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Senate

The Senate met at 2 p.m. and was called to order by the Honorable THOMAS R. CARPER, a Senator from the State of Delaware.

PRAYER

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

Dear God, with gratitude, we remember that it was 136 years ago, on March 3, that Congress approved Treasury Secretary Solomon P. Chase's instruction to the United States Mint to inscribe coins with the new motto, ''In God We Trust.'' We see this motto every day on the wall of this Senate Chamber. We pray that it will be the daily, hourly expression of our dependence on You. We place absolute and undoubting trust in You, Your love, Your providential care, and Your justice and mercy. We have a great need for You, Almighty God, and You are a great God for our needs. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable THOMAS R. CARPER led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. THURMOND).

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 5, 2001.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable THOMAS R. CARPER, a Senator from the State of Delaware, to perform the duties of the Chair.

STROM THURMOND,
President pro tempore.

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

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. HATCH. Mr. President, for the information of all Senators, the Senate will immediately begin debate of S. 420, the Bankruptcy Reform Act. Today, the bill will be open for debate only. As previously announced, there will be no votes during today's session. Amendments are in order on Tuesday, and therefore votes are expected to occur. It is hoped that all action on the bankruptcy bill can be completed prior to adjourning for the week. The Senate may also consider any nominations that become available for action, and I thank all our colleagues for their attention.

RESERVATION OF LEADER TIME

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

BANKRUPTCY REFORM ACT OF 2001

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of S. 420, which the clerk will report.

The bill clerk read as follows:

A bill (S. 420) to amend title 11, United States Code, and for other purposes.

The Senate proceeded to consider the bill.

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Mr. President, today, I am pleased that we are proceeding to the consideration of bankruptcy reform legislation. Senator GRASSLEY introduced S. 220 earlier this month, which is precisely the same legislative language that was contained in the conference report passed by the Senate in December by a vote of 70 to 28. That language has been marked up and reported out of the Judiciary Committee. It is that language we are considering today in S. 420, the ''Bankruptcy Reform Act of 2001.''

As many of you know, we have been working on the issue of bankruptcy reform for a number of years now. By way of background, both Houses demonstrated overwhelming margins in favor of this legislation in December, but President Clinton pocket-vetoed the legislation and we simply ran out of time in the session to come back and override the veto. So earlier this month, rather than introducing something to serve as a starting point for negotiations, Senator GRASSLEY introduced exactly the language that passed both houses so overwhelmingly in December. This language was the result of a long process of bipartisan negotiations last year that resulted in agreement on over four hundred pages of legislative language, on all but two issues. Although we were prepared to go directly to the Senate floor and complete this unfinished business of the last session, because of complaints by some Democrats on the committee, we held yet another committee hearing on the subject. Even after the hearing, some Democrats on the committee raised additional objections, and that is why we marked up the legislation in committee, instead of moving directly to the Senate floor for its quick consideration. We tried our best to accommodate our colleagues on the other side. I think we did, and I believe they appreciate it.

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

Although some 27 democratic amendments were circulated for the committee markup, I am pleased that our Democratic colleagues ultimately limited their offering of some of the amendments because those of us on the Republican side of the aisle worked very hard to accommodate Democratic concerns with respect to substantive amendments. We accepted several amendments and developed compromise provisions on several others. It is my sincere hope that we can work constructively on the floor without an unnecessary flood of amendments and without undue delay.

Again, this legislation was agreed to during bipartisan negotiations last year, with the exception of two provisions, one of which—the issue of the dischargeability of debts relating to violence—we worked in committee to resolve. I am pleased that the bill now includes a reasonable compromise developed by Senator SCHUMER and me that addresses the concerns of both sides in a fair manner. Let me take this opportunity to thank Senator SCHUMER for his leadership and hard work on this issue.

I am also pleased to have worked with the Ranking Democratic Member of the Judiciary Committee, Senator LEAHY, to include for the first time privacy protections in bankruptcy. The amendment protects personally identifiable information given by a consumer to a business debtor by adding new privacy protections to the bankruptcy code and by creating a consumer privacy ombudsman to appear before the bankruptcy court.

Given that the language we are considering is the Senate-passed conference report with the only changes being ones sought in committee by our Democratic colleagues, I am hopeful that we can all stand by the compromises we reached in good faith last year. I am the first to acknowledge that there are things I would like to see changed in the bill, but I recognize that we all have cooperated and compromised in order to enact this legislation that provides new consumer protections, helps children in need of child support, and makes other necessary reforms to a system that is open to abuse.

As we move to consideration of this legislation, I am heartened, but not surprised, by the results of the nationwide voter poll conducted for the Credit Union National Association which indicates broad public support for reforming our bankruptcy system.

According to the poll, the vast majority of people believe that individuals who file for bankruptcy should be required to pay back some of their debts if they have the means to do so.

This is precisely what the bankruptcy reform legislation is designed to do. The late Erma Bombeck once asked her husband, ''What do you think I'd do if I won a million dollars?'' ''You'd spend $2 million,'' he said. The reason her anecdote is funny is that it rings so true. Many people, even during the best of economic times, do not exercise financial responsibility.

The poll also shows that most people think it should be more difficult for people to file for bankruptcy. This finding indicates to me that Americans have had enough. They believe it should be made more difficult for people to file for bankruptcy. Fourteen percent strongly oppose that provision, 14 percent somewhat oppose, 24 percent somewhat favor it, and 40 percent strongly favor, or 64 to 28. So it is a very important thing when you think about it.

I have to say that, as I have mentioned the poll shows, most people think it should be more difficult for people to file for bankruptcy. This finding indicates to me that Americans have had enough; they are tired of paying for high rollers who game the current system and its loopholes to get out of paying their fair share.

Although this legislation does not make it more difficult for people to file for bankruptcy, it does eliminate some of the opportunities for abuse that exist under the current system. Our current system allows wealthy people to continue to abuse the system at the expense of everyone else. People with high incomes can run up massive debts and then use bankruptcy to get out of honoring them.

All of us end up paying for the unscrupulous who abuse the system. In fact, it has been estimated that every American family pays as much as $550 a year in a hidden tax as a result of the actions from these abuses. The bankruptcy reform legislation will help eliminate this hidden tax by implementing a means test to make wealthy people who can repay their debts actually honor them. I suppose we can call this a tax cut for the responsible people in America.

There are numerous examples of people who take advantage of loopholes at the expense of everyone else. I recently heard from the President of a credit union in Wisconsin who told me about a young couple who wanted a ''clean financial slate'' before they got married. What did they do? They ran up their credit card purchases. One of them prepaid on a car loan with the credit union to have the other cosigner released. Then, although they were both employed full time, they filed for bankruptcy to wipe out all their debt. The credit union—and its members—had to eat the $3,000 in credit card debt and another couple of hundred dollars on the car.

Bankruptcy relief was never meant to allow this kind of abuse. That is a minor story compared to the millions of examples that over the years could be cited. Hard-working Americans, including the members of credit unions nationwide, have been victimized by abusers of the current bankruptcy system long enough.

Bankruptcy abuse also hurts our Nation's small businesses. As Thomas Donahue, the president and CEO of the U.S. Chamber of Commerce, said recently:

Without congressional action, losses from bankruptcy abuses will continue to break the banks, and backs, of the Nation's small businesses and retailers, which work with slim profit margins and an even smaller margin for error.

Make no mistake, misrepresentations about this legislation have been running rampant by those who oppose any meaningful bankruptcy reform. Perhaps we can take some comfort in the words of former British Prime Minister Harold MacMillan who said:

I have never found, in a long experience of politics, that criticism is ever inhibited by ignorance.

Despite the allegations of opponents of reform, the poor are not affected by the means test. The legislation provides a ''safe harbor'' for those who fall below the median income, so they are not subjected to the means test at all.

Another misrepresentation I have heard again and again is that this legislation won't let people file for bankruptcy relief when they need it. The fact is, this legislation does not deny anyone access to bankruptcy relief; it just requires those who have the means to repay debts based on their income to do so. It is that simple.

Opponents of this legislation have also waged the claim that it somehow hurts women and children. This falsehood is a particularly disturbing one for me to hear because I have had a long history of advocating for children and families in Congress. I have worked tirelessly, provision by provision, to make this legislation dramatically improve the position of children and exspouses who are entitled to domestic support.

It can be difficult to get the word out when misrepresentations abound about what bankruptcy reform legislation really does. In fact, the bankruptcy legislation will put a stop to letting deadbeat parents use bankruptcy to avoid paying child support. This bill would mean putting an end to paying lawyers ahead of the children who rely on child support. Current bankruptcy law simply is not adequate, and, frankly, I was outraged to learn of the many ways deadbeat parents are manipulating and abusing the current bankruptcy system in order to get out of paying for their domestic support obligations. This bill is a tremendous improvement for children and families over current law. That is why there is such overwhelming support for this legislation from the child support professionals across the country—the very people who go after deadbeats to get children the support they need.

I hope those who oppose any reform to our Nation's bankruptcy system will not engage in petty parliamentary tactics and try to encumber it with frivolous amendments. Nevertheless, I am optimistic that this much-needed bankruptcy reform legislation will be signed into law this year. We have a

no-nonsense President in the White House who understands the importance of personal responsibility. So let's enact this meaningful bankruptcy reform. As I said last year, the American people have waited long enough for it, and it is time for us to do what really is in the best interest of the people at large. It is time to give this, in effect, tax cut to the millions of people out there who are paying, on the average, an extra $550 a year because of those abusing the system.

I yield the floor.

Mr. LEAHY. Mr. President, bankruptcy is a complex area of the law. It has competing public policy interests between debtors and creditors and among competing creditors.

The complex and competing interests involved in achieving fair and balanced reforms of our bankruptcy system demand we work in a bipartisan manner throughout the legislative process. Actually, that is the lesson we learned from failed attempts of past reform measures, and it is all the more relevant with an evenly divided Senate.

The Republican leadership in the Senate and of the Judiciary Committee I felt did not want the Judiciary Committee involved in shaping bankruptcy reform legislation this year, but over the last couple of weeks the committee was able to hold an informative hearing and a markup that began the process of improving the bill.

In fact, when we finally started talking about amendments to greatly improve the bill, we spent less than 4 or 5 hours. Eight amendments were adopted by the Judiciary Committee during a couple hours of work on Tuesday and a couple hours of work on Wednesday, and we improved it.

I am pleased to learn of the majority leader's remarks on Wednesday when he congratulated the committee for its positive action and for completing its work on an expedited basis last week. The point being: Just put us in a room, actually have us all there, and give us a little time. We usually work these things out. We can do the same thing on the floor. If the leadership wants us to complete this bill, we can do it expeditiously.

The bill the Senate begins considering today is the bill that originated in the Judiciary Committee, S. 420, with those important committee amendments already incorporated. The committee held an informative hearing and markup which has improved the bill in several key areas. I commend the Democratic members of the Judiciary Committee for their amendments and for their willingness to expedite committee action on this measure. I will give an example.

Senator FEINSTEIN pointed out a number of aspects of the bill need further refinement and our attention with respect to the harshness of the means test and the need for balance with regard to consumer credit disclosures and solicitations. In addition, she coauthored with Senator FEINGOLD an amendment that the committee debated and adopted by a 10–8 vote to provide balance and fairness to the bill's landlord-tenant provisions. I know the Senator from California will continue her good work so that the bill considered by the Senate is further improved.

During the markup, the committee adopted a number of improvements to the bill. We also showed what happens when we work in a bipartisan fashion.

I commend the chairman and Senator SCHUMER for reaching agreement on one of the most contentious issues in the bankruptcy debate in the last Congress: the discharge of penalties for violence against family planning clinics.

I believe the compromise Senator HATCH and Senator SCHUMER worked out, along with help from my staff, was possible in part because of the powerful testimony at our committee hearing on the need to end this abusive practice.

