the table.

SA 942. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 1, supra; which was ordered to lie on the table.

SA 943. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 1, supra; which was ordered to lie on the table.

SA 944. Mr. ENZI (for Ms. CANTWELL) proposed an amendment to amendment SA 932 proposed by Mr. ENZI (for himself, Mr. REED, and Mr. PRYOR) to the bill S. 1, supra.

SA 945. Mr. GREGG (for himself, Mr. SCHUMER, Mr. MCCAIN, Mr. KENNEDY, Mr. ROBERTS, Mr. EDWARDS, Ms. COLLINS, Mr. LEAHY, Mr. JOHNSON, Mr. FEINGOLD, Mr. HARKIN, Mr. KOHL, Mr. SMITH, Ms. STABENOW, Mr. MILLER, and Mr. COLEMAN) proposed an amendment to the bill S. 1, supra.

SA 946. Mr. DORGAN (for himself, Ms. STABENOW, Mr. JEFFORDS, Ms. SNOWE, Mr. JOHNSON, Mr. LEAHY, Mrs. BOXER, Mr. PRYOR, Mr. FEINGOLD, and Ms. COLLINS) proposed an amendment to the bill S. 1, supra.

SA 947. Mr. FRIST (for Mr. COCHRAN (for himself, Mr. FRIST, Mr. BREAUX, and Mr. SANTORUM)) proposed an amendment to amendment SA 946 proposed by Mr. DORGAN (for himself, Ms. STABENOW, Mr. JEFFORDS, Ms. SNOWE, Mr. JOHNSON, Mr. LEAHY, Mrs. BOXER, Mr. PRYOR, Mr. FEINGOLD, and Ms. COLLINS) to the bill S. 1, supra.

SA 948. Mr. GRAHAM, of South Carolina submitted an amendment intended to be proposed by him to the bill S. 1, supra; which was ordered to lie on the table.

SA 949. Mr. HARKIN submitted an amendment intended to be proposed by him to the bill S. 1, supra; which was ordered to lie on the table.

SA 950. Mr. PRYOR submitted an amendment intended to be proposed by him to the bill S. 1, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 936. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes; which was ordered to lie on the table, as follows:

At the end of subtitle C of title II, add the following:

SEC. ___. EXTENSION OF DEMONSTRATION FOR ESRD MANAGED CARE.

The Secretary shall extend without interruption, through December 31, 2007, the approval of the demonstration project, Contract No. H1021, under the authority of section 2355(b)(1)(B)(iv) of the Deficit Reduction Act of 1984, as amended by section 13567 of the Omnibus Reconciliation Act of 1993. Such approval shall be subject to the terms and conditions in effect for the 2002 project year with respect to eligible participants and covered benefits. The Secretary shall set the monthly capitation rate for enrollees on the basis of the reasonable medical and direct administrative costs of providing those benefits to such participants.

SA 937. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes; which was ordered to lie on the table, as follows:

At the end of subtitle B of title IV, add the following:

SEC. ___. PROHIBITION OF INCIDENTAL FEES AND REQUIRED PURCHASE OF NONCOVERED ITEMS OR SERVICES UNDER MEDICARE.

(a) IN GENERAL.—Section 1842 (42 U.S.C. 1395u) is amended by adding at the end the following new subsection:

''(u) PROHIBITION OF INCIDENTAL FEES OR REQUIRING PURCHASE OF NONCOVERED ITEMS OR SERVICES.—

''(1) IN GENERAL.—A physician, practitioner (as described in section 1842(b)(18)(C)), or other individual may not—

''(A) charge a membership fee or any other incidental fee to a medicare beneficiary (as defined in section 1802(b)(5)(A)); or

''(B) require a medicare beneficiary (as so defined) to purchase a noncovered item or service,

as a prerequisite for the provision of a covered item or service to the beneficiary under this title.

''(2) CONSTRUCTION.—Nothing in this subsection shall be construed to apply the prohibition under paragraph (1) to a physician, practitioner, or other individual described in such subsection who does not accept any funds under this title.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to membership fees and other charges made, or purchases of items and services required, on or after the date of enactment of this Act.

SA 938. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title IV, add the following:

SEC. ___. GAO STUDY AND REPORT ON THE PROPAGATION OF CONCIERGE CARE.

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on concierge care (as defined in paragraph (2)) to determine the extent to which such care—

(A) is used by medicare beneficiaries (as defined in section 1802(b)(5)(A) of the Social Security Act (42 U.S.C. 1395a(b)(5)(A))); and

(B) has impacted upon the access of medicare beneficiaries (as so defined) to items and services for which reimbursement is provided under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(2) CONCIERGE CARE.—In this section, the term ''concierge care'' means an arrangement under which, as a prerequisite for the provision of a health care item or service to an individual, a physician, practitioner (as described in section 1842(b)(18)(C) of the Social Security Act (42 U.S.C. 1395u(b)(18)(C))), or other individual—

(A) charges a membership fee or another incidental fee to an individual desiring to receive the health care item or service from such physician, practitioner, or other individual; or

(B) requires the individual desiring to receive the health care item or service from such physician, practitioner, or other individual to purchase an item or service.

(b) REPORT.—Not later than the date that is 12 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the study conducted under subsection (a)(1) together with such recommendations for legislative or administrative action as the Comptroller General determines to be appropriate.

SA 939. Mr. DASCHLE (for himself, Mr. NELSON of Nebraska, Ms. MIKULSKI, and Mr. JOHNSON) proposed an amendment to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes; as follows:

On page 103, strike lines 10 though 13 and insert the following:

''(B) the lesser of—

''(i) the amount by which the monthly plan premium approved by the Administrator for the plan exceeds the amount of the monthly national average premium; or

''(ii) in the case of an eligible beneficiary who is enrolled in a Medicare Prescription Drug plan that provides standard prescription drug coverage or an actuarially equivalent prescription drug coverage and does not provide additional prescription drug coverage pursuant to section 1860D–6(a)(2), an amount equal to 10 percent of the amount of the monthly national average premium.

On page 77, strike lines 10 through 22 and insert the following:

''(A) IN GENERAL.—In the case of an eligible beneficiary receiving access to qualified prescription drug coverage through enrollment with an entity with a contract under paragraph (1)(B), the monthly beneficiary obligation of such beneficiary for such enrollment shall be an amount equal to the lesser of—

''(i) the applicable percent (for the area in which the beneficiary resides, as determined under section 1860D–17(c)) of the monthly national average premium (as computed under section 1860D–15) for the year as adjusted using the geographic adjuster under subparagraph (B); or

''(ii) 110 percent of an amount equal to the applicable percent (as determined under section 1860D–17(c) before any adjustment under paragraph (2) of such section) of the monthly national average premium (as computed under section 1860D–15 before any adjustment under subsection (b) of such section) for the year.

SA 940. Mr. KERRY submitted an amendment intended to be proposed by him to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes; which was ordered to lie on the table; as follows:

On page 200, between lines 13 and 14, insert the following:

SEC. ___. ACCESS TO DISCOUNTED PRESCRIPTION DRUGS.

(a) IN GENERAL.—From amounts made available under subsection (c), the Secretary of Health and Human Services shall award grants to covered entities described in section 340B(a)(4) of the Public Health Service Act (42 U.S.C. 256b(a)(4)) to enable such entities to pay the start-up costs associated with the establishment of pharmacies to provide covered drugs under such section 340B.

(b) APPLICATION.—To be eligible to receive a grant under subsection (a), a covered entity shall prepare and submit to the Secretary of Health and Human Services an application at such time, in such manner, and containing such information as the Secretary may require.

(c) FUNDING.—There shall be made available from the Prescription Drug Account established under section 1860DD-25 of the Social Security Act, $300,000,000 to carry out this section. Amounts made available under this subsection shall remain available until expended.

SA 941. Mr. WYDEN (for himself, Mrs. MURRAY, and Mr. SMITH) submitted an amendment intended to be proposed by him to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title IV, add the following:

SEC. ___. MEDPAC STUDY ON MEDICARE PAYMENTS AND EFFICIENCIES IN THE HEALTH CARE SYSTEM.

Not later than 18 months after the date of enactment of this Act, the Medicare Payment Advisory Commission established under section 1805 of the Social Security Act (42 U.S.C. 1395b–6) shall provide Congress with recommendations to recognize and reward, within payment methodologies for physicians and hospitals established under the medicare program under title XVIII of the Social Security Act, efficiencies, and the lower utilization of services created by the practice of medicine in historically efficient and low-cost areas. Measures of efficiency recognized in accordance with the preceding sentence shall include—

(1) shorter hospital stays than the national average;

(2) fewer physician visits than the national average;

(3) fewer laboratory tests than the national average;

(4) a greater utilization of hospice services than the national average; and

(5) the efficacy of disease management and preventive health services.

SA 942. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes; which was ordered to lie on the table; as follows:

On page 204, after line 22, insert the following:

SEC. 133. PHARMACY BENEFIT MANAGERS TRANSPARENCY REQUIREMENTS.

(a) MEDICARE.—Subpart 3 of part D of title XVIII of the Social Security Act (as added by section 101) is amended by adding at the end the following new section:

''PHARMACY BENEFIT MANAGERS TRANSPARENCY REQUIREMENTS

''SEC. 1860D–27. Notwithstanding any other provision of law, an eligible entity offering a Medicare Prescription Drug plan under this part or a MedicareAdvantage organization offering a MedicareAdvantage plan under part C shall not enter into a contract with any pharmacy benefit manager (in this section referred to as a 'PBM') to manage the prescription drug coverage provided under such plan, or to control the costs of such coverage, unless the PBM satisfies the following requirements:

''(1) The PBM is not owned by a pharmaceutical manufacturing company.

''(2) The PBM agrees to pass along any cost savings negotiated with a pharmacy to the Medicare Prescription Drug plan or the MedicareAdvantage plan.

''(3) The PBM agrees to make public on an annual basis the percent of manufacturer's rebates received by the PBM that is passed back to the Medicare Prescription Drug plan or the MedicareAdvantage plan on a drug-by-drug basis.

''(4) The PBM agrees to provide, at least annually, the Medicare Prescription Drug plan or the MedicareAdvantage plan with all financial and utilization information requested by the plan relating to the provision of benefits to eligible beneficiaries through the PBM and all financial and utilization information relating to services provided to the plan. A PBM providing information under this paragraph may designate that information as confidential. Information designated as confidential by a PBM and provided to a plan under this paragraph may not be disclosed to any person without the consent of the PBM.

''(5) The PBM agrees to provide, at least annually, the Medicare Prescription Drug plan or the MedicareAdvantage plan with all financial terms and arrangements for remuneration of any kind that apply between the PBM and any prescription drug manufacturer or labeler, including formulary management and drug-switch programs, educational support, claims processing and

pharmacy network fees that are charged from retail pharmacies and data sales fees.

''(6) The PBM agrees to disclose the retail cost of a prescription drug upon request by a consumer.''.

(b) EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended by adding at the end the following:

''SEC. 714. PHARMACY BENEFIT MANAGERS TRANSPARENCY REQUIREMENTS.