During our hearing on bankruptcy reform legislation, Maria Vullo, a top-rate attorney, testified about the need to amend the bankruptcy code to stop wasteful litigation and end abusive bankruptcy filings that are used only to avoid the legal consequences of violence, vandalism, and harassment to deny access to legal health services. I believe she impressed all members of the committee. I think she made all members of the committee realize we have to move on this issue.

As a result of the amendment adopted by the committee last week, perpetrators of clinic violence will no longer be able to seek shelter in the Nation's bankruptcy courts.

In addition, the committee adopted a Leahy-Hatch amendment to protect the personal privacy of consumers whose information is held by firms in bankruptcy. The amendment of the Senator from Utah and I permits bankruptcy courts to honor the privacy policy of business debtors and creates a consumer privacy ombudsman to protect personal privacy in bankruptcy proceedings.

I appreciate the chairman's effort in joining me on this amendment to add important consumer privacy protections to the bankruptcy code.

The irony is, the Leahy-Hatch amendment would not even be needed if everybody was doing what they should. The Leahy-Hatch amendment is needed because the customer list and databases of failed firms can now be put up for sale in bankruptcy without any privacy considerations, and even in violation of the failed firm's own public privacy policy against the sale of personal customer information to third parties.

Let me explain what happens. You have an online company and they have a privacy policy that guarantees privacy of your family's information: You can give us all the details about your children, you can give us all this information because we promise you we will never sell it to anybody else; we will never give it to anybody else.

They keep their word, but they go into bankruptcy. The bankruptcy court looks at the file and says the only thing you have left worth any money is this list of names of these children, their parents, whomever. It is valuable. The trustee in the bankruptcy says: I have sworn an oath; I have to uphold the law. I have to sell that list. Suddenly the list you thought was sacrosanct is sold. I will give an example.

Toysmart.com. is a failed online toy store. It filed for bankruptcy last year. Its databases and customer lists were put up for sale as part of the bankruptcy proceeding. It went on the auction block even though they promised that all the information would never be allowed out.

The Leahy-Hatch amendment that we adopted in committee adds privacy protections and a consumer privacy ombudsman to the bankruptcy code to prevent future cases such as Toysmart.com.

We adopted several amendments by Senator FEINGOLD to strengthen chapter 12 to help our family farmers with the difficulties they face.

I offered another amendment that added a number of temporary bankruptcy judgeships to the bill, actually in line with the recommendations of the Judicial Conference of the United States.

All in all, the eight amendments the committee adopted to the initial proposal began the process of improving the bill during this Congress. We worked expeditiously in the Judiciary Committee to accommodate the interests of the majority leader in having prompt action on this measure. We did so in spite of the fact that this committee has not taken the organizational actions necessary to adopt a budget and to create subcommittees.

I thank the Members on my side of the aisle who have been willing to make quorums and move forward even though we have yet to organize the committee.

Last Wednesday, the majority leader said on the Senate floor:

> I think the committee needs to be congratulated because the committee worked yesterday, it worked again today, and it completed its work. I do not know how many amendments actually were considered, but they dealt in some way with as many as 30 amendments and I guess voted on a whole lot of them.

I thank the majority leader for his kind words about the Judiciary Committee's consideration of this bill.

The majority leader also stated on the Senate floor last week that he hoped ''for a full and free debate—amendments will be offered, considered, and voted on.''

I agree we should have such a full and free debate. It is actually the best way to proceed. The irony is we have a lot of discussion about should the Judiciary Committee mark this bill up or not mark it up? Should we meet on this bill or not meet on this bill? We spent more time talking about meeting

on the bill than we actually did when we sat down.

When we sat down and followed the normal process, we considered the amendments, we voted them up or down and sent the bill to the floor. The Senate works best when it can openly and freely work its will on major legislation.

Senators will return tomorrow. If we start voting on this early, bring up amendments, vote on this early tomorrow, go into the early evening, do the same on Wednesday, probably into Thursday morning, we can easily finish this bill so long as we don't interrupt it for other work.

We made a good start in the Judiciary Committee, but there are some issues that have to be held to the floor. We did not address the homestead exemption cap. Certainly that is a huge loophole where somebody could dump a whole lot of money in a few States into multimillion-dollar mansions and then declare bankruptcy and hide it from creditors.

We didn't talk about consumer credit card disclosures. Chairman HATCH asked that a number of these amendments be reserved for floor action. I agreed so as to help move this out of committee. But now we are ready to offer those amendments.

I believe we can craft a balanced bankruptcy reform law that corrects abuses by debtors and creditors in the current bankruptcy system. For example, we should provide for more disclosure of information so consumers may better manage their debts and avoid bankruptcy altogether. They must have a better idea what it means when they sign up for a credit card. They ought to have some idea when they are told, here is the minimum payment for the month. They also ought to have something saying, if you carry the minimum payment, here is what you will owe in the end, which may be many times what was paid for the item in the first place.

I know Senators LEVIN, DURBIN, SCHUMER, DODD, and others share a commitment to include credit industry reforms in a fair and balanced bankruptcy bill.

Billions of credit card solicitations made to American consumers in the past few years have contributed to the rise in consumer debt and bankruptcies, including a 7 or 8 year old receiving a credit card with a long line of credit, or a dog gets a credit card. Somebody puts their dog's name on an answer to a letter, and suddenly the dog is getting a credit card with an approval letter: Dear Mr. Rover Leahy: We are so impressed with your past credit card we are now giving you a $2,000 credit line.

When it comes to kids in school who can barely get enough money to go to the movies, credit card companies say: Dear Student: With your great credit card, here is $2,000, $3,000.

The idea is if you start using it, you get hooked on using that one credit card. On one side we have people trying to hook kids on drugs; on the other side, we have credit card companies trying to hook them on credit cards. In fact, it is estimated that last year credit card companies mailed 3.3 billion solicitations. In case you wonder why your mail is late, it is because of the credit card solicitations.

Many of the most controversial proposals for changing this bill are to benefit the credit card industry. A lot of what is driving the consideration of this bill is that the credit card industry is going to get some real big gifts. The biggest gift is to give to the credit card industry the taxpayer pays for bankruptcy courts and the authority of the Federal law to help them with the collection practices of these companies after they have given the credit card to your pet dog or your kids in school or your aging parent in a nursing home.

Business Week recently reported Dean Witter estimated this bill would boost the earnings of credit card companies by 5 percent a year. Want to know about a gift? This bill at present would give credit card companies alone a 5-percent increase. I would like to become the CEO of one of those credit card companies, hope the bill passes, and I could say: Look, our earnings went up.

One credit card company, MBNA, would make in profit—not in earnings, but in profit—$75 million a year, according to the Business Week article, if we pass this bill the way it is.

They will make a lot of money. If some of their lobbyists are outside singing jingle bells, it is not just the snow that shut down the Washington area this morning that encouraged them; it is this bill. In fact, it is only fair if the credit card industry is going to get the profits, they ought to be involved in bankruptcy reform. They ought to be asked to show how the changes they seek will benefit consumers. If they are going to make the extra profits, if they are going around saying it will benefit consumers, let me see the lower interest rates. Let me see the lower fees.

If this bill passes and gets signed into law, let us all ask the credit cards, where are the lower fees? Where are the lower interest rates? Who wants to bet we will see them?

There is no guarantee the billions in credit industry profits are going to be passed along to the consumers. I happen to agree with President Bush. He underlined the importance of examining credit industry practices when discussing the state of America's economy.

President Bush said he will ''remind Members of both the Senate and the House that there is a lot of debt at the Federal level, but there is a lot of debt at the private level. We've got a lot of people struggling to pay off credit card consumer debt.''

I am one Democrat who says President Bush is absolutely right. I agree with him. I think we ought to tell the credit card companies if you are going to get a big windfall from the Senate and the House, give something back to the consumers, and stop trying to hook kids on credit and credit cards that they can never pay off in their lifetime. Stop trying to hook them when they are in college, stop trying to hook parents who are strapped already with more credit cards without telling them what it will really cost them if they get behind.

Another improvement we should make is to address the problem of wealthy debtors who use overly broad homestead exemptions to shield assets from their creditors. Senator KOHL has been a leader on this issue and a champion for closing down the loophole for the rich.

In some States, wealthy debtors have million-dollar mansions that are protected from bankruptcy. There has been an abuse of the bankruptcy fresh start protection. In the last Congress, the Senate overwhelmingly, Republicans and Democrats, voted to close this loophole of the bankruptcy code. By a vote of 76–22, the Senate adopted a bipartisan amendment offered by Senators KOHL and SESSIONS to cap homestead exemption at $100,000. But the giveaway bill this year guts that provision. We have to put it back in. We want to make this law have a sense of being balanced.

At our hearing in the committee, Brady Williamson, the former chair of the National Bankruptcy Reform Commission, testified that ending homestead abuse was a key consensus recommendation of the Bankruptcy Reform Commission.

I think we should remember as we go through this week what purpose bankruptcy serves. It is a safety net for many Americans. That is why it has been here since the beginning of this country. Those who use bankruptcy are usually the most vulnerable of the American middle class. They are older Americans who have lost their jobs or are unable to pay their medical debts. They are women attempting to raise their families or secure alimony and child support after a divorce. They are individuals struggling to recover from unemployment.

As we move forward with reforms that are appropriate to eliminating abuses in the system, we need to remember the people that use the system, both the debtor and the creditor. We need to balance the interests of creditors with those of middle-class Americans who need the opportunity to resolve overwhelming financial burdens.

The last two Congresses proved there are many competing interests in the bankruptcy reform debate that make it difficult to enact a balanced and bipartisan bill. By working in a bipartisan fashion from the beginning of the amendment process to the end, we can craft reforms and ensure our bankruptcy laws better serve the intended

goals and correct abuses of the bankruptcy system by debtors and creditors. That is why I say let the process work through. Bring up amendments. Some will be adopted; some will not.

Nobody is out here to delay it. We are just trying to make a better bill. Let's do something about the homestead exemption. Let's do something about appropriate disclosure to consumers.

Let us make this a better bill and then send something to the President that he can be proud to sign, knowing it is consistent with what he said about a lot of people struggling to pay off credit card debt. The President will know that we have done something consistent with what he said just in the last couple of days.

I will work with Senator HATCH and my good friend, Senator Grassley from Iowa, to make more improvements on the Senate floor. Let's reach a bipartisan consensus that can be enacted into law. Let's do it in the next couple of days. Let's work on this. Let's start voting early tomorrow on it and let's wrap it up. Let's not go off this until we finish. If we do that, we can complete our work.

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

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

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. KENNEDY). Without objection, it is so ordered.

Mr. CARPER. Mr. President, for the last hour or so we have been privileged to hear comments from Senator HATCH and Senator LEAHY who discussed the debate of the bankruptcy reform legislation, which took place in the Judiciary Committee over the last several weeks. We now have the opportunity, today and tomorrow, to begin amending the bankruptcy reform legislation that was vetoed by President Clinton last year.

I wish to express my own appreciation to both Democrats and Republicans on the Judiciary Committee for letting the process work, and for moving the process forward.

I especially thank Senator SCHUMER and Senator HATCH for working out a compromise on those who would use bankruptcy as a way to avoid their responsibilities; or for those who have brought action against family planning clinics, or, frankly, any act of violence, intimidation or threat.

I am appreciative of Senator LEAHY and Senator HATCH for the work they have done in trying to make sure that consumer privacy protections are provided in this legislation.

The history of bankruptcy is known by many people. For much of the last century, individuals and businesses have been able to seek protection through bankruptcy in order to put their lives back together, or their businesses back together. Several chapters that exist for bankruptcy are designed to provide a place for consumers to find relief.

In the last decade we have witnessed some of the strongest economic expansion in our country's history—the longest economic expansion in our Nation's history—yet during the 1990s we have seen an alarming increase in the number of people filing for bankruptcy.

Not all of those people who filed for bankruptcy had any other recourse. In fact, the lion's share of the people who filed for bankruptcy last year—or the year before that and the year before that—were folks who were up against the wall. They needed a way out and for them bankruptcy was that way out.

There are people who lost their jobs; people whose family suffered illnesses; maybe catastrophic illnesses; or marriages that were dissolved; or relationships that came to an end. And because of those situations and others like them, those families need the protection of bankruptcy.

Not everyone who files for bankruptcy needs the protection afforded them in chapter 7. For some who file, chapter 7 is not the appropriate venue, because they have the ability to pay at least a portion of their debt. If an individual can repay some of their debt, they should instead file under chapter 13.

The challenge that the committees in the Senate and House faced last year was to try to figure out a fair way to determine who indeed had the ability to pay something of their debts and who did not.

Among the other reasons why we need reform—it has been alluded to before, and I will touch on it briefly—is that under current bankruptcy law those who have an obligation to pay child support, or those who have an obligation to make alimony payments, in many cases find those priorities low on their list. And, frankly, they are pretty low on the list of the bankruptcy laws of our land. We need to do something about that. This legislation would. It would raise the priority of child support payments and alimony payments as well.

Currently those who have those kinds of obligations to their children, or to a former spouse, also have to try to use something called the automatic stay as a way to avoid meeting those obligations while their bankruptcy case winds its way through court, and sometimes this can be a long period of time. This legislation would end the automatic stay for child support and alimony payments, making sure individuals are responsible for these personal obligations.

State and local governments are affected as well. As former Governor of Delaware, and former chairman of the National Governors' Association, one of the reasons why the National Governors' Association supported bankruptcy reform was to make sure individuals who had the ability to pay some of their State and local taxes were called upon to do that where it was reasonable. This legislation would do that.

In the end, when people who have the ability to pay, do not pay and walk away from those debts, the rest of us end up paying the costs of their bankruptcy. Businesses and creditors have to swallow the debt. Then, those of us who borrow money—whether it is for a house, or for a car, or for credit card purchases—in the end we pay more than we really ought to. This is not fair to the majority of us who pay our bills.

I have only been in the Senate for about 2 months. One of the comments I have heard most frequently is the old adage ''don't let the perfect be the enemy of the good.'' My guess is we are going to hear that a lot on the Senate floor this week. I will be the first to say it.

This bill represents in many respects so much that is needed. The changes don't do everything I would like. I will mention a couple of concerns that I have.

I think it was Senator LEAHY who spoke a few moments ago about the credit card applications that come to our children.

In some cases rather young children, even to our pets. I think he referred to Rover, Rover Leahy. I do not know if his dog actually did get a credit card application. I would just say we get a lot of mail in our home. I am sure we all do. We probably get more credit card solicitations than we would like. But we simply throw them away if we are not interested.

If credit card issuers or, frankly, others who are extending credit are so foolish as to extend credit to a pet or to a child, who does not have the ability to repay that obligation, that is a poor underwriting decision by the extender of the credit. And they deserve, in the end, what they will get. It is issued probably to someone who either maybe will not use it, or if they do use it, it is perhaps not with the intent of ever paying that obligation.

For the real person who is actually extended the credit card under those circumstances, under this bill, if they do not have the ability to pay, if, indeed, their income is under a median family income, they have a safe harbor. If they have to declare bankruptcy, they will continue to have the ability to file under chapter 7 and will not have to pay that obligation.

Senator LEAHY also mentioned the issue of disclosure. We get our credit card statements whenever they come. There is a statement on the credit card that says: If you pay your minimum monthly amount that is due, you can do so and not incur any kind of penalty. The credit card does not say how long it is going to take you to actually pay off your credit card bill if you only pay the minimum.

I wish there was some way to address that in a way that does not put the extender, the creditor, in harm's way with respect to class action lawsuits. This is a difficult situation.

The bill that is before us this week does provide an example to those of us who are consumers and explains that if we only pay the minimum payment, it may take an extended period of time to pay our credit card bill. It actually uses an example, as I understand it. Creditors, in this case, issuers of a credit card, are to provide on the statement an example that if this is how much you owe, and you pay your minimum payment—and this is the interest rate—this is how long it will take you to actually pay down your obligation. They actually offer a 1–800 number that someone can call to say: ''My debt is $800. That is what my statement says. My minimum payment is $20 a month. How long will it take me to pay it off?'' We can get an answer by calling the 1–800 number.

I wish we had the ability to put a close estimate of what the debt would cost a consumer, and how long it would take to pay off, right on the credit card statement. I am told the reason why the bill out of committee does not do that is because of concerns about class action lawsuits. That is a legitimate concern but, for me, the solution is not a perfect one.

The other issue I wish we could address is the homestead exemption. I understand Senator KOHL may try to address this issue this week. People roll up big debts and then go to a State that has a large homestead exemption, and they put a lot of money, a lot of assets therein, for example, a very expensive home—a quarter of a million dollars, half a million dollars, or million-dollar home—and then walk away from their other obligations and use that estate, that homestead to protect their assets.

I understand Senator KOHL is going to offer an amendment that makes this practice somewhat more difficult to do. I welcome that provision.

But most of the people who file for bankruptcy are not folks who seek to try to stiff credit card or financial institutions or department stores or anyone else. They are people who are left with little other choice. As I said earlier, they have been dealt, in many cases, a difficult or maybe a crippling blow in their lives. More than 90 percent of the people who file for bankruptcy actually need the protection of the laws, and fewer than 10 percent actually have the ability to pay something back.

But of those people who do have the ability to pay something back, I believe—and I suspect almost all of us believe—that they should repay at least a portion of their debts. I don't care if it is only 5 percent of the people who file who have the ability to pay something back—or 4 percent or 3 percent—if they have the ability, they should make that effort. We should expect that of them and of ourselves.

A major challenge the committee has faced, and the Congress has faced, in trying to craft an appropriate balance—weighing the concerns and rights of consumers versus those who extend the credit—is in relation to the tough questions that we have dealt with, such as how do you actually determine the ability to repay? We all come from different family circumstances in terms of employment, marital status, and illness. How do we determine who has the ability to repay? The committee, to its credit, has provided for a safe harbor, essentially to say people whose median family income falls below that of 100 percent of the median family income with respect to their State, they would automatically have a safe harbor. They could file for bankruptcy in chapter 7, and they basically get a free pass.

What is 100 percent of median family income? I think for a family of four in Delaware, it is about $45,000 a year. I think in Maryland, it is about $50,000 a year; and in Alabama, it is perhaps $35,000 a year.

For those whose family income is between 100 percent of median family income and 150 percent of median family income, they would receive, not a complete pass, but a rather cursory review to see if they would not also qualify for that safe harbor.

So we are talking about, in Maryland, for example, those whose income is between $50,000 and $75,000 would be below the 150-percent threshold, and I think would, for the most part, after an expedited review, have the right to file under chapter 7.

I think it is appropriate to ask, for one who files for bankruptcy, what kind of expenses are factored in when determining whether or not a person has the ability to pay? We get beyond these thresholds of 100 percent of median family income, 150 percent of median family income. Is anything else taken into account? As it turns out, a number of payments are. And they are the kind of payments we would expect for people to be able to hold their households together and be able to work.

For example, a person who is asking to file under chapter 7, as opposed to chapter 13, if their income exceeds those thresholds of 100 percent or 150 percent of median family income, they could present documentation to the bankruptcy court indicating how much their housing costs, their rent or mortgage payments are. If they have car payments, those would be appropriate, as well as would education expenses, clothing, and food allowances. Judges are given discretion to address special needs as well, including medical costs.

Let me close by saying Senator LEAHY, in his comments, talked about how many credit card solicitations are mailed out every year. I think he indicated the number is over 3 billion. That is a lot of mail. I would just remind everyone, as those credit card solicitations come into our mail boxes, of course, we do not have to take advantage of all of them. When I drive down the road in Delaware, and I go by an ice cream store or a doughnut shop, as much as I might be tempted to pull in and sample their wares, I do not always do that. We have to show some personal discretion regardless of how tempting those treats might be.

But if financial institutions actually do make money, and if their bottom lines are enhanced to some extent by the adoption of this legislation, my guess is, in the end, they all do not keep that money. My guess is, in the end, if you think about the competition—and it is a dog-eat-dog world these days in the credit card business—if I do not like the interest payment that comes with my credit card, I can find dozens of other issuers with a lower rate. If I do not like the monthly fee that I am asked to pay, I can find dozens of other issuers with lower monthly fees.

I would simply suggest the competitive nature of the business, including the credit card business, is such that for those issuers of credit cards who do not pass along some of those savings to consumers, then their competitors will. If competitors lower their interest rates and reduce or eliminate their monthly fees, those of us who are consumers will move off to take advantage of their lower interest rates and lower fees.

Let me conclude with these comments. I am glad we are at this point in the debate. I look forward to the debate over the next several days. I am very pleased we are going to have this debate. And those who have amendments, if they want to offer them, will have the opportunity to do so. We will debate them, and vote on them, and then vote on final passage.

I hope the amendments make the bill even a little better than it is today. I think it is better today than it was going into the committee a week or so ago. I am pleased to participate in the debate.

The PRESIDING OFFICER (Mr. VOINOVICH). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, bankruptcy judges, scholars, practitioners, labor unions, consumer advocacy organizations, and civil rights groups have uniformly rejected the Bankruptcy Reform Act of 2001 because its harsh and excessive provisions will have a devastating effect on working families.

Despite their words of warning, two of the most profitable industries in America—the credit card industry and the banking industry—have insisted upon a harsh bill that will fatten their bottom line while unfairly penalizing vulnerable Americans.

While we do need to pass a bill to reduce the fraud and abuse within the bankruptcy system, this bill will not accomplish that goal. This bill will hurt women, children, and hard-working American families, those who truly need the bankruptcy system to prevent unintended financial hardship.

This is no time to pass such harsh legislation. For weeks, President Bush has warned the Nation about the perils of an economic downturn. Pointing toward layoffs and rising unemployment, decreasing consumer confidence, and minimal economic growth, President Bush is urging Congress to act to strengthen the economy. But punitive bankruptcy reform legislation does not fall into that category. Now more than ever, we need to ensure that Americans losing their jobs or struggling with medical debt have the second chance for economic security that the bankruptcy laws are intended to provide. It makes no sense to pull the rug out from under them, just as the economy is weakening.

We need to separate the myths from the facts—and focus on the real winners and losers under the proposed legislation. By any fair analysis, this bankruptcy bill is the credit industry's wish list, a blatant effort to increase its profits at the expense of working families.

We know the circumstances and market forces that often push middle class Americans into bankruptcy.

Rising unemployment and company layoffs are major parts of the problem. In recent months, the slowing economy has caused a noticeable jump in the national unemployment rate. It rose to 4.2 percent in January, the highest level in 16 months. The slowing economy has also triggered massive layoffs. Within the past weeks, Verizon announced its plan to cut approximately 10,000 jobs, and Daimler Chrysler announced it would drastically cut its workforce by eliminating 26,000 jobs over the next three years. Xerox plans to eliminate 800 jobs on top of the 5,200 cut last Fall. Telecommunications giant World Com reported plans to lay off up to 15 percent of its workforce, a loss of 11,500 jobs. Sara Lee plans to lay off 7,000 employees. AOL-Time Warner wants to cut 2,000 jobs. Lucent Technologies plans to eliminate 10,000 workers. The layoffs go on and on. Overall, companies have announced plans to lay off close to 70,000 workers—and the year has just begun.

Often, when workers lose their current good jobs, they are unable to recover. In a February 2000 survey conducted by the Bureau of Labor Statistics that approximately one-fourth of workers displaced from full-time wage and salary jobs received earnings substantially lower than what they had received before they lost their jobs. It is all too common for laid-off workers to be forced to accept part-time jobs, temporary jobs, or jobs with fewer or no benefits at all.