''The provisions of section 1860D–27 of the Social Security Act shall apply to a group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, in the same manner as such provisions apply to an eligible entity offering a Medicare Prescription Drug plan under part D of title XVIII of the Social Security Act or to a MedicareAdvantage organization offering a MedicareAdvantage plan under part C of title XVIII of that Act.''.

(2) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 713 the following:

''Sec. 714. Pharmacy benefit managers transparency requirements.''.

(3) EFFECTIVE DATES.—The amendments made by this subsection shall apply with respect to plan years beginning on or after the date of enactment of this Act.

(c) AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT RELATING TO THE GROUP MARKET.—

(1) IN GENERAL.—Subpart 2 of part A of title XXVII of the Public Health Service Act (42 U.S.C. 300gg-4 et seq.) is amended by adding at the end the following:

''SEC. 2707. PHARMACY BENEFIT MANAGERS TRANSPARENCY REQUIREMENTS.

''The provisions of section 1860D–27 of the Social Security Act shall apply to a group health plan and a health insurance issuer providing health insurance coverage in connection with a group health plan, in the same manner as such provisions apply to an eligible entity offering a Medicare Prescription Drug plan under part D of title XVIII of the Social Security Act or to a MedicareAdvantage organization offering a MedicareAdvantage plan under part C of title XVIII of that Act.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to group health plans and health insurance issuers in connection with group health plans for plan years beginning on or after the date of enactment of this Act.

(d) AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT RELATING TO THE INDIVIDUAL MARKET.—

(1) IN GENERAL.—The first subpart 3 of part B of title XXVII of the Public Health Service Act (42 U.S.C. 300gg-51 et seq.) is amended—

(A) by redesignating such subpart as subpart 2; and

(B) by adding at the end the following:

''SEC. 2753. PHARMACY BENEFIT MANAGERS TRANSPARENCY REQUIREMENTS.

''The provisions of section 1860D–27 of the Social Security Act shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as they apply to an eligible entity offering a Medicare Prescription Drug plan under part D of title XVIII of the Social Security Act or to a MedicareAdvantage organization offering a MedicareAdvantage plan under part C of title XVIII of that Act.''.

(2) EFFECTIVE DATE.—The amendment made by subsection (c)(1)(B) shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after the date of enactment of this Act.

(e) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Subchapter B of chapter 100 of the Internal Revenue Code of 1986 is amended by inserting after section 9812 the following:

''SEC. 9813. PHARMACY BENEFIT MANAGERS TRANSPARENCY REQUIREMENTS.

''The provisions of section 1860D–27 of the Social Security Act shall apply to a group health plan in the same manner as they apply to an eligible entity offering a Medicare Prescription Drug plan under part D of title XVIII of the Social Security Act or to a MedicareAdvantage organization offering a MedicareAdvantage plan under part C of title XVIII of that Act.''.

(2) CLERICAL AMENDMENT.—The table of contents for chapter 100 of such Code is amended by inserting after the item relating to section 9812 the following

''Sec. 9813. Required coverage of young adults.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to plan years beginning on or after the date of enactment of this Act.

SA 943. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes; which was ordered to lie on the table; as follows:

On page 516, after line 22, add the following:

SEC. ___. INCENTIVE PAYMENT IN MEDICARE HEALTH PROFESSIONAL SHORTAGE AREAS DEMONSTRATION PROJECT.

Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by adding at the end the following new section:

''INCENTIVE PAYMENTS IN MEDICARE HEALTH PROFESSIONAL SHORTAGE AREAS DEMONSTRATION PROJECT

''SEC. 1897. (a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary shall establish a demonstration project under which—

''(A) pursuant to paragraph (3), the Secretary designates areas in a State selected under paragraph (5) as medicare health professional shortage areas; and

''(B) an incentive payment is provided under part B to primary care physicians for each physician's service (as defined in section 1861(q)) that is furnished in a medicare health professional shortage area to an individual enrolled under such part.

''(2) PRIMARY CARE PHYSICIAN DEFINED.—For purposes of this section, the term 'primary care physician' has the meaning given such term for purposes of designating health professional shortage areas under section 332(a) of the Public Health Service Act (42 U.S.C. 254e(a)).

''(3) DESIGNATION OF AREAS.—The Secretary shall designate an area in a State selected under paragraph (5) as a medicare health professional shortage area if the Secretary determines, using the methodology established under subsection (b)(1)(B), that individuals enrolled under part B and residing in the area have inadequate access to primary care physicians.

''(4) TERMS AND CONDITIONS.—

''(A) INCENTIVE PAYMENT IN ADDITION TO PAYMENT OTHERWISE MADE.—

''(i) IN GENERAL.—Subject to clause (ii), the incentive payment made under the demonstration project for a physician's service shall be in addition to the amount otherwise made for the service under part B.

''(ii) NO PAYMENTS UNDER THE INCENTIVE PAYMENT PROGRAM IN A DEMONSTRATION STATE DURING OPERATION OF THE DEMONSTRATION PROGRAM.—Subject to subparagraph (D), notwithstanding section 1833(m), during the operation of the demonstration project in a State selected under paragraph (5), the Secretary may not make any incentive payment to any physician under such section for any service furnished in any part of such State, regardless of—

''(I) whether the physician is eligible for bonus payments under the demonstration program; and

''(II) where the service was furnished in the State.

''(B) AMOUNT OF INCENTIVE PAYMENT.—The amount of the incentive payment for a physician's service furnished under the demonstration project shall be an amount equal to 40 percent of the payment amount for the service under part B.

''(C) NO EFFECT ON AMOUNT OF COINSURANCE AN INDIVIDUAL IS REQUIRED TO PAY.—The amount of any coinsurance that an individual enrolled under part B is responsible for paying with respect to a physicians' service furnished to the individual shall be determined as if this section had not been enacted.

''(D) NO EFFECT ON PAYMENTS TO CRITICAL ACCESS HOSPITALS.—The amount of payment for outpatient critical access services of a critical access hospital under section 1834(g) shall be determined as if this section had not been enacted.

''(5) DEMONSTRATION SITES.—The Secretary shall conduct the demonstration project in 5 States selected by the Secretary as demonstration sites.

''(6) AUTOMATION OF INCENTIVE PAYMENTS.—

''(A) IN GENERAL.—Under the demonstration project, incentive payments under paragraph (1)(B) to a primary care physician shall be made automatically to the physician rather than the physician being responsible for determining when a payment is required to be made under that paragraph.

''(B) INCENTIVE PAYMENT BASED ON ZIP CODES.—In order to comply with subparagraph (A), the Secretary shall establish procedures in which the amount of payment otherwise made for a physician's service is automatically increased by the amount of the incentive payment under the demonstration project if the service was furnished in any zip code that is entirely or partially in a designated medicare health professional shortage area in a State selected under paragraph (5).

''(7) DURATION.—The demonstration project shall be conducted for a 3-year period. The period for establishing the methodology under subsection (b) shall not be counted for purposes determining such 3-year period.

''(b) ESTABLISHMENT OF METHODOLOGY FOR ASSISTING SECRETARY IN DESIGNATING MEDICARE HEALTH PROFESSIONAL SHORTAGE AREAS.—

''(1) IN GENERAL.—The Secretary shall select 1 or more Federal rural health research centers within the Health Resources Services Administration to establish a methodology to assist the Secretary in designating areas within the States selected under subsection (a)(5) as medicare health professional shortage areas pursuant to subsection (a)(3).

''(2) RULES FOR ESTABLISHING METHODOLOGY.—

''(A) IN GENERAL.—The methodology established under paragraph (1) shall address—

''(i) how to measure the percentage of the total population in an area that consists of individuals enrolled under part B; and

''(ii) the appropriate ratio of such individuals to primary care physicians in an area in order to ensure that such individuals have adequate access to services furnished by such physicians.

''(B) METHODOLOGY MAY BE SIMILAR TO METHODOLOGIES USED UNDER THE PUBLIC HEALTH SERVICE ACT.—The methodology established under paragraph (1) may be similar to methodologies utilized by the Secretary for designating areas, and population groups within areas, as health professional shortage areas under section 332(a) of the Public Health Service Act (42 U.S.C. 254e(a)).

''(C) CONSULTATION.—The Federal rural health research centers selected under paragraph (1) shall consult with the State and local medical societies of the States selected under subsection (a)(5) in establishing the methodology under paragraph (1).

''(c) NO EFFECT ON DESIGNATION AS A HEALTH PROFESSIONAL SHORTAGE AREA.—Except as provided in subsection (a)(4)(A)(ii), the designation of an area as a medicare health professional shortage area under subsection (a)(3) shall have no effect on the designation of such area as a health professional shortage area under section 332(a) of the Public Health Service Act (42 U.S.C. 254e(a)).

''(d) WAIVER AUTHORITY.—The Secretary may waive such requirements of title XI and this title as may be necessary for the purpose of carrying out the demonstration project.

''(e) REPORT.—

''(1) IN GENERAL.—Not later than 6 months after the completion of the demonstration project, the Secretary shall submit to Congress a report on such project.

''(2) CONTENTS.—The report submitted under paragraph (1) shall contain—

''(A) an evaluation of whether the demonstration project has had the effect of stabilizing, maintaining, or increasing access of individuals enrolled under part B to physicians' services furnished by primary care physicians, including whether the amount of the incentive payment is adequate to stabilize, maintain, or increase such access and if not, then what amount will;

''(B) a comparison of the effectiveness of the demonstration project in stabilizing, maintaining, or increasing such access with the effectiveness of other Federal, State, and local programs, such as the incentive program under section 1833(m), that are designed to stabilize, maintain, or increase such access;

''(C) recommendations for such legislation and administrative actions as the Secretary considers appropriate; and

''(D) any other items that the Secretary considers appropriate.

''(f) FUNDING.—

''(1) INCENTIVE PAYMENTS.—The Secretary shall use funds in the Federal Supplementary Medical Insurance Trust Fund under section 1841 to make the incentive payments under this section.

''(2) ESTABLISHMENT OF METHODOLOGY.—

''(A) IN GENERAL.—There is authorized to be appropriated $6,000,000 to establish the methodology under subsection (b)(1).

''(B) AVAILABILITY.—Any amounts appropriated pursuant to subparagraph (A) shall remain available until expended.''.

SA 944. Mr. ENZI (for Ms. CANTWELL) proposed an amendment to amendment SA 932 proposed by Mr. ENZI (for himself, Mr. REED, and Mr. PRYOR) to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes; as follows:

On page 2 of amendment SA#932 between lines 18 and 19 strike ''.'' and insert the following: ''with the auditor of the Administrator's choice.''

SA 945. Mr. GREGG (for himself, Mr. SCHUMER, Mr. MCCAIN, Mr. KENNEDY, Mr. ROBERTS, Mr. EDWARDS, Ms. COLLINS, Mr. LEAHY, Mr. JOHNSON, Mr. FEINGOLD, Mr. HARKIN, Mr. KOHL, Mr. SMITH, Ms. STABENOW, Mr. MILLER, and Mr. COLEMAN) proposed an amendment to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes; as follows:

At the end, add the following:

TITLE ___—ACCESS TO AFFORDABLE PHARMACEUTICALS

SEC. ___01. SHORT TITLE.

This title may be cited as the ''Greater Access to Affordable Pharmaceuticals Act''.

SEC. ___02. 30-MONTH STAY-OF-EFFECTIVENESS PERIOD.

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

(1) in paragraph (2), by striking subparagraph (B) and inserting the following:

''(B) NOTICE OF OPINION THAT PATENT IS INVALID OR WILL NOT BE INFRINGED.—

''(i) AGREEMENT TO GIVE NOTICE.—An applicant that makes a certification described in subparagraph (A)(vii)(IV) shall include in the application a statement that the applicant will give notice as required by this subparagraph.

''(ii) TIMING OF NOTICE.—An applicant that makes a certification described in subparagraph (A)(vii)(IV) shall give notice as required under this subparagraph—

''(I) if the certification is in the application, not later than 20 days after the date of the postmark on the notice with which the Secretary informs the applicant that the application has been filed; or

''(II) if the certification is in an amendment or supplement to the application, at the time at which the applicant submits the amendment or supplement, regardless of whether the applicant has already given notice with respect to another such certification contained in the application or in an amendment or supplement to the application.

''(iii) RECIPIENTS OF NOTICE.—An applicant required under this subparagraph to give notice shall give notice to—

''(I) each owner of the patent that is the subject of the certification (or a representative of the owner designated to receive such a notice); and

''(II) the holder of the approved application under subsection (b) for the drug that is claimed by the patent or a use of which is claimed by the patent (or a representative of the holder designated to receive such a notice).

''(iv) CONTENTS OF NOTICE.—A notice required under this subparagraph shall—

''(I) state that an application that contains data from bioavailability or bioequivalence studies has been submitted under this subsection for the drug with respect to which the certification is made to obtain approval to engage in the commercial manufacture, use, or sale of the drug before the expiration of the patent referred to in the certification; and

''(II) include a detailed statement of the factual and legal basis of the opinion of the applicant that the patent is invalid or will not be infringed.''; and

(2) in paragraph (5)—

(A) in subparagraph (B)—

(i) by striking ''under the following'' and inserting ''by applying the following to each certification made under paragraph (2)(A)(vii)''; and

(ii) in clause (iii)—

(I) in the first sentence, by striking ''unless'' and all that follows and inserting ''unless, before the expiration of 45 days after the date on which the notice described in paragraph (2)(B) is received, an action is brought for infringement of the patent that is the subject of the certification and for which information was submitted to the Secretary under subsection (b)(1) or (c)(2) before the date on which the application (excluding an amendment or supplement to the application), which the Secretary later determines to be substantially complete, was submitted.''; and

(II) in the second sentence—

(aa) by striking subclause (I) and inserting the following:

''(I) if before the expiration of such period the district court decides that the patent is invalid or not infringed (including any substantive determination that there is no cause of action for patent infringement or invalidity), the approval shall be made effective on—

''(aa) the date on which the court enters judgment reflecting the decision; or

''(bb) the date of a settlement order or consent decree signed and entered by the court stating that the patent that is the subject of the certification is invalid or not infringed;'';

(bb) by striking subclause (II) and inserting the following:

''(II) if before the expiration of such period the district court decides that the patent has been infringed—

''(aa) if the judgment of the district court is appealed, the approval shall be made effective on—

''(AA) the date on which the court of appeals decides that the patent is invalid or not infringed (including any substantive determination that there is no cause of action for patent infringement or invalidity); or

''(BB) the date of a settlement order or consent decree signed and entered by the court of appeals stating that the patent that is the subject of the certification is invalid or not infringed; or

''(bb) if the judgment of the district court is not appealed or is affirmed, the approval shall be made effective on the date specified by the district court in a court order under section 271(e)(4)(A) of title 35, United States Code;'';

(cc) in subclause (III), by striking ''on the date of such court decision.'' and inserting ''as provided in subclause (I); or''; and

(dd) by inserting after subclause (III) the following:

''(IV) if before the expiration of such period the court grants a preliminary injunction prohibiting the applicant from engaging in the commercial manufacture or sale of the drug until the court decides the issues of patent validity and infringement and if the court decides that such patent has been infringed, the approval shall be made effective as provided in subclause (II).'';

(B) by redesignating subparagraphs (C) and (D) as subparagraphs (E) and (F), respectively; and

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

''(C) CIVIL ACTION TO OBTAIN PATENT CERTAINTY.—

''(i) DECLARATORY JUDGMENT ABSENT INFRINGEMENT ACTION.—If an owner of the patent or the holder of the approved application under subsection (b) for the drug that is claimed by the patent or a use of which is claimed by the patent does not 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 given under paragraph (2)(B) was received, the applicant may bring a civil action against the owner or holder (but not against any owner or holder that has brought such a civil action against that applicant, unless that civil action was dismissed without prejudice) for a declaratory judgment under section 2201 of title 28, United States Code, that the patent is invalid or will not be infringed by the drug for which the applicant seeks approval.

''(ii) COUNTERCLAIM TO INFRINGEMENT ACTION.—

''(I) IN GENERAL.—If an owner of the patent or the holder of the approved application under subsection (b) for the drug that is claimed by the patent or a use of which is claimed by the patent brings a patent infringement action against the applicant, the applicant may assert a counterclaim seeking an order requiring the holder to correct or delete the patent information submitted by the holder under subsection (b) or (c) on the ground that the patent does not claim either—

''(aa) the drug for which the application was approved; or

''(bb) an approved method of using the drug.

''(II) NO INDEPENDENT CAUSE OF ACTION.—Subclause (I) does not authorize the assertion of a claim described in subclause (I) in any civil action or proceeding other than a counterclaim described in subclause (I).

''(iii) NO DAMAGES.—An applicant shall not be entitled to damages in a civil action under subparagraph (i) or a counterclaim under subparagraph (ii).''.

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

(1) in subsection (b), by striking paragraph (3) and inserting the following:

''(3) NOTICE OF OPINION THAT PATENT IS INVALID OR WILL NOT BE INFRINGED.—

''(A) AGREEMENT TO GIVE NOTICE.—An applicant that makes a certification described in paragraph (2)(A)(iv) shall include in the application a statement that the applicant will give notice as required by this paragraph.

''(B) TIMING OF NOTICE.—An applicant that makes a certification described in paragraph (2)(A)(iv) shall give notice as required under this paragraph—

''(i) if the certification is in the application, not later than 20 days after the date of the postmark on the notice with which the Secretary informs the applicant that the application has been filed; or

''(ii) if the certification is in an amendment or supplement to the application, at the time at which the applicant submits the amendment or supplement, regardless of whether the applicant has already given notice with respect to another such certification contained in the application or in an amendment or supplement to the application.

''(C) RECIPIENTS OF NOTICE.—An applicant required under this paragraph to give notice shall give notice to—

''(i) each owner of the patent that is the subject of the certification (or a representative of the owner designated to receive such a notice); and

''(ii) the holder of the approved application under this subsection for the drug that is claimed by the patent or a use of which is claimed by the patent (or a representative of the holder designated to receive such a notice).

''(D) CONTENTS OF NOTICE.—A notice required under this paragraph shall—

''(i) state that an application that contains data from bioavailability or bioequivalence studies has been submitted under this subsection for the drug with respect to which the certification is made to obtain approval to engage in the commercial manufacture, use, or sale of the drug before the expiration of the patent referred to in the certification; and

''(ii) include a detailed statement of the factual and legal basis of the opinion of the applicant that the patent is invalid or will not be infringed.''; and

(2) in subsection (c)(3)—

(A) in the first sentence, by striking ''under the following'' and inserting ''by applying the following to each certification made under subsection (b)(2)(A)(iv)'';

(B) in subparagraph (C)—

(i) in the first sentence, by striking ''unless'' and all that follows and inserting ''unless, before the expiration of 45 days after the date on which the notice described in subsection (b)(3) is received, an action is brought for infringement of the patent that is the subject of the certification and for which information was submitted to the Secretary under paragraph (2) or subsection (b)(1) before the date on which the application (excluding an amendment or supplement to the application) was submitted.'';

(ii) in the second sentence—

(I) by striking ''paragraph (3)(B)'' and inserting ''subsection (b)(3)'';

(II) by striking clause (i) and inserting the following:

''(i) if before the expiration of such period the district court decides that the patent is invalid or not infringed (including any substantive determination that there is no cause of action for patent infringement or invalidity), the approval shall be made effective on—

''(I) the date on which the court enters judgment reflecting the decision; or

''(II) the date of a settlement order or consent decree signed and entered by the court stating that the patent that is the subject of the certification is invalid or not infringed;'';

(III) by striking clause (ii) and inserting the following:

''(ii) if before the expiration of such period the district court decides that the patent has been infringed—

''(I) if the judgment of the district court is appealed, the approval shall be made effective on—

''(aa) the date on which the court of appeals decides that the patent is invalid or not infringed (including any substantive determination that there is no cause of action for patent infringement or invalidity); or

''(bb) the date of a settlement order or consent decree signed and entered by the court of appeals stating that the patent that is the subject of the certification is invalid or not infringed; or

''(II) if the judgment of the district court is not appealed or is affirmed, the approval shall be made effective on the date specified by the district court in a court order under section 271(e)(4)(A) of title 35, United States Code;'';

(IV) in clause (iii), by striking ''on the date of such court decision.'' and inserting ''as provided in clause (i); or''; and

(V) by inserting after clause (iii), the following:

''(iv) if before the expiration of such period the court grants a preliminary injunction prohibiting the applicant from engaging in the commercial manufacture or sale of the drug until the court decides the issues of patent validity and infringement and if the court decides that such patent has been infringed, the approval shall be made effective as provided in clause (ii).''; and

(iii) in the third sentence, by striking ''paragraph (3)(B)'' and inserting ''subsection (b)(3)'';

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

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

''(D) CIVIL ACTION TO OBTAIN PATENT CERTAINTY.—

''(i) DECLARATORY JUDGMENT ABSENT INFRINGEMENT ACTION.—If an owner of the patent or the holder of the approved application under subsection (b) for the drug that is claimed by the patent or a use of which is claimed by the patent does not 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 given under subsection (b)(3) was received, the applicant may bring a civil action against the owner or holder (but not against any owner or holder that has brought such a civil action against that applicant, unless that civil action was dismissed without prejudice) for a declaratory judgment under section 2201 of title 28, United States Code, that the patent is invalid or will not be infringed by the drug for which the applicant seeks approval.

''(ii) COUNTERCLAIM TO INFRINGEMENT ACTION.—

''(I) IN GENERAL.—If an owner of the patent or the holder of the approved application under subsection (b) for the drug that is claimed by the patent or a use of which is claimed by the patent brings a patent infringement action against the applicant, the applicant may assert a counterclaim seeking an order requiring the holder to correct or delete the patent information submitted by the holder under subsection (b) or this subsection on the ground that the patent does not claim either—

''(aa) the drug for which the application was approved; or

''(bb) an approved method of using the drug.

''(II) NO INDEPENDENT CAUSE OF ACTION.—Subclause (I) does not authorize the assertion of a claim described in subclause (I) in any civil action or proceeding other than a counterclaim described in subclause (I).

''(iii) NO DAMAGES.—An applicant shall not be entitled to damages in a civil action under clause (i) or a counterclaim under clause (ii).''.