Divorce is another major cause of bankruptcy. Divorce rates have soared in recent decades, and the financial consequences are particularly devastating for women. Divorced women are four times more likely to file for bankruptcy than married women or single men. In 1999, 540,000 women who head their own households filed for bankruptcy to try to stabilize their lives; 200,000 of them were also creditors trying to collect child support or alimony. The rest were debtors struggling to make ends meet.

Another major factor in bankruptcy is the high cost of health care. Forty-three million Americans have no health insurance, and many more are underinsured. Each year, millions of families spend more than 20 percent of their income on medical care. Older Americans are hit particularly hard. A 1998 CRS Report states that even though Medicare provides generally good health coverage for older Americans, half of this age group spend 14 percent or more of their after-tax income on out-of-pocket health costs, including insurance premiums, co-payments and prescription drugs.

A report published in Norton's Bankruptcy Adviser says:

> The data reported here serve as a reminder that self-funding medical treatment and loss of income during a bout of illness or recovery from an accident make a substantial number of middle class families vulnerable to financial collapse. For middle class people, there is little government help, so that when private insurance is inadequate, bankruptcy serves by default as a means for dealing with the financial consequences of a serious medical problem.

These are the desperate individuals and families from whom the credit card industry believes it can squeeze higher profits. The industry claims that these men and women are cheating and abusing the bankruptcy system, and are irresponsibly using their credit cards to live in a luxury they cannot afford.

These Americans are not cheats and frauds, but they do constitute the vast number of Americans in bankruptcy. Two out of every three bankruptcy filers have an employment problem. Two out of every five bankruptcy filers have a health care problem. Divorced or separated people are three times more likely than married couples to file for bankruptcy. Working men and women in economic free fall often have no choice except bankruptcy. Yet, the credit card industry is determined to deny them the safety net they need.

There is no doubt that large numbers of Americans will be harmed by this legislation. They do the right thing and play by the rules. They work hard and try to provide for their children. But sometimes, unexpected tragedy strikes, and nothing can prepare them for the financial difficulties they will encounter.

The Trapp family of Plantation, FL is one of these families. They are not wealthy cheats trying to escape from their financial responsibilities. They are a middle class family engulfed in debt, because of circumstances beyond their control.

Mr. and Mrs. Trapp worked as letter carriers for 12 years. Both worked before and after their three children were born. They had a good life, but an unexpected medical obstacle occurred. Their 4 year old daughter, Annelise, contracted a muscle disease that is similar to a very rare form of Muscular Dystrophy. Her muscles are very weak. She needs a respirator to breathe, and she also needs constant nursing care.

The Trapps had good health insurance through the United States Postal Service. But even with this comprehensive coverage, Annelise's medical expenses left the family with massive debts. Their insurance has paid millions of dollars, but the Trapps' portion of the bills was still $124,000. This debt combined with $26,000 owed on a specially manufactured van to accommodate Annelise made it impossible for the family to meet its financial obligations. They were forced to declare bankruptcy.

Proponents of the bill argue that the Trapp family would not be affected by the means test, because their current income is below the State median income. That is not true. Before Mrs. Trapp left her job, the family's annual income was $83,000 a year or $6,900 a month. Under the bill, the Trapp family's previous six months' income would be averaged, so that they would have an average monthly income of about $6,200—above the State median—even though their actual monthly gross income at the time of filing was $4,800.

Based upon the fictitious income assumed by the legislation, the Trapp family would be subject to the means test. And the means test formula—using the IRS standards—assumes that the Trapps have the ability to repay more than their actual income would allow.

This harsh legislation is an undeserved windfall for one of the most profitable and powerful industries in America. Credit card companies are engaged in massive and unseemly nationwide campaigns to hook unsuspecting citizens; like the elderly, college students, and the working poor, on credit card debt. In 1999 alone, Americans received 3 billion—3 billion—credit card solicitations. That's more than three times the 900 million mailings they received in 1992.

The average American household is carrying $7,500 worth of debt, 150 percent higher than a decade ago. A major cause of the problem is that the cost of credit has gone up, and credit card companies are bolstering their profits through heavy penalties and aggressive collection practices. Credit card companies are also targeting marketing campaigns at those who cannot afford to pile up such debts. Instead of helping these individuals recover from their debts, the industry is supporting legislation that will only drive them deeper into financial despair.

Supporters of the bill argue that it is not a pro-credit card industry bill. But, to deal effectively and comprehensively with the problem of bankruptcy, we have to deal with the problem of debt. We must see that the credit card industry does not abandon fair lending policies to fatten its bottom line, or ask Congress to become the collector for its unpaid credit card bills.

The industry and congressional supporters of the bill attempt to argue that the bankruptcy bill will help, not hurt, women and children. But that is false and misleading.

Proponents of the bill praise the alimony and child support provisions. They say that these provisions will make child support and alimony payments the number one priority in bankruptcy. But this rhetoric masks the complexity of the bankruptcy system. When taken individually, some of these provisions are positive steps towards helping women and children collect the support to which they are entitled. However, they do not address the main problem created by the bankruptcy bill.

Thirty-one organizations that support women and children have said, ''Some improvements were made in the domestic support provisions . . . However, even the revised provisions fail to solve the problems created by the rest of the bill, which gives many other creditors greater claims—both during and after bankruptcy—than they have under current law.'' It is obvious that if this bankruptcy legislation is enacted, women and children will be the ultimate losers in the process.

It is true that the pending legislation moves support payments to first priority in the bankruptcy code. But the first priority ranking only matters in the limited number of cases in which the debtor actually has assets to distribute to a creditor. As 116 professors of bankruptcy and commercial law have stated:

> Granting ''first priority'' to alimony and support claims is not the major solution the consumer credit industry claims, because ''priority'' is relevant only for distributions made to creditors in the bankruptcy case itself. Such distributions are made in only a negligible percentage of cases. More than 95 percent of bankruptcy cases make NO distributions to any creditors because there are no assets to distribute. Granting women and children first priority for bankruptcy distributions permits them to stand first in line to collect nothing.

Beyond the false rhetoric claiming that women and children receive ''first priority'' lies an ugly truth—in many instances, women and children will be last in line. Under current law, an ex-wife trying to collect support has special protection. But under the pending bill, more debt is created that cannot be discharged after bankruptcy—credit card debt. This step will certainly create intense competition for the former husband's limited income. Under current law, he can use his post-bankruptcy income to meet his basic responsibilities, including his student loans, his tax liability, and his support payments to his former wife and children. But if this bill becomes law, one of his so-called ''basic'' responsibilities will be a new one—to Visa and Mastercard. We all know what happens when women and children are forced to compete for these scare resources with these sophisticated lenders—they lose!

Although many of the new domestic support provisions are helpful, they don't solve the problem created by this bill—and some of those provisions undermine the ability of women to collect support payments. Under the bill, a prerequisite to Chapter 13 approval is the payment of support claims. The goal is worthwhile, but other provisions in this bill will drain debtors of available funds and prevent them from meeting the requirements of a Chapter 13 plan and from making child support payments. If there is not enough money to cover all obligations, including the new obligations created by this bill, more Chapter 13 plans will fail, making the provision worthless and making it less likely that women and children will get the support they deserve.

This legislation not only unfairly targets middle class and poor families—it also leaves flagrant abuses in place. Any credible bankruptcy reform bill must include a homestead provision without loopholes for the wealthy.

The pending bill does include a half-hearted loophole-filled homestead provision. However, it will do very little to eliminate fraud. With a little planning—or in some cases, no planning at all—wealthy debtors will be able to hide millions of dollars in assets from their creditors. For example, Allen Smith of Delaware—a State with no homestead exemption—and James Villa of Florida—a State with an unlimited homestead exemption—were treated very differently by the bankruptcy system. After trying desperately to make ends meet in the midst of financial distress, Allen Smith eventually lost his home. However, James Villa was able to hide $1.4 million from his creditors by purchasing a luxury mansion in Florida which he was able to keep after bankruptcy.

Last year, the Senate passed the Sessions-Kohl homestead amendment which corrected this abuse of the bankruptcy system. But that provision is not in this bill. Surely, a bill designed to end fraud and abuse should include a loophole-free homestead provision.

For any bankruptcy reform to be effective, the homestead loophole must be closed permanently. It should not be left open just for the wealthy. Yet the bill's supporters refuse to fight for such a responsible provision with the same intensity they are fighting for the credit card industry's wish list, and fighting against women, against the sick, against laid-off workers, and against other individuals and families who will have no safety net if this unjust bill passes.

Proponents of the bill also argue that it will help small businesses. This is another credit card industry myth.

This bankruptcy reform bill is not based on any serious business need. In fact, its overhaul of Chapter 11 will hurt, not help, small businesses. Chapter 11 was enacted to serve the interests of business debtors, creditors, and other constituencies affected by business failures—particularly employees. A principal goal of Chapter 11 is to encourage business reorganization in order to preserve jobs. Supporters of the bill ride roughshod over this important goal. They create more hurdles, additional costs, and a rigid, inflexible structure for small businesses in bankruptcy. As a result, fewer small business creditors will be paid, and more jobs will be lost.

It is a travesty that hard-working American families will be the victims of bankruptcy reform. AFL-CIO President John Sweeney said it well:

> This bill punishes working families who need protection from financial distress—distress all too often the result of the terrible financial burden of catastrophic illness or other personal tragedies. It threatens jobs in financially distressed companies, all while it carefully protects abuses of the bankruptcy system that benefit the rich—abuses like the homestead exemption.

I agree with John Sweeney and the scores of labor, consumer, religious, and civil rights groups who oppose this bill. It is clear that the bill before us is designed to increase the profits of the credit card industry at the expense of working families. If the bill becomes law, the effects will be devastating, and I urge my colleagues to reject it.

Mr. President, I want to take a few moments of the Senate's time to go through these charts and illustrate some of the points I mentioned in my earlier statement. This chart represents why Americans file for bankruptcy.

Medical problems, or substantial medical debt, are the reasons for 45 percent of bankruptcy filings. Job problems are 68.9 percent, effectively 70 percent. Those reasons taken together—job and medical problems—amount to 75 percent of all bankruptcies.

This obviously is accelerated. For what reasons? One reason is the increasing softness of the economy at the current time and the increasing number of unemployed, particularly with many mergers leading to dramatic changes in income over a relatively short period of time.

Another reason is the increasing number of Americans who do not have health insurance and, correspondingly, the increasing amount being paid for prescription drugs. If one looks behind these figures with reference to medical problems, one will find most of them are older workers in their fifties, prior to the time they are eligible for Medicare.

The total number of Americans who are uninsured is increasing. All of that is related to the increasing number of layoffs. The increasing number of uninsured and the increasing costs of prescription drugs are reflected in this figure.

Let's look at the remaining approximately 25 percent. Basically, the other 25 percent are women who are single, women involved in divorce. If we look over this chart, we see that in 1981—red representing joint bankruptcies, yellow the men, and blue the women—single women were third, behind joint filers

and less than men. Joint bankruptcies continued. The women passed the men in 1991. In 1999, the women were No. 1. They came from being third, virtually about one-fifth of the total, to now being almost half the total.

Who are these individuals? Who are these women? These are women who have not been able to claim their alimony. A great percentage of these are women who are unable to get child support to which they are entitled. What happens to them? They end up in bankruptcy.

Then we find out how the new provisions in this bill treat them. They treat them much more harshly. I'm not the only one saying it, although I have repeated it. Virtually every single group that is an advocate for children, women, or workers agrees, let alone the bankruptcy professionals involved in this. That is what this bill is about.

I have a list of those groups that are strongly opposed to it. The various women's groups include: National Women's Law Center, National Partnership for Women and Families, Children's Defense Fund, American Association of University Women, Church Women United, Coalition of Labor Union Women, National Center for Youth Law, Center for Child Care Workforce, the YMCA, and Children NOW. The labor groups include: The AFL-CIO, Communications Workers of America, United Steelworkers of America, International Brotherhood of Teamsters, and the list goes on. Other key groups include: Leadership Conference on Civil Rights, Consumers Union, Consumer Federation of America, Religious Action Center, Alliance of Retired Americans, and National Senior Citizens Law Center.