(c) INFRINGEMENT ACTIONS.—Section 271(e) of title 35, United States Code, is amended by adding at the end the following:

''(5) The filing of an application described in paragraph (2) that includes a 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), and the failure of the owner of the patent to bring an action for infringement of a patent that is the subject of the certification before the expiration of 45 days after the date on which the notice given under subsection (b)(3) or (j)(2)(B) of that section is received, shall establish an actual controversy between the applicant and the patent owner sufficient to confer subject matter jurisdiction in the courts of the United States in any action brought by the applicant under section 2201 of title 28 for a declaratory judgment that any patent that is the subject of the certification is invalid or not infringed.''.

(d) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by subsections (a), (b), and (c) apply to any proceeding under section 505 of the Federal

Food, Drug, and Cosmetic Act (21 U.S.C. 355) that is pending on or after the date of enactment of this Act regardless of the date on which the proceeding was commenced or is commenced.

(2) NOTICE OF OPINION THAT PATENT IS INVALID OR WILL NOT BE INFRINGED.—The amendments made by subsections (a)(1) and (b)(1) apply 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) after the date of enactment of this Act in an application filed under subsection (b)(2) or (j) of that section or in an amendment or supplement to an application filed under subsection (b)(2) or (j) of that section.

(3) EFFECTIVE DATE OF APPROVAL.—The amendments made by subsections (a)(2)(A)(ii)(I) and (b)(2)(B)(i) apply with respect to any patent information submitted under subsection (b)(1) or (c)(2) 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.

SEC. ____03. FORFEITURE OF 180-DAY EXCLUSIVITY PERIOD.

(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 ____02) is amended—

(1) in subparagraph (B), by striking clause (iv) and inserting the following:

''(iv) 180-DAY EXCLUSIVITY PERIOD.—

''(I) DEFINITIONS.—In this paragraph:

''(aa) 180-DAY EXCLUSIVITY PERIOD.—The term '180-day exclusivity period' means the 180-day period ending on the day before the date on which an application submitted by an applicant other than a first applicant could become effective under this clause.

''(bb) FIRST APPLICANT.—The term 'first applicant' means an applicant that, on the first day on which a substantially complete application containing a certification described in paragraph (2)(A)(vii)(IV) is submitted for approval of a drug, submits a substantially complete application containing a certification described in paragraph (2)(A)(vii)(IV) for the drug.

''(cc) SUBSTANTIALLY COMPLETE APPLICATION.—As used in this subsection, the term 'substantially complete application' means an application under this subsection that on its face is sufficiently complete to permit a substantive review and contains all the information required by paragraph (2)(A).

''(dd) TENTATIVE APPROVAL.—

''(AA) IN GENERAL.—The term 'tentative approval' means notification to an applicant by the Secretary that an application under this subsection meets the requirements of paragraph (2)(A), but cannot receive effective approval because the application does not meet the requirements of this subparagraph, there is a period of exclusivity for the listed drug under subparagraph (E) or section 505A, or there is a 7-year period of exclusivity for the listed drug under section 527.

''(BB) LIMITATION.—A drug that is granted tentative approval by the Secretary is not an approved drug and shall not have an effective approval until the Secretary issues an approval after any necessary additional review of the application.

''(II) EFFECTIVENESS OF APPLICATION.—Subject to subparagraph (D), if the application contains a certification described in paragraph (2)(A)(vii)(IV) and is for a drug for which a first applicant has submitted an application containing such a certification, the application shall be made effective on the date that is 180 days after the date of the first commercial marketing of the drug (including the commercial marketing of the listed drug) by any first applicant.''; and

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

''(D) FORFEITURE OF 180-DAY EXCLUSIVITY PERIOD.—

''(i) DEFINITION OF FORFEITURE EVENT.—In this subparagraph, the term 'forfeiture event', with respect to an application under this subsection, means the occurrence of any of the following:

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

''(aa) the earlier of the date that is—

''(AA) 75 days after the date on which the approval of the application of the first applicant is made effective under subparagraph (B)(iii); or

''(BB) 30 months after the date of submission of the application of the first applicant; or

''(bb) with respect to the first applicant or any other applicant (which other applicant has received tentative approval), the date that is 75 days after the date as of which, as to each of the patents with respect to which the first applicant submitted a certification qualifying the first applicant for the 180-day exclusivity period under subparagraph (B)(iv), at least 1 of the following has occurred:

''(AA) In an infringement action brought against that applicant with respect to the patent or in a declaratory judgment action brought by that applicant with respect to the patent, a court enters a final decision from which no appeal (other than a petition to the Supreme Court for a writ of certiorari) has been or can be taken that the patent is invalid or not infringed.

''(BB) In an infringement action or a declaratory judgment action described in subitem (AA), a court signs a settlement order or consent decree that enters a final judgment that includes a finding that the patent is invalid or not infringed.

''(CC) The patent expires.

''(DD) The patent is withdrawn by the holder of the application approved under subsection (b).

''(II) WITHDRAWAL OF APPLICATION.—The first applicant withdraws the application or the Secretary considers the application to have been withdrawn as a result of a determination by the Secretary that the application does not meet the requirements for approval under paragraph (4).

''(III) AMENDMENT OF CERTIFICATION.—The first applicant amends or withdraws the certification for all of the patents with respect to which that applicant submitted a certification qualifying the applicant for the 180-day exclusivity period.

''(IV) FAILURE TO OBTAIN TENTATIVE APPROVAL.—The first applicant fails to obtain tentative approval of the application within 30 months after the date on which the application is filed, unless the failure is caused by a change in or a review of the requirements for approval of the application imposed after the date on which the application is filed.

''(V) AGREEMENT WITH ANOTHER APPLICANT, THE LISTED DRUG APPLICATION HOLDER, OR A PATENT OWNER.—The first applicant enters into an agreement with another applicant under this subsection for the drug, the holder of the application for the listed drug, or an owner of the patent that is the subject of the certification under paragraph (2)(A)(vii)(IV), the Federal Trade Commission or the Attorney General files a complaint, and there is a final decision of the Federal Trade Commission or the court with regard to the complaint from which no appeal (other than a petition to the Supreme Court for a writ of certiorari) has been or can be taken that the agreement has violated the antitrust laws (as defined in section 1 of the Clayton Act (15 U.S.C. 12), except that the term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that that section applies to unfair methods of competition).

''(VI) EXPIRATION OF ALL PATENTS.—All of the patents as to which the applicant submitted a certification qualifying it for the 180-day exclusivity period have expired.

''(ii) FORFEITURE.—The 180-day exclusivity period described in subparagraph (B)(iv) shall be forfeited by a first applicant if a forfeiture event occurs with respect to that first applicant.

''(iii) SUBSEQUENT APPLICANT.—If all first applicants forfeit the 180-day exclusivity period under clause (ii)—

''(I) approval of any application containing a certification described in paragraph (2)(A)(vii)(IV) shall be made effective in accordance with subparagraph (B)(iii); and

''(II) no applicant shall be eligible for a 180-day exclusivity period.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), 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.

(2) COLLUSIVE AGREEMENTS.—If a forfeiture event described in section 505(j)(5)(D)(i)(V) of that Act occurs in the case of an applicant, the applicant shall forfeit the 180-day period under section 505(j)(5)(B)(iv) of that Act without regard to when the first certification under section 505(j)(2)(A)(vii)(IV) of that Act for the listed drug was made.

(3) DECISION OF A COURT WHEN THE 180-DAY EXCLUSIVITY PERIOD HAS NOT BEEN TRIGGERED.—With respect to an application filed before, on, or after the date of enactment of this Act for a listed drug for which a certification under section 505(j)(2)(A)(vii)(IV) of that Act was made before the date of enactment of this Act and for which neither of the events described in subclause (I) or (II) of section 505(j)(5)(B)(iv) of that Act (as in effect on the day before the date of enactment of this Act) has occurred on or before the date of enactment of this Act, the term ''decision of a court'' as used in clause (iv) of section 505(j)(5)(B) of that Act means a final decision of a court from which no appeal (other than a petition to the Supreme Court for a writ of certiorari) has been or can be taken.

SEC. ____04. BIOAVAILABILITY AND BIOEQUIVALENCE.

(a) IN GENERAL.—Section 505(j)(8) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(8)) is amended—

(1) by striking subparagraph (A) and inserting the following:

''(A)(i) The term 'bioavailability' means the rate and extent to which the active ingredient or therapeutic ingredient is absorbed from a drug and becomes available at the site of drug action.

''(ii) For a drug that is not intended to be absorbed into the bloodstream, the Secretary may assess bioavailability by scientifically valid measurements intended to reflect the rate and extent to which the active ingredient or therapeutic ingredient becomes available at the site of drug action.''; and

(2) by adding at the end the following:

''(C) For a drug that is not intended to be absorbed into the bloodstream, the Secretary may establish alternative, scientifically valid methods to show bioequivalence if the alternative methods are expected to detect a significant difference between the drug and the listed drug in safety and therapeutic effect.''.

(b) EFFECT OF AMENDMENT.—The amendment made by subsection (a) does not alter

the standards for approval of drugs under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)).

SEC. ___05. REMEDIES FOR INFRINGEMENT.

Section 287 of title 35, United States Code, is amended by adding at the end the following:

''(d) CONSIDERATION.—In making a determination with respect to remedy brought for infringement of a patent that claims a drug or a method or using a drug, the court shall consider whether information on the patent was filed as required under 21 U.S.C. 355 (b) or (c), and, if such information was required to be filed but was not, the court may refuse to award treble damages under section 284.''.

SEC. ___06. CONFORMING AMENDMENTS.

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

(3) in subsections (e) and (l), by striking ''505(j)(5)(D)'' each place it appears and inserting ''505(j)(5)(F)''.

SA 946. Mr. DORGAN (for himself, Ms. STABENOW, Mr. JEFFORDS, Ms. SNOWE, Mr. JOHNSON, Mr. LEAHY, Mrs. BOXER, Mr. PRYOR, Mr. FEINGOLD, and Ms. COLLINS) proposed an amendment to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes; as follows:

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) 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 that specific prescription drug or by that specific importer of drugs that are counterfeit or in violation of any requirement under this section, 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) EFFECTIVENESS OF SECTION.—

''(1) IN GENERAL.—If, after the date that is 1 year after the effective date of the regulations under subsection (b) and before the date that is 18 months after the effective date, the Secretary submits to Congress a certification that, in the opinion of the Secretary, based on substantial evidence obtained after the effective date, the benefits of implementation of this section do not outweigh any detriment of implementation of this section, this section shall cease to be effective as of the date that is 30 days after the date on which the Secretary submits the certification.