This is just part of the list of groups whose prime responsibility is representing vulnerable children. That is the purpose of the Children's Defense Fund. The other organizations protect women in our society from the harshness of legislation and from the inequities of the workplace. All of them are universally against this legislation because they find it puts a harsh burden on children, women, workers, and on those who have experienced a significant increase in their medical bills. That is what is happening. This is a profile of those individuals who are going into bankruptcy.

Generally at the end of the day around here, we look at pieces of legislation and ask on the one hand, who benefits and on the other, who pays. It is not a bad way of looking over legislation. If we had more of that around here and we looked out for average working families, we would come to some rather different conclusions. We certainly would on this one because virtually the entire bankruptcy bar, those professors who are teaching in law schools in the North, South, East, and West, as well as judges, have come to the same conclusions.

Members of the Judiciary Committee have reviewed it as a result of the hearings. Advocates of the various groups have been out there time and time again. One might find fault with one particular group, but virtually all the groups that represent children and workers are opposed to this legislation because of its unfairness.

Those who will benefit are the credit card industry and the banks, make no mistake about it. That is enormously interesting to me, as someone who is the prime sponsor of the minimum wage. We can find time for consideration of the bankruptcy bill; yet we do not have time to look at an increase in the minimum wage for hard-working Americans. We cannot find time to schedule that, but we can find time to consider legislation that is going to benefit some of the wealthiest and most powerful companies and corporations in America. Make no mistake about it, that is what this legislation is about.

As this institution and its leadership is about choices, make no mistake what the choice is. The choice is to look after the interest of the credit card companies and the banks. That is first. It is early March, and that is where we are. I hope the American people are aware of this legislation and its implications.

DEPARTMENT OF LABOR ERGONOMICS RULE

Mr. KENNEDY. Mr. President, I want to speak on another issue affecting working families that also will be coming up in a very few hours. That is the proposal that will be made by, as I understand, our Republican leadership or representatives introducing legislation which, after a 10-hour agreement, will vitiate the existing rules to protect American workers from ergonomic injuries.

If we asked Americans 10 years ago what ergonomic injuries were, a great many Americans would not have been able to pronounce the word ''ergonomic,'' and they really would not have had much of an understanding as to what the problem was.

Interestingly, there was a very courageous and brave woman who did understand that problem and that challenge and was willing to do something about it. That was then-President Bush's Labor Secretary, Elizabeth Dole. This is what the Secretary of Labor said about ergonomic injuries in 1990, 11 years ago:

> One of the Nation's most debilitating across-the-board worker safety and health illnesses. . . .
>
> We must do our utmost to protect workers from these hazards. . . .
>
> By reducing repetitive motion injuries, we will increase both the safety and productivity of America's workforce. I have no higher priority than accomplishing just that.

That was 11 years ago. Over the period of the last 10 years, we have had study after study by the National Academy of Sciences, by the Institutes of Medicine, by a range of different independent groups. Finally at the end of last year, there was the promulgation of a rule to provide protection.

For whom are we providing protection? Basically, ergonomic injuries are repetitive motion injuries, including carpal tunnel syndrome, tendonitis, and back disorders. Ergonomic injuries occur across the board. Among those affected are secretaries who endure carpal tunnel syndrome from the use of computers, factory workers who pick up and place equipment on assembly lines, nurses who suffer back injuries from lifting patients, and high-tech workers who sit at keyboards all day long. All across our new economy, these injuries are taking place.

Let's look at the numbers of people affected. The source is the Bureau of Labor Statistics in the year 2000. There are 1.8 million ergonomic injuries reported yearly, and 600,000 people lose time from their work yearly. Ergonomic injuries impose annual costs of $50 billion; account for over one-third of all serious job-related injuries; and account for over two-thirds of all job-related illnesses.

Why do I bring this up? We were talking a few moments ago about bankruptcy, and that is the measure before the Senate. Tomorrow, on a privileged motion, without any other earlier statement, only what we have read in the newspapers and in the last several hours have confirmed, we will face a motion made by the other side under particular procedures. We will permit only 10 hours of debate, and if that motion carries, the rule that was in the works for 10 years will be wiped out within a 10-hour period. The way the language of the law is drafted, there will be little recourse to reissue the rule in its current form.

That is what will be before the Senate tomorrow. We will get off this bankruptcy bill with time enough to look after another major issue of special importance to the Chamber of Commerce and the National Association of Manufacturers. Of course, the Chamber of Commerce has a direct interest in bankruptcy, because of the credit card industry and the banking industry. The Chamber of Commerce is leading the battle on this bankruptcy bill.

The Chamber is looking for a twofer this year. They are looking for two big wins at the expense of working Americans: one, in the area of bankruptcy; two, in undermining existing protections to ensure the health and safety of workers in the workforce.

That is why I take this time. We will find out tomorrow if there will be a motion to debate this issue. We will not be debating the issues of bankruptcy. We will be debating this. How many colleagues will know this when they come to their offices tomorrow? It will be interesting because there has been virtually no notice given to us.

If the Administration has concerns about the existing ergonomics rule, the rule could be adjusted, could be

changed, or could be altered without use of this motion. The Administration has an available administrative process and procedure to make changes in the rule. We could have addressed concerns about the rule through hearings and delayed implementation of the rule. But opponents of the rule say: No, we think we have the votes to eliminate it altogether and put 1.8 million workers at risk. We think we can add up the votes and destroy the rule tomorrow afternoon after 10 hours of debate.

Under the law, if opponents of the ergonomics rule have the votes, they can even shorten the debate. Then at the end of the day we will find those 1.8 million workers without any kind of protection. That is what is happening.

I don't know where the speakers are on this issue. Hopefully, we will have a chance to debate this more tomorrow.

Women are disproportionately harmed by ergonomic hazards. Women comprise 47 percent of the total workforce and incur 33 percent of the total injuries in the workforce. But women constitute 64 percent of all those who lose time from work because of repetitive motion injuries, and 71 percent of those who lose worker time for carpal tunnel injuries. The ergonomics rule is thus of special benefit for women who are out there working, trying to provide for their families. They are the ones primarily injured. They are the ones who lose time. They are the ones who will suffer most if the ergonomics rule is eliminated.

If there are problems with the rule, we can amend it, we can change it; we can alter it.

We are prepared to do that. Let's get the best in terms of the private sector and the workers, the women's groups, and others, and try to fashion something. But oh, no. The other side is saying: let's just tear up the rule and throw it out. That is what the proposal will be.

We hear a good deal about this new spirit taking place in Washington, DC. This is not in evidence in the Senate, where they send two bolts right at working families, first through the the bankruptcy bill and second, by taking this extraordinary step to destroy the ergonomics rule. I think this is the first time we have used this provision, enacted 5 or 6 years ago, in order to put workers all across this country—in the new economy and in the older economy as well—at serious risk.

I will come back to who is in favor of this action. Virtually every medical group and health care group supports the ergonomics rule. But not the Chamber or the National Association of Manufacturers.

Let's look at what the Chamber claims as to why the ergonomics rule ought to be repealed. The Chamber claims the rule is not supported by sound science. This is the first myth.

We have seen in debate time and time again, more often now than before, individuals misstate the position of the opposition and then differ with it. It is an old debating technique. I have had Members who have described my amendments in a way I could not understand and then said they differed with them. That is a tried and tested technique that should be discounted, but too often it is not. And it is what is at work here.

Let's listen to what has been said about the rule. I have the NAM statement, which lists seven reasons we ought to be against the ergonomics rule. We have the Chamber of Commerce statement. I will state these for the record because it is important they be answered. Whether we will have a chance to do that tomorrow or not, we will do the best we can.

First, the Chamber says that the bill is not supported by sound science.

The recent National Academy of Sciences study proves conclusively that workplace practices cause ergonomic injuries and that ergonomic programs work to prevent and limit these injuries. That study confirms the results of thousands of prior studies.

This National Academy of Sciences study was primarily focused on lower back and upper extremity musculoskeletal injuries. It stated that:

> The panel concludes that there is a clear relationship between back disorders and physical load; that is, manual material handling, load moment, frequent bending and twisting, heavy physical work, and whole-body vibration. For disorders of the upper extremities, repetition, force, and vibration are particularly important work-related factors.

It goes on. You can read the conclusions. The Chamber's claim that the rule is not supported by sound science is categorically false and misleading.

The National Association of Manufacturers claims the rules set too low a threshold and that one job-related complaint will trigger the rule.

Right? Wrong. Wrong. They are wrong. This standard sets a threshold that is lower than the ones OSHA has set in other rules, including its lockout-tagout standard, asbestos standard, and blood-borne pathogen standard. In these rules, employers must take action if an employee is merely exposed to a risk. These are rules that OSHA has adopted and that are in effect, despite the opposition of the Chamber of Commerce and the National Association of Manufacturers.

Under the ergonomics rule, even if there are serious ergonomic hazards in a workplace, an employer is not required to look for or correct those hazards until after a worker is injured or has signs or symptoms of an injury. One complaint requires an employer to determine that an injury is work related and that exposure to risk is at significant levels. It does not trigger the entire program.

Once there is an injury, in other words, the employer makes the judgment whether it is work related—the employer makes that judgment. Then, after that, the employer has to find that the individual has been exposed to the risk at significant levels. It is only then that other requirements of the rule are triggered.

So the National Association of Manufacturers' claim that the rule sets too low a threshold is just not an accurate representation as to what the rule does.

Third, the National Association and the Chamber claim the rule covers injuries that are not caused by workplace practices. But under the rule, as I mentioned, the employer decides that an injury is work related. They are thus completely wrong in that statement as well.

They go on. The Chamber claims the rule imposes an impractical, overreaching, and one-size-fits-all approach. The reality is the rule allows employers to determine how best to deal with ergonomic problems in their workforces. The rule doesn't mandate specific solutions. If an employer decides an injury is work related, the employer must then determine, based on a simple checklist set forth in the rule, whether the employee has suffered sufficiently severe exposure to require action. If so, the employer can decide on the solution it wants to adopt.

The Chamber claims the rule will be extremely costly for business. After an exhaustive analysis of the issue, the Department of Labor estimated the rule will result in a net savings—savings—of $4.5 billion each year in reduced workers compensation costs and increased productivity.

Numerous business leaders have found the ergonomics programs they have implemented have saved a good deal of money. I am going to come back to that in just a moment.

Next, the Chamber claims the rule requires higher payments than workers' compensation and overrides State workers' compensation laws.

The payments to workers are necessary to encourage them to report their injuries before they worsen and before other workers are needlessly exposed. This is not a new concept. It has been used for 20 years. It was used in the lead, benzene, cadmium, formaldehyde, and ethylene chloride standards. The idea is to try to get the workers to report their injuries at an early time, before they become permanently injured and before the costs and the loss of time escalate dramatically. So the Chamber clearly misrepresented what the current status of the law is and what the precedents have been.

Again, the NAM alleges OSHA has admitted the rule's grandfather clause will not grandfather any employers. OSHA has not ever made this statement. In fact, OSHA predicts many employers will be grandfathered in. The NAM's statement is basically flagrantly misleading and wrong.

The NAM claims the DOL ignored the will of Congress by issuing the rule. The fact is, in funding the National Academy of Sciences study of ergonomics in 1999, the Congress expressly promised it would not be used to delay issuance of the rule. This is

what Bob Livingston and DAVE OBEY said when they were the Chair and the ranking member of the House Committee on Appropriations.

Mr. President, I ask unanimous consent to have the full letter presented in the RECORD.

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

HOUSE OF REPRESENTATIVES,
COMMITTEE ON APPROPRIATIONS,
Washington, DC, October 19, 1998.