''(2) PROCEDURE.—The Secretary shall not submit a certification under paragraph (1) unless, after a hearing on the record under sections 556 and 557 of title 5, United States Code, the Secretary—

''(A)(i) determines that it is more likely than not that implementation of this section would result in an increase in the risk to the public health and safety;

''(ii) identifies specifically, in qualitative and quantitative terms, the nature of the increased risk;

''(iii) identifies specifically the causes of the increased risk; and

''(iv)(I) considers whether any measures can be taken to avoid, reduce, or mitigate the increased risk; and

''(II) if the Secretary determines that any measures described in subclause (I) would require additional statutory authority, submits to Congress a report describing the legislation that would be required;

''(B) identifies specifically, in qualitative and quantitative terms, the benefits that would result from implementation of this section (including the benefit of reductions in the cost of covered products to consumers in the United States, allowing consumers to procure needed medication that consumers might not otherwise be able to procure without foregoing other necessities of life); and

''(C)(i) compares in specific terms the detriment identified under subparagraph (A) with the benefits identified under subparagraph (B); and

''(ii) determines that the benefits do not outweigh the detriment.

''(o) 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 947. Mr. FRIST (for Mr. COCHRAN (for himself, Mr. FRIST, Mr. BREAUX, and Mr. SANTORUM)) proposed an amendment to amend SA 946 proposed by Mr. DORGAN (for himself, Ms. STABENOW, Mr. JEFFORDS, Ms. SNOWE, Mr. JOHNSON, Mr. LEAHY, Mrs. BOXER, Mr. PRYOR, Mr. FEINGOLD, and Ms. COLLINS) to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes; as follows:

At the appropriate place, insert the following:

''( ) 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 948. Mr. GRAHAM of South Carolina submitted an amendment intended to be proposed by him to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in title II, insert the following:

Subtitle ____—National Bipartisan Commission on Medicare Reform

SEC. ___01. MEDICAREADVANTAGE GOAL; ESTABLISHMENT OF COMMISSION.

(a) ENROLLMENT GOAL.—It is the goal of this title that, not later than January 1, 2010, at least 15 percent of individuals entitled to, or enrolled for, benefits under part A of title XVIII of the Social Security Act and enrolled under part B of such title should be enrolled in a MedicareAdvantage plan, as determined by the Center for Medicare Choices.

(b) FAILURE TO ACHIEVE GOAL.—If the goal described in subsection (a) is not met by January 1, 2012, as determined by the Center for Medicare Choices, there shall be established a commission as described in section 2.

SEC. ___02 NATIONAL BIPARTISAN COMMISSION ON MEDICARE REFORM.

(a) ESTABLISHMENT.—Upon a determination under section ___01(b) that the enrollment goal has not been met, there shall be established a commission to be known as the National Bipartisan Commission on Medicare Reform (in this section referred to as the ''Commission'').

(b) DUTIES OF THE COMMISSION.—The Commission shall—

(1) review and analyze the long-term financial condition of the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

(2) identify problems that threaten the financial integrity of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established under sections 1817 and 1841 of such Act (42 U.S.C. 1395i and 1395t), including—

(A) the financial impact on the medicare program of the significant increase in the number of medicare eligible individuals; and

(B) the ability of the Federal Government to sustain the program into the future;

(3) analyze potential solutions to the problems identified under paragraph (2) that will ensure both the financial integrity of the medicare program and the provision of appropriate benefits under such program, including methods used by other nations to respond to comparable demographic patterns in eligibility for health care benefits for elderly and disabled individuals and trends in employment-related health care for retirees;

(4) make recommendations to restore the solvency of the Federal Hospital Insurance Trust Fund and the financial integrity of the Federal Supplementary Medical Insurance Trust Fund;

(5) make recommendations for establishing the appropriate financial structure of the medicare program as a whole;

(6) make recommendations for establishing the appropriate balance of benefits covered under, and beneficiary contributions to, the medicare program;

(7) make recommendations for the time periods during which the recommendations described in paragraphs (4), (5) and (6) should be implemented;

(8) make recommendations on the impact of chronic disease and disability trends on future costs and quality of services under the current benefit, financing, and delivery system structure of the medicare program;

(9) make recommendations regarding a comprehensive approach to preserve the medicare program, including ways to increase the effectiveness of the MedicareAdvantage program and to increase MedicareAdvantage enrollment rates; and

(10) review and analyze such other matters as the Commission determines appropriate.

(c) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 17 members, of whom—

(A) four shall be appointed by the President;

(B) six shall be appointed by the Majority Leader of the Senate, in consultation with the Minority Leader of the Senate, of whom not more than 4 shall be of the same political party;

(C) six shall be appointed by the Speaker of the House of Representatives, in consultation with the Minority Leader of the House of Representatives, of whom not more than 4 shall be of the same political party; and

(D) one, who shall serve as Chairperson of the Commission, shall be appointed jointly by the President, Majority Leader of the Senate, and the Speaker of the House of Representatives.

(2) DEADLINE FOR APPOINTMENT.—Members of the Commission shall be appointed by not later than April 1, 2012.

(3) TERMS OF APPOINTMENT.—The term of any member appointed under paragraph (1) shall be for the life of the Commission.

(4) MEETINGS.—The Commission shall meet at the call of the Chairperson or a majority of its members.

(5) QUORUM.—A quorum for purposes of conducting the business of the Commission shall consist of 8 members of the Commission, except that 4 members may conduct a hearing under subsection (e).

(6) VACANCIES.—A vacancy in the membership of the Commission shall be filled, not later than 30 days after the Commission is given notice of the vacancy, in the same manner in which the original appointment was made. Such a vacancy shall not affect the power of the remaining members to carry out the duties of the Commission.

(7) COMPENSATION.—Members of the Commission shall receive no additional pay, allowances, or benefits by reason of their service on the Commission.

(8) EXPENSES.—Each member of the Commission shall receive travel expenses and per diem in lieu of subsistence in accordance with sections 5702 and 5703 of title 5, United States Code.

(d) STAFF AND SUPPORT SERVICES.—

(1) EXECUTIVE DIRECTOR.—

(A) APPOINTMENT.—The Chairperson shall appoint an executive director of the Commission.

(B) COMPENSATION.—The executive director shall be paid the rate of basic pay for level V of the Executive Schedule under title 5, United States Code.

(2) STAFF.—With the approval of the Commission, the executive director may appoint such personnel as the executive director considers appropriate.

(3) APPLICABILITY OF CIVIL SERVICE LAWS.—The staff of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates).

(4) EXPERTS AND CONSULTANTS.—With the approval of the Commission, the executive director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(5) PHYSICAL FACILITIES.—The Administrator of the General Services Administration shall locate suitable office space for the operation of the Commission. The facilities shall serve as the headquarters of the Commission and shall include all necessary equipment and incidentals required for the proper functioning of the Commission.

(e) POWERS OF COMMISSION.—

(1) HEARINGS AND OTHER ACTIVITIES.—The Commission may hold such hearings and undertake such other activities as the Commission determines to be necessary to carry out its duties under this section.

(2) STUDIES BY GAO.—Upon the request of the Commission, the Comptroller General shall conduct such studies or investigations as the Commission determines to be necessary to carry out its duties under this section.

(3) COST ESTIMATES BY CONGRESSIONAL BUDGET OFFICE AND OFFICE OF THE CHIEF ACTUARY OF THE CENTERS FOR MEDICARE & MEDICAID.—

(A) IN GENERAL.—The Director of the Congressional Budget Office or the Chief Actuary of the Center for Medicare & Medicaid Services, or both, shall provide to the Commission, upon the request of the Commission, such cost estimates as the Commission determines to be necessary to carry out its duties under this section.

(B) REIMBURSEMENTS.—The Commission shall reimburse the Director of the Congressional Budget Office for expenses relating to the employment in the office of the Director of such additional staff as may be necessary for the Director to comply with requests by the Commission under subparagraph (A).

(4) DETAIL OF FEDERAL EMPLOYEES.—Upon the request of the Commission, the head of any Federal agency is authorized to detail, without reimbursement, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this section. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(5) TECHNICAL ASSISTANCE.—Upon the request of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties under this section.

(6) USE OF MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies and shall, for purposes of the frank, be considered a commission of Congress as described in section 3215 of title 39, United States Code.

(7) OBTAINING INFORMATION.—The Commission may secure directly from any Federal agency information necessary to enable it to carry out its duties under this section, if the information may be disclosed under section 552 of title 5, United States Code. Upon request of the Chairperson of the Commission, the head of each such agency shall furnish such information to the Commission.

(8) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(9) PRINTING.—For purposes of costs relating to printing and binding, including the cost of personnel detailed from the Government Printing Office, the Commission shall be deemed to be a committee of Congress.

(f) REPORT.—Not later than October 1, 2012, the Commission shall submit to the President and Congress a report and an implementation bill that shall contain a detailed statement of only those recommendations, findings, and conclusions of the Commission that receive the approval of at least 11 members of the Commission.

(g) TERMINATION.—The Commission shall terminate on the date that is 30 days after the date on which the report and implementation bill is submitted under subsection (f).

SEC. ___03 CONGRESSIONAL CONSIDERATION OF REFORM PROPOSALS.

(a) DEFINITIONS.—In this section:

(1) IMPLEMENTATION BILL.—The term ''implementation bill'' means only a bill that is introduced as provided under subsection (b), and contains the proposed legislation included in the report submitted to Congress under section ___02(f), without modification.

(2) CALENDAR DAY.—The term ''calendar day'' means a calendar day other than 1 on which either House is not in session because of an adjournment of more than 3 days to a date certain.

(b) INTRODUCTION; REFERRAL; AND REPORT OR DISCHARGE.—

(1) INTRODUCTION.—On the first calendar day on which both Houses are in session immediately following the date on which the report is submitted to Congress under section ___02(f), a single implementation bill shall be introduced (by request)—

(A) in the Senate by the Majority Leader of the Senate, for himself and the Minority Leader of the Senate, or by Members of the Senate designated by the Majority Leader and Minority Leader of the Senate; and

(B) in the House of Representatives by the Speaker of the House of Representatives, for himself and the Minority Leader of the House of Representatives, or by Members of the House of Representatives designated by the Speaker and Minority Leader of the House of Representatives.

(2) REFERRAL.—The implementation bills introduced under paragraph (1) shall be referred to any appropriate committee of jurisdiction in the Senate and any appropriate committee of jurisdiction in the House of Representatives. A committee to which an implementation bill is referred under this paragraph may report such bill to the respective House without amendment.

(3) REPORT OR DISCHARGE.—If a committee to which an implementation bill is referred has not reported such bill by the end of the 15th calendar day after the date of the introduction of such bill, such committee shall be immediately discharged from further consideration of such bill, and upon being reported or discharged from the committee, such bill shall be placed on the appropriate calendar.

(c) FLOOR CONSIDERATION.—

(1) IN GENERAL.—When the committee to which an implementation bill is referred has reported, or has been discharged under subsection (b)(3), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the implementation bill, and all points of order against the implementation bill (and against consideration of the implementation bill) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the implementation bill is agreed to, the implementation bill shall remain the unfinished business of the respective House until disposed of.

(2) AMENDMENTS.—An implementation bill may not be amended in the Senate or the House of Representatives.

(3) DEBATE.—Debate on the implementation bill, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the implementation bill is not in order. A motion to reconsider the vote by which the implementation bill is agreed to or disagreed to is not in order.

(4) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on an implementation bill, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the implementation bill shall occur.

(5) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to an implementation bill shall be decided without debate.

(d) COORDINATION WITH ACTION BY OTHER HOUSE.—If, before the passage by 1 House of an implementation bill of that House, that House receives from the other House an implementation bill, then the following procedures shall apply:

(1) NONREFERRAL.—The implementation bill of the other House shall not be referred to a committee.

(2) VOTE ON BILL OF OTHER HOUSE.—With respect to an implementation bill of the House receiving the implementation bill—

(A) the procedure in that House shall be the same as if no implementation bill had been received from the other House; but

(B) the vote on final passage shall be on the implementation bill of the other House.

(e) RULES OF SENATE AND HOUSE OF REPRESENTATIVES.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of an implementation bill described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. ___04. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this subtitle for each of fiscal years 2012 through 2013.

SA 949. Mr. HARKIN submitted an amendment intended to be proposed by him to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title IV, add the following:

SEC. ___. IMPROVED PAYMENT FOR CERTAIN MAMMOGRAPHY SERVICES.

(a) EXCLUSION FROM OPD FEE SCHEDULE.—Section 1833(t)(1)(B)(iv) (42 U.S.C. 13951(t)(1)(B)(iv)) is amended by inserting before the period at the end the following: ''and does not include screening mammography (as defined in section 1861(jj)) and unilateral and bilateral diagnostic mammography''.

(b) ADJUSTMENT TO TECHNICAL COMPONENT.—For diagnostic mammography performed on or after January 1, 2004, for which payment is made under the physician fee schedule under section 1848 of the Social Security Act (42 U.S.C. 1395w–4), the Secretary, based on the most recent cost data available, shall provide for an appropriate adjustment in the payment amount for the technical component of the diagnostic mammography.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to mammography performed on or after January 1, 2004.

SA 950. Mr. PRYOR submitted an amendment intended to be proposed by him to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, add the following:

SEC. ___. EQUAL ACCESS TO COMPETITIVE GLOBAL PRESCRIPTION MEDICINE PRICES FOR AMERICAN PURCHASERS.

(a) DEFINITION OF COVERED PRODUCT.—In this section, the term ''covered product'' has the meaning given the term in section 804 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384).

(b) PROHIBITION.—It shall be unlawful for the manufacturer of a covered product or any other person that sells a covered product to refuse to sell to any wholesaler or retailer (or other purchaser representing a group of wholesalers or retailers) of covered products in the United States on terms (including such terms as prompt payment, cash payment, volume purchase, single-site delivery, the use of formularies by purchasers, and any other term that effectively reduces the cost to the manufacturer of supplying the drug) that are not substantially the same as the most favorable (to the purchaser) terms on which the person has sold or has agreed to sell the covered product to any purchaser in Canada.

(c) ENFORCEMENT.—The Secretary of Health and Human Services, or any wholesaler or retailer in the United States aggrieved by a violation of subsection (b), may bring a civil action in United States district court against a person that violates subsection (b) for an order—

(1) enjoining the violation; and

(2) awarding damages in the amount that is equal to 3 times the amount of the value of the difference between—

(A) the terms on which the person sold a covered product to the wholesaler or retailer; and

(B) the terms on which the person sold the covered product to a person in Canada.

(d) EFFECTIVENESS OF SECTION.—This section takes effect on the date that is 2 years after the date of enactment of this Act, except that this section shall not be in effect during any period after that date in which there is in effect a final regulation promulgated by the Secretary of Health and Human Services permitting the importation or reimportation of prescription drugs under section 804 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384).

NOTICES OF HEARINGS/MEETINGS

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. CRAIG. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on Public Lands and Forests.

The hearing that was originally scheduled for June 19, 2003 has been postponed and will now be held on Wednesday, June 25 at 2:30 p.m. in Room SD–366 of the Dirksen Senate Office Building.

The purpose of this oversight hearing is to gain an understanding of the grazing programs of the Bureau of Land Management and the United States Forest Service. The Subcommittee will receive testimony on grazing permit renewal, BLM's potential changes to grazing regulations, range monitoring, drought and other grazing issues. This hearing will also provide the basis for other grazing hearings that we may want to undertake at the subcommittee level as the year goes on.

Because of the limited time available for the hearings, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mrs. DOLE. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on June 19, 2003, at 10:00 A.M. to conduct a hearing on ''The Growing Problem of Identity Theft and Its Relationship to the Fair Credit Reporting Act.''

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mrs. DOLE. Mr. President. I ask unanimous consent that the Committee on Commerce, Science and Transportation be authorized to meet on Thursday, June 19, 2003, at 9:30 a.m., on pending Committee business.

S. 1264. The Federal Communications Commission Reauthorization Act of 2003 (Bill Bailey/Lee Carosi/James Assey).

S. 865. Commercial Spectrum Enhancement Act (Bill Bailey/James Assey).

S. 1234. The Federal Trade Commission Reauthorization Act of 2003 (Ken Nahigian/David Strickland/Cathy McCullough).

S. 1046. Preservation of Localism, Program Diversity, and Competition in Television Broadcast Service Act of 2003 (Lee Carosi/James Assey/Rachel Welch).

S. 1261. The Consumer Product Safety Commission Reauthorization Act of 2003 (Ken Nahigian/David Strickland/Cathy McCullough).

S. 1244. The Federal Maritime Commission Reauthorization Act of 2003 (Rob Freeman/Mary Phillips/Carl Bentzel).

S. 1262. The Maritime Administration Authorization Act of 2003 (Rob Freeman/Mary Phillips/Carl Bentzel).

S. 247. Harmful Algal Bloom and Hypoxia Amendments Act of 2003 (Drew Minkiewicz/Margaret Spring).

S. 1106. Fishing Quota Act of 2003 (Drew Minkiewicz/Margaret Spring).

S. 861. Coastal and Estuarine Land Protection Act (Drew Minkiewicz/Margaret Spring).

S. 1152. United States Fire Administration Reauthorization Act of 2003 (Ken LaSala/Jean Toal Eisen).

S. 1260. The Commercial Space Transportation Act of 2003 (Floyd DesChamps/Jean Toal Eisen/John Cullen).

S. 189. 21st Century Nanotechnology Research and Development Act (Ken LaSala/Jean Toal Eisen/Chan Lieu).

S. 877. Controlling the Assault of Non-Solicited Pornography and Marketing (CAN–SPAM) Act of 2003 (Paul Martino/David Strickland).

Nomination of Annette Sandberg (PN 440), of Washington, to be Administrator of the Federal Motor Carrier Administration, (Rob Freeman, May Phillips, Virginia Pounds/Debbie Hersman/Vanessa Jones).

Nominations for Promotion in the United States Coast Guard (PNs 689, 671, 672) (Virginia Pounds/Army Fraenkel/Vanessa Jones).

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mrs. DOLE. Mr. President, I ask unanimous consent that the Committee on Government Affairs be authorized to meet on Thursday, June 19, 2003, at 10:00 a.m. for a hearing entitled ''Self-Dealing and Breach of Duty: An Initial Review of the ULLICO Matter.''

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mrs. DOLE. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet for a hearing on ''Teachers Union Scandals: Closing the Gaps in Union Member Protections'' during the session of the Senate on Thursday, June 19, 2003 at 10:15 a.m. in SD–430.

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

COMMITTEE ON THE JUDICIARY

Mrs. DOLE. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, June 19, 2003, at 9:30 a.m. in Hart Room 216.

I. Nominations: William H. Pryor, Jr., to be United States Circuit Judge for the Eleventh Circuit; Diane M. Stuart to be Director, Violence Against Women Office, United States Department of Justice.

II. Bills: S. 724, A bill to amend Title 18, United States Code, to exempt certain rocket propellants from prohibitions under that title on explosive materials. [Enzi, Craig, Durbin, Sessions]; S. 1125, Fairness in Asbestos Injury Resolution Act of 2003 (''The FAIR Act'') [Hatch, DeWine, Chambliss]; S. 1233, A bill to authorize assistance for the National Great Blacks in Wax Museum and Justice Learning Center [Mikulski, Hatch, Edwards]; S.J. Res. 1, A joint resolution proposing an amendment to the Constitution of the United States to protect the rights of crime victims [Kyl, Chambliss, Cornyn, Craig, DeWine, Feinstein, Graham, Grassley].

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

COMMITTEE ON INTELLIGENCE

Mrs. DOLE. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, June 19, 2003 at 2:30 p.m. to hold a closed hearing on intelligence matters.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. ALEXANDER. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's Executive Calendar: Calendar Nos. 225, 226, 229, 230, and 232.

I further ask unanimous consent that the nominations be confirmed, the motions to reconsider be laid upon the table; that the President be immediately notified of the Senate's action, and the Senate then return to legislative business.

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

The nominations considered and confirmed are as follows:

NATIONAL COUNCIL ON DISABILITY

Anne Rader, of Virginia, to be a Member of the National Council on Disability for a term expiring September 17, 2004.

DEPARTMENT OF HOMELAND SECURITY

Eduardo Aguirre, Jr., of Texas, to be Director of the Bureau of Citizenship and Immigration Services, Department of Homeland Security.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Terrence A. Duffy, of Illinois, to be a Member of the Federal Retirement Thrift Investment Board for a term expiring October 11, 2003.

Terrence A. Duffy, of Illinois, to be a Member of the Federal Retirement Thrift Investment Board for a term expiring October 11, 2007.

DEPARTMENT OF HOMELAND SECURITY

C. Stewart Verdery, Jr., of Virginia, to be an Assistant Secretary of Homeland Security.

CONFIRMATION OF EDUARDO AGUIRRE, JR.

Mr. LEAHY. Mr. President, I am pleased to support the nomination of Eduardo Aguirre to serve as Director of the Bureau of Citizenship and Immigration Services (BCIS), in the newly-created Department of Homeland Security. I was very impressed with him at his nomination hearing, and I look forward to working with him in his new position.

I am pleased that this nomination was referred to the Judiciary Committee, which continues to have jurisdiction over immigration legislation and oversight. Similarly, I am pleased that we were able to obtain unanimous consent last week for the Judiciary Committee to receive a subsequent referral on the nomination of Michael Garcia to head the Bureau of Customs and Immigration Enforcement—BICE.

The recent Inspector General report on the treatment of ''9/11 detainees''

shows the severe consequences that can be faced by those immigrants who fail to mention their unlawful status. Of course, the responsibility to remain here legally falls upon immigrants, but there are occasions when immigrants live up to that responsibility and are nonetheless failed by errors and backlogs on the Government's part. I hope and trust that preventing such errors will be a major priority for Mr. Aguirre. I also hope that he will use his position to battle the perception in many immigrant communities that the war on terrorism has become a war on immigrants.

At his confirmation hearing, I talked to Mr. Aguirre about the former INS employees in Vermont who will be under his jurisdiction, including those at the Vermont Service Center in St. Albans. I recommended to him that he build on the established INS workforce throughout the State by making Vermont a regional center for his agency, and I was pleased that he seemed to take that advice seriously. I am eager to work with him to see that idea become a reality.

On the national level, it was a priority for many of us in Congress that immigration services not be overlooked at the Department of Homeland Security. Although our security is paramount, the new Department must remember that our Nation's founding principals and economic health demand that immigration be handled in a fair and orderly way. After his confirmation hearing, I believe that Mr. Aguirre—himself a refugee—understands this at a fundamental level.