Hon. ALEXIS HERMAN,
Secretary of Labor,
Washington, DC.

DEAR MADAM SECRETARY: Congress has chosen not to include language in the Fiscal Year 1999 Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act that would prohibit OSHA from using funds to issue or promulgate a proposed or final rule on ergonomics. As you are well aware, the Fiscal Year 1998 Labor, Health and Human Services and Education and Related Agencies Appropriations Act did contain such a prohibition though OSHA was free to continue the work required to develop such a rule.

Congress has also chosen to provide $890,000 for the Secretary of Health and Human Services to fund a review by the National Academy of Sciences (NAS) of the scientific literature regarding work-related musculoskeletal disorders. We understand that OSHA intends to issue a proposed rule on ergonomics late in the summer of 1999. We are writing to make clear that by funding the NAS study, it is in no way our intent to block or delay issuance by OSHA of a proposed rule on ergonomics.

Sincerely,

BOB LIVINGSTON,
Chairman.
DAVE OBEY,
Ranking Member.

Mr. KENNEDY. The letter says: ''We understand OSHA intends to issue a proposed rule on ergonomics late this summer. We are writing to make clear that by funding the NAS study, it is in no way our intent to block or delay issuance by OSHA of a proposed rule on ergonomics.''

So NAM claims that DOL ignored the bipartisan will of Congress are completely, blatantly, flagrantly wrong, as are so many of the other claims. Here, when Congress asked for the study, they understood there would not be a delay. They wanted the information.

Furthermore, the NAM states the NAS study did not address the issue of causation and repeatedly called for more study. The Academy, Mr. President explicitly stated it had done sufficient work to support conclusive findings that workplace practices cause ergonomics injuries.

The CRA, the procedure which will be in use here, is a unique procedure which is violative of the traditions of this body which permit and encourage debate and discussion and then action at the termination of debate. We have the 10-hour limitation on debate, and then an up or down vote that will lead to elimination of the rule, instead of altering or changing it.

The NAM claims that use of CRA ''will not bar the Department of Labor from adopting an ergonomics rule in the future.'' They ought to read the provisions of the CRA, which I believe will exclude the possibility for getting any kind of action in the future.

I want to take a moment to show what some businesses have said about this particular proposal over a period of time. Business leaders agree that ergonomics programs work. Peter Meyer of Sequin International Quality Center said:

> We have reduced our compensation claims for carpal tunnel syndrome through an effective ergonomics program and our productivity has increased dramatically and our absenteeism has decreased drastically.

This is from Business Week, which should not be considered to be a part of the working families establishment. In December of the year 2000, Business Week said that for most companies, ''the likely outcome will be dramatically fewer employees with ergonomics problems and long-term cost savings to boot.''

We have a number of those different statements by businesses that have gone ahead and created ergonomics programs on their own.

American scientists also call the ergonomic rule ''necessary and based on sound science.''

These are the various groups—Orthopedic Surgeons, Association of Occupational Health Nurses, Occupational Therapy Association, Society of Safety Engineers, Chiropractic Association, Public Health Association—that believe the rule which has been promulgated makes sense in protecting American workers. But with one single vote, we are going to have a situation where that rule is cast aside—no alterations, no changes, and no modifications. It is just take it or leave it because we have the votes, and there will be no attempt to try to work this out, no attempt in terms of the word ''civility'' to try to listen to the other side in making some alterations and changes. No. It is just: We have the votes to knock out this provision and undermine protection for Americans—primarily women—in the workforce, and we are going to do that tomorrow in a 10-hour period. I think the arrogance of that position with regard to protecting workers is absolutely unacceptable.

This particular proposal has been 10 years in the making, and in 10 hours we will effectively have it undone. I would have hoped for some opportunity to discuss this. Instead, tomorrow we will have only the 10 hours to go through these measures.

We hear a great deal also about the volume of the rule itself. It has been misstated that it is 600 pages. It is closer to eight or nine pages. Those are the rules.

I believe these rules represent the most important rulemaking to protect American workers that we have had in recent times. It is the most important rule that we will have for the next several years. It will make major differences in terms of the health and safety and the productivity of the American workforce. Without this kind of protection, we are putting at significant risk tens of thousands or hundreds of thousands of American workers. We are doing that in 1 day of votes in the Senate. That is wrong. That is absolutely wrong.

We will be denied the opportunity to try to make adjustments or changes if we want to do it. There is a procedure to be able to do it. But absolutely no. Our opponents say: We have the votes, and we are going to turn our backs on American workers, particularly on women, who are looking for some protection.

I am hopeful this measure can be defeated. But it is a bad day and a sad day for American workers when it is even brought up for debate.

I yield the floor.

Mr. ENZI. Madam President, I ask unanimous consent that my remarks follow immediately those remarks of the Senator from Massachusetts who spoke immediately before Senator GRASSLEY so that Senator SESSIONS' comments will flow on Senator GRASSLEY's remarks.

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

Mr. ENZI. Madam President, I thank the Senator from Alabama. First, I congratulate both the Senator from Iowa, Mr. GRASSLEY, and the Senator from Alabama, Mr. SESSIONS, for their ultimate effort on the bankruptcy bill. They have both done an excellent job, as well as the people on the other side of the aisle who have contributed to a bipartisan bill, a bill the Senator from Iowa mentioned we passed before.

I have been the subcommittee chairman for international trade and finance, and, as such, I got to oversee some of the International Monetary Fund bailouts of some of the other countries that got into an economic crisis. When that happened, we forced them to do bankruptcy. We forced them to do what we have been talking about. They did it, and their economies came back.

It is a little embarrassing to revisit those countries and have them say: How come you folks have not taken your own advice?

I appreciate all the effort that my colleagues have put into this. It is extremely crucial for the United States and for the consumers and for the individuals of this country.

The reason I am here, though, is not to deal with bankruptcy. The speech preceding mine was not a speech on bankruptcy. It was a speech on ergonomics. The Senator I succeeded, Senator Simpson, used to say: Charges unanswered are charges believed.

I must discuss the ergonomic comments that have been made. This is a preview of tomorrow. Tomorrow, we will have a full-blown debate, I hope, on ergonomics. It is an extremely crucial issue for every single person in this country. It is very important we do it and we do it right. I put the emphasis on doing it ''right.''

The reason we are going to have a debate tomorrow is it has been done wrong. We will invoke the Congressional Review Act tomorrow, the first significant use of it since it was passed. I congratulate the two people who were primarily responsible for bringing the Congressional Review Act to the Senate, the Senator from Oklahoma, DON NICKLES, and the Senator from Nevada, HARRY REID—one a Democrat, one a Republican.

It was a bipartisan bill. Why was it a bipartisan bill? Congress has the responsibility for passing laws in this Congress. We have gotten in the habit of delegating our responsibility. It is much easier than hashing out details, to put in a little part in the bill that says we want an agency to write the rules.

The reason we passed a Congressional Review Act is we gave that responsibility away and we didn't like what the agencies did. I am sure each Member who has dealt with an agency and their rules have had occasion to say somebody ought to jerk them back to reality. That is exactly what those two Senators did—one a Republican, one a Democrat. They deserve congratulations from this body.

Now we need to have the courage to use what they and others did. Although I was not here when it was passed, I suspect some of the people criticizing the Congressional Review Act now were here when it was passed. I suspect some of them voted for it.

Now we want to use it on a rule they have some interest in, and they don't want to touch it using that act. I think it is very important we use the Congressional Review Act, we congratulate the people who passed it, and we need to put it to use on this ill-conceived rule.

The ergonomics rule has to be the worst rule ever passed by any government agency. It was passed quicker than any other rule by OSHA. We will hear comments that Elizabeth Dole noticed it and mentioned it 10 years ago. I have found references to businesses who knew about it, noticed it, and did something about it, considerably before Elizabeth Dole noticed it 10 years ago. I have been proud of some of the businesses that have made extensive efforts to handle ergonomics in the workplace in spite of not having a rule in place. But regardless of how long ago the issue was first mentioned, OSHA's rule was only proposed less than a year before the final rule came out.

It is not the intent of business to hurt employees. It is better business to protect employees. One of the difficulties with ergonomics, an injury does not just happen at work. It happens all sorts of places. It is hard to tell where it happened, when it happened, and how it happened.

Putting that aside, we need to have an ergonomics rule. We need to be dealing with it in every possible way. But we have to have a rule that does something, not just costs something. Part of that cost is not going to just be dollars. The estimated $4 billion to perhaps $100 billion is a pretty wide range of numbers. The biggest cost is going to be in American jobs. This will get down to the workers, the people we are not allowing to talk about how to solve the problem, the workers closest to the job, the ones who are doing the lifting or typing or hammering or whatever repetitive motion is involved. No, we have our government set up so the bureaucrats try to find solutions and special committees of speakers can be set up to talk about it and mandate one solution for all. But the guy doing the work, who sees it each and every day, who says there is a better way to do this, cannot decide how his job can be done better. And in most circumstances it is not even legal to ask him about it. There is a law that says employers better not talk directly to employees about safety. But workers are suffering. We need to do something about it.

Fortunately, many businesses already are. According to OSHA, even before the rule, in the last 5 years, there was a 22-percent decrease in ergonomics injuries? The Bureau of Labor Statistics gives business far more credit for having done something than does OSHA. Perhaps OSHA has an ulterior motive?

At any rate, businesses, when they know what to do, generally do it. I have to say ''generally.'' I always hear the arguments on the floor, not just dealing with OSHA but dealing with a lot of topics, one side talks about the bad businessmen and the other side talks about the fraudulent employees. Neither side is right. Yes, there are bad businessmen. Yes, there are fraudulent employees. But not very many, thank goodness.

I would say there are 5 percent of the businesses in this country with businessmen who are ethically challenged. There are about that many employees who are ethically challenged. Out of that 5 percent, many of them just don't care. That's about 3 percent, I think, who generally don't care. No matter what kind of law is passed, they don't care, so it doesn't matter what you do. That is both sides.

Of all those who are ethically challenged, I think only one tenth of one percent is truly bad, bad to the bone. That might even be high; might be a little low. But even though the rules and laws in this country affect every single person, they are written as if they are only for the one-tenth of 1 percent who were bad to the bone. That is pretty much what this rule is designed to do.

If you want people treated as though they are bad to the bone, both employers and employees, maybe you don't think this rule is so bad. But if you don't, I urge you to vote with me to reverse the ergonomics rule.

We heard criticisms of the rule by people who had written letters. Some of those were: The rule is bad; the rule has massive flaws in it. Some things were taken out of context. I hope we get into those tomorrow. We held hearings in the Labor Subcommittee; the Employment, Safety and Training Subcommittee of the Committee on Health, Education, Labor, and Pensions. We held hearings. This is a book of the hearings.

We held two specific hearings on the way it will affect health care in this country. We talked about how OSHA needs to resolve the conflict between the ergonomics rule and the medical rules so you don't have to violate one to achieve the other. We talked about the way the payments for Medicare are locked in at a rate that doesn't recognize the costs OSHA recognizes, the costs that facilities providing Medicare will have to pay. The rule doesn't mention that. We also talked about workers' comp in our hearings. We had people who weighed in from New York, Pennsylvania, and New Mexico. We talked about the way the rule infringes on workers comp.

In the OSH Act, there is a specific provision prohibiting infringing on workers comp. Workers comp is a system that has been developed in the States, by the States, over decades. There isn't a single thing in place in the OSHA administration to take care of the kinds of controversies, the kinds of processes that will have to be dealt with to handle workers comp. They get into workers comp.

Did they listen to what we had to say at the hearings? Not at all. They didn't listen to what was said by the professionals in the field, the State people in the field, the people on the panels, or the Senators asking the questions. You won't find any of it has wound up in the rule they put out. What kind of Government do we have that doesn't listen?

You heard some groups that are in favor of the ergonomics bill, ergonomics rule. I am not surprised they are in favor of ergonomics protection, so am I. What we should not be in favor of is this particular ergonomics rule. This rule will bind up what business is able to do.