He faces a challenging job. I have already written him about the backlogs that plague our immigration system, and I hope that he is able to make meaningful change in that area. The President has pledged to reduce the average backlog for immigration petitions to 6 months by 2006—to do so is going to take serious investment, and I hope Mr. Aguirre will be a voice inside the administration to make that investment.

NOMINATION OF C. STEWART VERDERY, JR.

Mr. ALLEN. Mr. President, I rise today to applaud the Senate's approval of the nomination of C. Stewart Verdery, Jr., to be an Assistant Secretary of Homeland Security for Border and Transportation Security Policy. Mr. Verdery's nomination was approved unanimously by the Committee on Governmental Affairs on June 17, and his confirmation will fill a vital position at the new Department of Homeland Security. I have known Stewart for over a decade, and believe that his experience, Jeffersonian conservative principles, and personal qualities make him well-qualified to serve in the new Department.

The Assistant Secretary for Policy and Planning at the Border and Transportation Directorate, Department of Homeland Security, is the principal adviser to the BTS Under Secretary for policy development in the substantive areas within the BTS Directorate, including immigration and customs enforcement, customs and border protection, transportation security, Federal law enforcement training, and domestic preparedness. The Assistant Secretary is responsible for ensuring that policies developed for BTS and its component agencies are designed to achieve homeland security objectives as directed by the DHS Secretary and BTS Under Secretary and to fulfill the BTS mission statement to ''protect national security and promote public safety by enforcing our nation's immigration and customs laws, providing an effective defense against all external threats, including international terrorists, and other threats such as illegal drugs and other contraband, while preserving the free flow of legitimate trade and travel.''

Mr. Verdery is well-known to this body, having served for more than 6 years in the U.S. Senate. He first served as counsel to my senior colleague from Virginia, Senator WARNER, in his personal office and on the Senate Rules Committee. He joined the Senate Judiciary Committee in 1998 as head of the crime and law enforcement unit, and then moved to become General Counsel to the senior Senator from Oklahoma, Mr. NICKLES. In this role, Mr. Verdery advised the Senate leadership on a host of issues, including crime and law enforcement, commerce, judicial nominations, constitutional law, campaign finance, and telecommunications. He was widely respected among his peers and relied upon not only by Senator NICKLES, but by many other members of the Republican Conference and their staffs as well.

Whether managing the high-profile investigation of the disputed 1996 Louisiana Senate election, helping direct the Clinton impeachment trial, or a host of other assignments, Mr. Verdery's organizational skills, political instincts, and notable work ethics enabled him to thrive in the demanding environment of the U.S. Senate.

I had the opportunity to work closely with Stewart when the Senate Republican leadership designated him as a lead staffer for the Senate Republican High Tech Task Force, which has the goal of advancing constructive technology policy in the Senate. As chairman of the High Tech Task Force in 2001–2002, I was impressed by his extraordinary command of complex technology issues and, perhaps more important, his ability to succinctly explain the issues to others. His advice and counsel were always sound and thoughtful, and through his effective and friendly manner, he instantly earned the respect of those with whom he worked.

Stewart Verdery played a key role in the transformation of the High Tech Task Force into a lead advocate for the technology-friendly policies in the Senate. With his assistance, my colleagues and I were better prepared to advance a positive technology policy agenda in the Senate, including: the passage of a clean, 2-year Internet tax moratorium extension; passage of the upgraded Export Administration Act reauthorization; securing additional funding for anti-piracy prosecutions; and the hard-fought effort in the economic stimulus debate to make the Research and Development tax credit permanent, to provide enhanced expensing and to include the broadband tax credit.

Mr. Verdery will be a valuable member of the team at the Department of Homeland Security. I wish Stewart, his wife Jenny and their two young children, Isabelle and Chase, all the very best health and happiness in this new endeavor.

Mr. NICKLES. Madam President, I rise today to support the Senate's approval of the nomination of Stewart Verdery as the Assistant Secretary for Policy and Planning at the Border and Transportation Directorate of the Department of Homeland Security.

I have worked with Stewart since his days as Counsel to the Senate Rules Committee and while he was at the Senate Judiciary Committee. He did an outstanding job in those capacities. As a matter of fact, he did such a great job I hired him to serve as my General Counsel in the Assistant Republican Leader's office. In his position there, he served not only as my counsel, but as a counsel for the entire Senate. We deal with a lot of issues in the U.S. Senate, and Stewart's counsel was invaluable to me and other Senators.

I consider Stewart and his wife Jenny to be part of the family. Not only were they married while he was on my staff, but their two children were born as well. I respect him as both a professional and a family man.

I have no doubt Stewart will excel in this new position, and it is with great pleasure that I support his nomination as Assistant Secretary for Policy and Planning.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

KEEPING CHILDREN AND FAMILIES SAFE ACT OF 2003—CONFERENCE REPORT

Mr. ALEXANDER. Mr. President, I ask the Chair to lay before the Senate a conference report to accompany S. 342, the Child Abuse Protection Act.

The PRESIDING OFFICER. The clerk will report the conference report.

The legislative clerk read as follows:

The Committee of Conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 342), to amend the Child Abuse Prevention and Treatment Act to make improvements to and reauthorize programs under the Act, and

for other purposes, having met, have agreed that the Senate recede from its disagreement to the amendment of the House, and agree to the same with an amendment, signed by all of the conferees on the part of both Houses.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

(The conference report is printed in the RECORD of the House proceedings of June 12, 2003)

Mr. GREGG. Mr. President, I am pleased today to speak in support of the conference agreement reached by the House of Representatives and the Senate for S. 342, the Keeping Children and Families Safe Act of 2003.

This act reauthorizes several programs that are key to protecting our most vulnerable children and families: The child Abuse Prevention and Treatment Act, CAPTA; the Adoption Opportunities Act; The Abandoned Infants Assistance Act; the Family Violence Prevention and Services Act; and the Children's Justice Act.

The Keeping Children and Families Safe Act works to reduce child abuse and neglect by encouraging new training and better qualifications for frontline child and family service workers. This legislation also improves links between child protective services, health and mental health agencies, and judicial systems to improve services for at risk children and to mitigate the damaging impact that child abuse and neglect can cause.

For children who are removed from their homes as a result of child abuse or neglect, this Act helps to ensure they are placed into safe foster care or adoptive homes. By requiring that criminal background checks are performed on all adults residing in foster homes, this Act helps to prevent further abuse to the child. Through the reauthorization of the Adoption Opportunities Act, this legislation also helps to better facilitate the adoption of children with special needs by working to eliminate interjurisdictional barriers to adoption.

Lastly, the Keeping Children and Families Safe Act gives victims of domestic violence greater access to shelters in times of emergency through the reauthorization of the Family Violence Prevention and Services Act.

This important legislation responds to some of the most serious needs of children and families. I commend the work of the House of Representatives, who acted earlier today to pass this Conference report. I also thank the ranking member of the Health, Education, Labor, and Pensions Committee Senator KENNEDY for his work on this bill, as well as Senators ALEXANDER and DODD, the chairman and ranking member of the Subcommittee on Children and Families.

Protecting our most vulnerable populations is a significant priority and passage of this legislation sends a clear message that Congress is deeply committed to the interests of children and their families. I am very pleased that the House and Senate will send the Keeping Children and Families Safe Act of 2003 to the President for his signature.

Mr. KENNEDY. Mr. President, the bipartisan legislation before the Senate today will continue our Federal commitment to see that the Nation's most vulnerable children are protected and safe.

Child abuse and child neglect continue to be serious problems. Each year, thousands of children suffer. On any given day, 2,400 children are discovered to be victims of child abuse or neglect. Tragically, 3 of those children die each day as a result.

Abuse and neglect harm children from all backgrounds and all walks of life. Too many children are in situations in which their basic needs are not provided for. Too many children are subject to physical harm or emotional trauma. Too many children are victims of sexual abuse. We can do better and we must do better.

For nearly 30 years, the Child Abuse Prevention and Treatment Act has supported States in their efforts to respond to the immediate needs of children subjected to abuse and neglect, and helped them and their families take the road to recovery.

We all know it's a huge challenge. Each week, child protective service agencies in local communities respond to more than 50,000 suspected cases of child abuse and neglect. Despite their hard work, nearly half of all children in substantiated cases of abuse receive no follow-up services or support.

This legislation is an important step toward responding to the needs of every neglected and abused child in every community in our country. It is an important step toward seeing that children in desperate circumstances have the support they need to stop the abuse and deal with the harmful effects.

This legislation will renew our federal commitment to help states improve their own response to child abuse and neglect. More will be done to promote better planning at the Federal, State, and local levels, facilitate more effective referrals to the available services, and broaden the scope of the response.

More will be done to see that those responsible for investigating or working with abused children and their families have the necessary training and skills to do their jobs effectively and efficiently. States will be encouraged to provide new safety training to child abuse caseworkers. New cross-training will help caseworkers identify signs of domestic violence and substance abuse that often signal child abuse.

More will be done to strengthen community efforts. Our bill will ensure that local citizens oversee, review, and improve the practices of child protective services. It will promote partnerships between public agencies and community-based organizations to share the responsibility of reducing child abuse and neglect in their communities.

More will be done to end geographic barriers to adoption and provide permanent homes for abused children.

More will be done to combat the destructive effects of family violence and provide immediate help to its victims. A new electronic network will link victims to organizations available to help them, 24-hours-a-day, 365 days-a-year.

More will also be done to reduce the social and emotional impact of domestic violence on children. A new demonstration program will support direct services, referrals, and appropriate interventions for the 10 million children who witness domestic violence each year.

Our colleague, Senator Wellstone, was one of the greatest champions for abused children. I commend the conferees for their work to include this important program that he cared about so deeply.

As our communities across the nation continue their efforts to respond more effectively to every incident of child abuse and neglect, they must do so with resources already stretched thin. This bipartisan legislation increases the authorization for the Child Abuse Prevention and Treatment Act to $200 million in order to deliver the support that local communities need to do this important work.

I commend Senator GREGG and all of the conferees for their work and their leadership on this legislation. It's a major step toward guaranteeing help for children and families to overcome the devastating effects of abuse, neglect, and violence in their lives.

Mr. ALEXANDER. Mr. President, I rise today with my colleagues Senators GREGG, KENNEDY, and DODD to pass the conference report for S. 342, ''The Keeping Children and Families Safe Act of 2003.'' I also want to congratulate Senator GREGG, the chairman of the conference committee, and commend his leadership.

Unlike many Federal Government programs, this is a relatively small level of funding, but it is vital for the safety and sanctity of our most precious resource—our children. S. 342 reauthorizes the ''Child Abuse Prevention and Treatment Act, (CAPTA),'' which provides grants to States to improve child protection systems and grants to support community-based family resource and support services. The changes made to this program will encourage new training and better qualifications for child and family service workers. Additionally, this program will create or improve coordination between child protection services and education, health, mental health, and judicial systems to ensure that children who are abused and neglected are properly identified and receive referrals to appropriate services.

Tennessee has used CAPTA funding for many innovative pilot programs, such as Therapeutic Visitation Services. This is a pilot project that provides intensive service to families with

children in the foster care system from four rural areas in east Tennessee. The goal is to preserve and strengthen family relationships while facilitating visitation between children and biological parents. Children in the pilot program saw their parents sooner and more frequently.

In Davidson County, the Chap-Plus program provides service and helps coordinate care for families that are stressed due to their child's medical condition, such as a life threatening disease. Another program that receives CAPTA funding is the University of Tennessee Legally Defensible Child Interviewing program, which trains Child Protective Services case managers. This training is focused on improving interviewing skills of investigative teams when they interview children who are the possible victims of sexual, physical, or emotional abuse.

These important programs will benefit from this legislation. I thank my colleagues for voting for this bill.

Mr. DODD. Mr. President, I am pleased to join with my colleagues in supporting the conference report on legislation to reauthorize CAPTA, the Child Abuse Prevention and Treatment Act. This measure is very aptly called the Keeping Children and Families Safe Act of 2003.

The conference report we are approving today would strengthen efforts to prevent child abuse and neglect. It would promote increased sharing of information and partnerships between child protective services and education, health, and juvenile justice systems. It would encourage a variety of new training programs to improve child protection, particularly cross-training in recognizing domestic violence and substance abuse in addition to child abuse detection and protection training.

The Keeping Children and Families Safe Act of 2003 renews grants to States to improve child protection systems and increases to $200 million the authorization for child abuse investigations, training of child protection service, CPS, workers, and community child abuse prevention programs.

For States to receive funding, they must meet several new requirements: have triage procedures to provide appropriate referrals of a child ''not at risk of imminent harm'' to a community organization or for voluntary preventive services; have policies and procedures for the referral of abused children under the age of three to early intervention services funded under Part C of the Individuals with Disabilities Education Act; have policies in place to address the needs of infants who are born and identified as having been physically affected by prenatal exposure to illegal drugs, which must include a safe plan of care for the child; have policies of improved training, retention, and supervision of caseworkers; and require criminal background record checks for prospective foster and adoptive parents and all other adults living in the household, not later than 2 years after the law's enactment.

Child abuse and neglect continue to be significant problems in the United States.

Nearly 3 million referrals concerning the welfare of about 5 million children were made to Child Protection Services, CPS, agencies throughout the Nation in 2001. Of these referrals, about two-thirds, 67.3 percent, were ''screened-in'' for further assessment and investigation. Professionals, including teachers, law enforcement officers, social service workers, and physicians made more than half, 56.5 percent, of the screened-in reports. About 903,000 children were found to be victims of child maltreatment. Over half, 59 percent, suffered neglect, including medical neglect; 19 percent were physically abused; 10 percent were sexually abused; 6.8 percent were emotionally maltreated; and 19.5 percent were associated with ''other'' forms of maltreatment such as abandonment, threats of harm to the child, and drug addiction. About 275,000, or 20 percent, of abused children were placed in foster care as a result of CPS investigation or assessment.

Many of these children fail to receive adequate protection and services.

The most tragic consequence of child maltreatment is death. In 2001, about 1,300 children died of abuse and/or neglect. Children younger than six years of age accounted for 85 percent of child fatalities and children younger than one year of age accounted for 41 percent of child fatalities.

Child abuse is not a new phenomenon. For more than a decade, numerous reports have called attention to the tragic abuse and neglect of children and the inadequacy of our Child Protection Service systems to protect our children.

In 1990, the U.S. Advisory Board on Child Abuse and Neglect concluded that ''child abuse and neglect is a national emergency.'' In 1995, the U.S. Advisory Board on Child Abuse and Neglect reported that ''State and local CPS caseworkers are often overextended and cannot adequately function under their current caseloads.'' The report also stated that, ''in many jurisdictions, caseloads are so high that CPS response is limited to taking the complaint call, making a single visit to the home, and deciding whether or not the complaint is valid, often without any subsequent monitoring of the family.''

A 1997 General Accounting Office, GAO, report found that, ''the CPS system is in crisis, plagued by difficult problems, such as growing caseloads, increasingly complex social problems and underlying child maltreatment, and ongoing systemic weakness in day-to-day operations.'' According to GAO, CPS weaknesses include ''difficulty in maintaining a skilled workforce; the inability to consistently follow key policies and procedures designed to protect children; developing useful case data and record-keeping systems, such as automated case management; and establishing good working relationships with the courts.''

According to a May 2001 report conducted by the American Public Human Services Association, APHSA, the Child Welfare League of America, CWLA, and the Alliance for Children and Families, annual staff turnover is high and morale is low among CPS workers. The report found that CPS workers had an annual turnover rate of 22 percent, 76 percent higher than the turnover rate for total agency staff. The ''preventable'' turnover rate was 67 percent, or two-thirds higher than the rate for all other direct service workers and total agency staff. In some States, 75 percent or more of staff turnovers were preventable.

States rated a number of retention issues as highly problematic. In descending order they are: workloads that are too high and/or demanding; caseloads that are too high; too much worker time spent on travel, paperwork, courts, and meetings; workers not feeling valued by the agency; low salaries; supervision problems; and insufficient resources for families and children.

To prevent turnover and retain quality CPS staff, some States have begun to increase in-service training, increase education opportunities, increase supervisory training, increase or improve orientation, increase worker safety, and offer flex-time or changes in office hours. Most States, however, continue to grapple with staff turnover and training issues.

Continued public criticism of CPS efforts, continued frustration by CPS staff and child welfare workers, and continued abuse and neglect, and death, of our Nation's children, served as the backdrop as we composed the Child Abuse Prevention and Treatment Act CAPTA, reauthorization bill this year.

The Child Protection System mission must focus on the safety of children. To ensure that the system works as intended, CPS needs to be appropriately staffed. The staff need to receive appropriate training and cross-training to better recognize substance abuse and domestic violence problems.

The conference agreement we are passing today encourages triage approaches and differential response systems so that those reports where children are most at risk of imminent harm can be prioritized.

The bill specifically emphasizes collaborations in communities between CPS, health agencies, including mental health agencies, schools, and community-based groups to help strengthen families and provide better protection for children.

The bill provides grants for prevention programs and activities to prevent child abuse and neglect. By focusing this assistance on at-risk families, we can help improve the likelihood that a

child will grow up on a home without violence, abuse, or neglect.

Beyond the CAPTA title of this legislation, the bill reauthorize the Family Violence Prevention and Services Act, including new efforts to address the needs of children who witness domestic violence, and a new highly secure web site to increase the likelihood that when an abused spouse calls for help, such calls will be handled as efficiently as possible with on-line links to shelters immediately letting the caller know of open shelters and the services these shelters offer. The measure also reauthorizes the Adoption Opportunities Act, and the Abandoned Infants Assistance Act.

Child protection ought not be a partisan issue. This bill will help ensure that it is not. I want to commend and thanks my colleagues on the conference committee—Chairman GREGG, Senator KENNEDY, Senator ALEXANDER, and Senator DEWINE as well as my colleagues in the House for their efforts to craft a bipartisan initiative that can help to prevent and alleviate suffering among our Nation's children.

Mr. ALEXANDER. I ask unanimous consent that the conference report be agreed to, that the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD.

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

The conference report was agreed to.

ACCOUNTANT, COMPLIANCE, AND ENFORCEMENT STAFFING ACT OF 2003

Mr. ALEXANDER. Mr. President, I ask unanimous consent that the Senate immediately proceed to the consideration of H.R. 658.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 658) to provide for the protection of investors, increase confidence in the capital markets system, and fully implement the Sarbanes-Oxley Act of 2002 by streamlining the hiring process for certain employment positions in the Securities and Exchange Commission.

There being objection, the Senate proceeded to consider the bill.

Mr. ALEXANDER. I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 658) was read the third time and passed.

DISCHARGE AND REFERRAL—H.R. 856

Mr. ALEXANDER. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be discharged from further consideration of H.R. 856 and that the bill be referred to the Committee on Energy and Natural Resources.

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

MEASURE READ THE FIRST TIME—H.R. 8

Mr. ALEXANDER. Mr. President, I understand that H.R. 8 is at the desk and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill by title.

The legislative clerk read as follows:

A bill (H.R. 8) to make the repeal of the estate tax permanent.

Mr. ALEXANDER. I now ask for its second reading and object to further proceeding on this matter.

The PRESIDING OFFICER. The objection is heard. The bill will remain at the desk.

ORDERS FOR FRIDAY, JUNE 20, 2003

Mr. ALEXANDER. Mr. President, I ask unanimous consent when the Senate completes its business today it stand in adjournment until 9 a.m., Friday, June 20. I further ask that following the prayer and pledge, the morning hour be deemed 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 the Senate then resume consideration of Calendar No. 140, S. 504, the American History and Civics Act of 2003, as provided under the previous order.

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

PROGRAM

Mr. ALEXANDER. For the information of all Senators, tomorrow morning the Senate will resume consideration of S. 504, the American History and Civics Act. Under the previous order, at 9:15 a.m., the Senate will vote on passage of the bill. Immediately following that vote, the Senate will resume consideration of S. 1, the prescription drug benefits bill, and proceed to a vote in relation to the Dorgan amendment relating to drug reimportation.

Therefore, I inform my colleagues that the leader says there will be two rollcall votes beginning at 9:15 a.m. tomorrow. Following the two votes at 9:15 a.m., the leader wanted me to inform colleagues the Senate will continue consideration of S. 1, the prescription drug benefits bill. Additional amendments will be debated tomorrow, and Members who wish to speak on amendments or the bill itself are encouraged by the leader to come to the Senate floor during tomorrow's session.

ADJOURNMENT UNTIL 9 A.M. TOMORROW

Mr. ALEXANDER. 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 7:45 p.m., adjourned until Friday, June 20, 2003, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate June 19, 2003:

DEPARTMENT OF STATE

JACKIE WOLCOTT SANDERS, FOR THE RANK OF AMBASSADOR DURING HER TENURE OF SERVICE AS UNITED STATES REPRESENTATIVE TO THE CONFERENCE ON DISARMAMENT AND THE SPECIAL REPRESENTATIVE OF THE PRESIDENT OF THE UNITED STATES FOR NON-PROLIFERATION OF NUCLEAR WEAPONS.

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS CHIEF OF CHAPLAINS, UNITED STATES NAVY, AND APPOINTMENT TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 5142:

To be rear admiral

REAR ADM. (LH) LOUIS V. IASIELLO, 0000

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C. SECTION 624:

To be lieutenant colonel

WILLIAM R. GLADBACH, 0000
MALCOLM K. WALLACE JR., 0000

Confirmations

Executive nominations confirmed by the Senate June 19, 2003:

NATIONAL COUNCIL ON DISABILITY

ANNE RADER, OF VIRGINIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2004.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TERRENCE A. DUFFY, OF ILLINOIS, TO BE A MEMBER OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD FOR A TERM EXPIRING OCTOBER 11, 2003.

TERRENCE A. DUFFY, OF ILLINOIS, TO BE A MEMBER OF OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD FOR A TERM EXPIRING OCTOBER 11, 2007.

DEPARTMENT OF HOMELAND SECURITY

C. STEWART VERDERY, JR., OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF HOMELAND SECURITY.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

EDUARDO AGUIRRE, JR., OF TEXAS, TO BE DIRECTOR OF THE BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES, DEPARTMENT OF HOMELAND SECURITY.