As I said, tomorrow we will get into more of the differences, the flaws and things about which they did not listen. But there is a big problem with this one that deserves use of the congressional review act. Here is what it is. The process was flawed. How they passed it was atrocious.

I am ashamed that any agency of our Government did business the way they did business. What did they do? Just a few things I will mention today. Listen for full details tomorrow.

They paid people to testify on their behalf. They reviewed and corrected their testimony before it was given. They brought them in for practices. Then, worst of all, they paid them to rip apart the testimony of the individuals who came on their own to testify. Yes.

We cannot allow our Government to pay people to destroy the testimony of other citizens in this country who have the right to speak on any rule as well.

After that happened, and after I mentioned it on the floor, I got to meet with the Assistant Secretary of OSHA and asked him about it. I asked him what the process was going to be like. I was a little curious as to whether they were going to try to push through this rule.

I mentioned they talk about how Liddy Dole mentioned it 10 years ago. But this rule did not get published until a little over a year ago. The first time it was published that anybody could actually look at a document and say this is what it says was less than a year before the time it was finalized—less than a year. The average rulemaking time on things much less difficult than ergonomics is 4 years. It takes 4 years to get a rule in place.

I contend, on a lot of these things, we should get together. We could agree on most of it and get things in place in a shorter time than OSHA can react. But the two sides don't talk, and separately they keep working on that one-tenth of 1 percent of the people who are bad to the bone.

I had this meeting with the Assistant Secretary of OSHA. I mentioned some of the things with which we had some concerns based on the hearings. He admitted he was an advocate for the rule the way it was.

It seems to me the agency ought to be listening to the comments. I do not see how you can be an advocate and still heed what people have said about what you wrote. I was concerned about that. I brought it up with him. I said: Can you give me any indication that you will make any changes in light of the testimony we have presented? He could not comment on that.

But I can tell you, now that I have seen the final rule that is published, he not only didn't listen to me, he didn't listen to the comments that were there. I have to tell you, the final rule that was published was far more difficult than the one on which we had to comment.

We cannot have that kind of activity in this country. What if agencies wrote a rule and published it, one with which they knew everybody would agree, then they took testimony, they took comments, they tabulated it—which was not done in the instance I am talking about, or at least I don't see how it could have been done—and then they published a final rule that was totally different from the one on which they took testimony?

That is why we need a CRA, to jerk people back to reality who think they know the way to do it and do not take into consideration the comments of the people of this country.

We have a document that is flawed. We have a document that was done the wrong way. We need to redo it.

You may also hear that the CRA prohibits reissuing the rule if it is ''substantially the same.'' That is absolutely correct. Probably another brilliant idea that was put in the bill by the bi-partisan co-sponsors. ''Substantially the same'' doesn't mean it cannot be done at all. It means that agency that jerked people around before cannot take the same thing, change a word, and put it back out as a rule again, which would put us in the continuous motion of overriding an agency's ill will. We would do it if we had to. But that is what the Congressional Review Act is designed to avoid. It should not be that difficult. With civility and bipartisanship, we ought to be able to arrive at a new approach, and not just on this rule.

Did you know, on the rules that OSHA has passed, we rarely revise a single one? Do you think technology has changed in 28 years? Do you think there is any need to change anything that was written 28 years ago? You had better believe there is, and we need to find a system to do it. I pledge to work toward a system that will allow safety for the workplace to get into place easier, quicker, and more effective than it is right now. I am sure business and labor will join in that effort to make sure we get more safety in the workplace.

Madam President, I yield the floor.

The PRESIDING OFFICER (Ms. COLLINS). The Senator from Iowa.

BANKRUPTCY ACT OF 2001—Resumed

Mr. GRASSLEY. Madam President, I am the author of this bankruptcy bill that is before the Senate. I know I am not the first to speak on it today. There have been proponents and opponents of it.

Also, let me make very clear that thus far today there have been both Republicans and Democrats speaking in favor of the bill that is before us.

I am very happy to be here to discuss this legislation. I thought last December, when we got it to the President, might have been the end of it and we would have a bankruptcy bill as the law of the land—the first major bankruptcy legislation to pass this body since 1978 or 1979.

Prior to Senator KENNEDY's remarks about the rules that we will be working on, Senator KENNEDY gave all of us an opportunity to see a list of organizations that oppose this bill. I think it is perfectly correct for Senator KENNEDY to express the views of anybody who opposes the bill and in support of his opposition to the bill. But there is a flip side of all of the membership of all the organizations that Senator KENNEDY said were opposed to this legislation. That flip side is that they all have members that, because some people in this country don't pay their bills, those who do pay their bills and buy products from companies that have creditors that have gone into bankruptcy, those very same members could, on average for a family of four, pay $400 more for goods and services that they would purchase because other people go into bankruptcy and don't pay their bills. There is no free lunch.

I hope we have as much concern about the well-being of the members of those organizations that do not go into bankruptcy and have to pay more because they are supporting legislation to maintain the status quo where it is easy to go into bankruptcy and let somebody pick up the cost of your going into bankruptcy.

That doesn't preclude that I believe firmly in the principle of a fresh start when people go into bankruptcy because of causes that are no fault of their own. Obviously, in those instances, there are costs to all of us who pick up the bill. But what this legislation is trying to change is the fact that there is an attitude out there of using the bankruptcy code for financial planning when you have some ability to repay. We are saying to those people who file for bankruptcy who have the ability to repay—and, albeit, they probably are a minority of all the people who file for bankruptcy—that it is immoral for them to use the bankruptcy code for financial planning. To put this $400 cost every year that other people pay for their goods and services who do not go into bankruptcy, we are saying to those people who can repay that they are not going to use the bankruptcy code for financial planning, and they are not going to get off scot free.

I hope those who look at the long list of organizations that oppose this legislation—by the way, I could put up a chart that would have a long list of organizations supporting this legislation; I am not going to do that. But for those who view those that are against it, remember that they have members that are also hurt because there is abuse of the bankruptcy code.

I am glad we are now proceeding to consideration of this bankruptcy bill, S. 420. This bill has been long in the making. As we all know, we have been working on it for two Congresses now. Prior to those two Congresses, I worked on legislation establishing a study commission made up of experts in bankruptcy to suggest to us changes in the bankruptcy code because we saw a skyrocketing of the number of people going into bankruptcy, having reached a peak of 1.4 million people; and that happening during a time of good economy as well.

Besides passing this legislation in the two Congresses, we have given this bill very adequate study by holding numerous hearings in the Judiciary Subcommittee on Administrative Oversight and the Courts which I chaired prior to this Congress. We have the published transcripts of these hearings. They are available to the public and any Senator who is interested in looking at how thoroughly the committee has been considering this legislation.

The need for bankruptcy reform has been debated on this floor at length. In

fact, this bill should have been enacted last year but was pocket vetoed at the last minute by President Clinton.

The bill we consider today with a new number, S. 420, and a new title, the ''Bankruptcy Reform Act of 2001,'' is practically identical to last year's bankruptcy reform conference report that passed out of the Senate by an overwhelming bipartisan vote of 70–28. The only exception is we have made a few changes in this new draft to accommodate members of the Democrat Party.

There was strong bipartisan support in the last Congress. That strong bipartisan support continues to this very day. So it is high time that we get the job done and get this bill to the President; this President will sign it.

I want to give some background on the development of this bankruptcy legislation. In the 106th Congress, Senator TORRICELLI and I worked very closely together on bankruptcy reform. Senator TORRICELLI, a Democrat, and I addressed many concerns and negotiated many compromises. We were able to pass out of the Senate the Grassley-Torricelli bill by a vote of 83–14. The Senate then approved the bankruptcy conference report by the vote I mentioned earlier, but I want to emphasize how bipartisan it was—70–28; 53 Republican Senators, 17 Democratic Senators voted for the conference report.

But then, as I indicated, President Clinton pocket vetoed this bill. Congress had adjourned, so it did not have an opportunity to override that veto last December. So here we are again trying to pass bankruptcy reform.

My Democratic colleagues—Senators TORRICELLI, BIDEN, JOHNSON, and CARPER—have joined Senators HATCH, SESSIONS, and me on this bill, S. 420, the Bankruptcy Reform Act of 2001. We hope to get additional cosponsors from both sides of the aisle. As you can see, there is strong bipartisan support for this bankruptcy bill, just as there has been a long history of bipartisan support for bankruptcy reform ever since I have been in the Senate.

I note for the record that I believe we have really bent over backwards to try to accommodate Senators' concerns with the bill's process in this Congress. I do not think it is any surprise to anyone that my position is that the bankruptcy bill is unfinished business from the last Congress. I think the large majority of us in the Senate believe that is the case, that it is unfinished business.

The bill, being pocket vetoed, had to start over again this year. And here we are. Of course, it was really too bad we could not get the job done last year, considering the pocket veto.

So at the beginning of this Congress, I reintroduced the bipartisan conference report with no changes—no changes—exactly the same bill. The reason I did this was not necessarily because the conference report was exactly the way I would have written the legislation, but because I felt compromise is necessary. And that conference report, with the bipartisan support that it had, was negotiated as best it could be. We had reached many carefully crafted compromises. And that bipartisan product ought to be our starting point this time.

So I introduced that as S. 220, the same bipartisan bankruptcy conference report language of last year that 70 Members of this body supported. I had that bill held at the desk so we could proceed expeditiously on this matter. I did not think, with all the work that had been done on it over the last 4 years—with only a Presidential veto, a pocket veto at that, standing in the way of it being the law of the land—that there was much point in going through the process of hearings and committee action before we worked on it here. This was one way we could expedite the process; save all the busy Senators some time, and move on with something that had such broad bipartisan support.

But always in a body of 100, where consensus is what it takes most of the time to get anything done, we had Senators with concerns about this process. So the Judiciary Committee, of which I am a member, accommodated those concerns by not only, once again, holding a hearing on bankruptcy reform and the bill, but also by holding a markup of the language in S. 220.

So the Judiciary Committee accepted several amendments that were not in the conference report of last time. And that marked-up version of the bankruptcy bill was reported out of committee and reintroduced with a new number. So we went from S. 220—the exact bill that President Clinton pocket vetoed—to now S. 420. That is what we have before us.

So I hope this clarification on history and on the procedural process of this bill will show that, one, the bill is a bipartisan effort; two, that we have been working on bankruptcy reform for a very long time and have gone over all the fine points of this bill in great detail; and, three, that we have bent over backwards to allow a fair process to move this bill forward at this time.

Let me now discuss the merits of bankruptcy reform and why this bill is necessary to solve the problems we have before us of a historically high number of bankruptcies—1.4 million bankruptcies in 1 year—maybe last year just a little bit less than that but now maybe coming back up. It is a problem with which we should deal.

There have been a large number of bankruptcies in good times. And remember, the last 20 years—covering the Reagan administration, the Bush administration, the Clinton administration, and now the Bush administration—have been the best economic years ever in the history of America. Yet during this period of time we had 1.4 million bankruptcies in 1 year, compared to 300,000 bankruptcies back in the early 1980s. Something is wrong, and this gives us an opportunity to correct what is wrong.

To emphasize, when the Senate last considered this bill just 3 or 4 months ago, we heard a lot about the declining numbers of bankruptcies from that top of 1.4 million that I talked about because the opponents of this compromise bill were pointing to this temporary downward spike in the number of bankruptcies to say that there was no need for any bankruptcy legislation.

I refer my colleagues to a Wall Street Journal article dated December 1, 2000, which predicted that consumer bankruptcies will rise by 15 percent this year. According to the article, one expert referred to the predicted upswing in bankruptcies as ''the verge of another flood.''

Opponents to the bill act as if there is nothing to worry about. But the fact is, we have a bankruptcy crisis on our hands. Things are more than likely going to get worse. We need to pass this bill, and we need to pass it right now.

The Bankruptcy Reform Act before us will help the American people and the economy. With the economy slowing down and a declining stock market, Americans are anxious about their economic future. If we hit a recession without fixing the bankruptcy system, we could face a situation where bankruptcies spiral out of control even beyond what they were in the good times of 1998, 1997, and 1996.

The time to act is now, before any recession is in full swing—not to send a signal to those people who legitimately, for the past 100 years, had a reason to have a fresh start. We do not want to stop those people in debt from going to bankruptcy court because of situations beyond their control. No, it is not to stop that. But before we get into this recession and too many people want to further use the bankruptcy code as part of their financial planning, we want to stop those who can repay some of their debt or all of their debt, that they know they are not going to get off scot-free.

I will address how this bill will change the way bankruptcy is being treated in the United States. Simply put, bankruptcy is a court proceeding where people get their debts wiped away. Every debt is wiped away through bankruptcy. When this happens, for every debt that is wiped away, someone loses money. That is not Washington nonsense. That is good old American common sense.

Of course, when someone who extends credit has their obligation wiped away in bankruptcy, they are forced to make a decision. Should this loss simply be swallowed as the cost of doing business and absorbed by the owner or do you raise prices for other customers to make up for your losses? Either way there is no free lunch; somebody pays.

Presently, when an individual files for bankruptcy under chapter 7, a court proceeding takes place and their debts are simply erased. Every time a debt is

wiped away through bankruptcy, someone loses money. When someone loses money in this way, he or she has to decide to either assume the loss as a cost of business or raise prices for other customers to make up for that loss. When bankruptcy losses are infrequent, then maybe lenders just swallow the loss, but when they are frequent, lenders need to raise prices to other consumers to offset their losses.

If there are a million businesses out there that have to so deal, I would have to say there are a million answers as to how each one of those businesses might see a debtor getting their losses wiped away.

These higher prices obviously eventually translate into higher interest rates for future borrowers. We had an outstanding economist by the name of Larry Summers—also the last Secretary of the Treasury—testify before our Senate Finance Committee that bankruptcies tend to drive up interest rates. With the possibility of the economy slowing right now, we need to at this time fix a bankruptcy system that inflates interest rates and threatens to make the slowdown even worse. Bankruptcy reform will help our economy through lower interest rates.

The result of the bankruptcy crisis is that hard-working, law-abiding Americans have to pay higher prices for goods and services. S. 420 makes it harder for individuals who can repay their debts to file for bankruptcy under chapter 7 where those debts are wiped away. This would lessen the upward pressure on interest rates and higher prices. It is only fair to require people who can repay their debts to pull their own weight. Under current bankruptcy laws, one can get full debt cancellation in chapter 7 with no questions asked. The Bankruptcy Reform Act before us asks the fundamental question of whether repayment is possible by an individual. If it is, then he or she will be channeled into chapter 13 of the bankruptcy code which requires people to repay a portion of their debt as a precondition for limited debt cancellation.

The bill does this by providing a means test to steer filers who can repay a portion of their debts away from chapter 7 bankruptcy. The test employs a legal presumption that chapter 7 proceedings should be dismissed or converted into chapter 13 whenever the filer earns more than the State medium income and can repay at least $6,000 of his or her unsecured debt over 5 years.

In calculating a debtor's income, living expenses are deducted as permitted under IRS standards for the State and locality where that debtor lives. Legitimate expenses—such as food, shelter, clothing, medical, transportation, attorney's fees, and charitable contributions—are taken into account in this analysis as provided for under these IRS guidelines. Moreover, a debtor may rebut the presumption by demonstrating some sort of special circumstances.

Responding to the point that is always brought up against this bill—we have already heard it this afternoon—that somehow, regarding high medical expenses, you never get adequate consideration of that by the judge if you go into bankruptcy, I don't know what it takes to satisfy people on the other side whom I believe are using this medical expense issue just as an excuse because they don't want any bankruptcy reform. If writing off 100 percent of all medical expenses is not enough, would you be satisfied if we wrote a law that allowed you to write off 101 percent or 102 percent? When I say medical expenses under the IRS guidelines can be written off in making a determination of the ability to repay or go into chapter 13 and then repay part of your debt, I mean that they can be written off.

The means test takes into account a debtor's income and expenses and then, even beyond that, allows the debtor to show special circumstances which would justify adjustments to this IRS benchmark means test. In this way, then, the bankruptcy reform bill preserves the fresh start I have talked about for people who have been overwhelmed by medical debt or sudden unforeseen emergencies.

As stated by the General Accounting Office—not by Senator GRASSLEY but by the General Accounting Office—the bill allows for full 100 percent deductibility of medical expenses before examining repayment ability. This bill preserves fair access to bankruptcy for people who truly are in need.

So that I am crystal clear, people who do not have the ability to repay their debt can still use the bankruptcy system as they would have before. This bill specifically provides that people of limited income can still file under chapter 7. There is a specific safe harbor built in for these individuals so their debt can be wiped away as is done right now—the fresh start.

I repeat: There is a safe harbor for these poor people, but the free ride is over for those who have high incomes and who game the system and who don't want to repay their debt but can repay their debt; they are no longer going to get off scot free.

That brings me to the moral issue involved with bankruptcy reform. Somehow, I know that in 21st century America you aren't supposed to be judgmental about people. Let me say to you I think it is a sad commentary that I can get into trouble for being judgmental about people, but if I were to do the same thing, commit the same act, I would probably get away with it. That is a sad commentary.

There is this issue of personal responsibility. It has been one of the main themes of this bankruptcy reform bill. Since 1993, the numbers of Americans who have declared bankruptcy have increased over 100 percent. That is how you eventually get to that high number 2 years ago of one and four-tenths. While nobody knows all the reasons underlying bankruptcy crises, the data shows that bankruptcies increased dramatically during the same timeframe when unemployment was low and real wages were at an all-time high.

I believe the bankruptcy crisis is a moral crisis. People have to stop looking at bankruptcy as a convenient financial planning tool while other honest Americans have to foot the bill. It is clear to me that our last bankruptcy system must bear some of the blame for this crisis. A system where people aren't even asked to pay off their debts, obviously, contributes to the fraying of the moral fiber of our Nation and to the lack of personal responsibility. Why should people pay their bills when we have a system allowing them to walk away with no questions asked? Why should people honor their obligations when they can take the easy way out through bankruptcy?

I think the system needs to be reformed because it is fundamentally unfair. The Bankruptcy Reform Act before us will then promote personal responsibility among borrowers and create a deterrence for those hoping to cheat the system, to game the system, to use it for financial planning, to get off scot free.

The bill does more than just provide for a flexible means test. It gives judges discretion to consider the individual circumstances of each debtor to determine whether they truly belong in chapter 7 and then get the fresh start that we all agree they are entitled to if they are in this situation because of something beyond their control. But it also contains tough consumer protections that people on the other side of the aisle, correctly so, have brought to our attention that we ought to be doing something about.

We are going to have procedures in this bill to prevent companies from using threats to coerce debtors into paying debts which could be wiped away once they are in bankruptcy. That is not fair play, when we have activity such as that occurring.

The bill requires the Justice Department to concentrate law enforcement resources on enforcing consumer protection laws against abusive debt collection practices. It contains significant new disclosures for consumers, mandating that credit card companies provide key information about how much they owe and how long it will take to pay off their credit card debt by only making a minimum payment—just getting on a treadmill and never getting off.

Consumers will be able to get this information through a toll-free number, where they can get information about how long it will take to pay off their own credit card balances if they make only the minimum payments because we want to help people get off of that treadmill as well. We want to do it by educating consumers and improving the consumers' understanding of their financial situation.

Also, credit card companies that offer credit cards over the Internet will

be required, for the first time, to fully comply with the Truth in Lending Act. So claims that this bill is unbalanced for the creditor and against the debtor are wrong. There are enhanced consumer protection and information and education provisions to give the debtor more information—hopefully, to avoid bankruptcy in the first place.

Our bill makes changes that will help particularly vulnerable segments of our society. We have heard people against this bill—and, again, I think just because they don't want any change in the bankruptcy laws whatsoever, and maybe some of them even think we ought to make it easier to go into bankruptcy—bring up this issue about child support. It is one of their great contributions to the evolution of this legislation, that child support now is the No. 1 priority.

Again, as I said, in the case of these groups of people who are against the bill in the case of medical expenses, if 100-percent deductibility and consideration of 100 percent of the medical expenses isn't enough, should it be 101 percent or 102 percent? Again, if child support is the No. 1 priority, what more can I do for you? There isn't a number smaller than 1 for a priority when it comes to using the assets that are in bankruptcy to see that children are No. 1 in consideration. They ought to be No. 1 in consideration. So they have the highest priority.

I wish to make clear that the bankruptcy bill makes a significant improvement for child support claimants as well. This bankruptcy bill does not hurt them, as opponents try to claim. In fact, the organizations that specialize in tracking down deadbeat dads all believe this bill will be a tremendous help in collecting child support. The people on the front lines say that the bankruptcy bill is good for collecting child support. For example, the bill provides that parents and State child support enforcement collection agencies are given notice when a debtor who owes child support for alimony files for bankruptcy in the first instance—I should say, not in the first instance of bankruptcy but when they file for bankruptcy, this information is going to be made known to them right away because bankruptcy trustees are required to notify child support creditors of their right to use child support enforcement agencies to collect outstanding amounts due.

In addition, the bill requires creditors to provide the last known address of debtors owing support obligations upon the request of the custodial parent. Concerns being expressed by opponents to this bill then, in regard to this child support issue just do not hold water.

The Bankruptcy Reform Act before us also makes great strides in cracking down on the very wealthy individuals who abuse the bankruptcy system. If you listen to our critics, you might get the impression that the homestead exemption is one giant loophole, that we don't deal with it in this bill at all, and that somehow we are protecting the rich. Here again, we had the nonpartisan General Accounting Office look at the question of how frequently the homestead exemption is abused by wealthy people in bankruptcy. The GAO found that less than 1 percent of the bankruptcy filings in the States where there are unlimited homestead exemptions involving homesteads of over $100,000—and the number of States that fall into that category can be counted on the one hand. But in those States 99 percent of the bankruptcy filings are not abusive, according to the General Accounting Office. So there is no big loophole there. In fact, the provision in the bill with respect to homestead is a significant improvement over current law because there is presently no Federal cap on homestead exemptions in the current law.

Our bill changes that by requiring a person be a resident of a State for 2 years before claiming the homestead exemption.

Furthermore, there is a 7-year lookback provision which will allow our bankruptcy judges to review the debtor's activities for the past 7 years to determine whether the debtor was trying to shield assets through this homestead exemption.

This, quite frankly, is one of these very tough issues with which we have to deal. On this, I did not have to deal with Democratic Senators who think it ought to be tougher, but I had to deal with those within my own Republican caucus.

There was a lot of work that had to be done on this. It is a delicate compromise between those who believe the homestead exemption should be capped through Federal law and others who are uncomfortable with the uniform Federal cap because 150 years ago, their State constitution writers wrote a different provision.

I hope my colleagues will not believe it when others say the provisions of this bill that tighten up this exemption, regardless of the State constitutions, is a gaping loophole because it is not. The homestead provision in the bankruptcy bill substantially cuts down on abuses.

I wish to talk about another thing this bankruptcy bill does that is so important in the rural areas of America, particularly as it deals with the family farmer. Some may not know that the farmers across the country currently have no protection at all against foreclosures and forced auctions, and that is because chapter 12 of the bankruptcy code, which I wrote about 15 years ago, sunsetted last June. We thought President Clinton signing this in December would take care of that problem. Chapter 12 has expired leaving farmers without this last-ditch safety net.

The answer is that chapter 12 ceased to exist because opponents of bankruptcy reform stalled movement on this legislation last year so that it would be timely for President Clinton to pocket veto it after we adjourned in December instead of while we were still here, when we obviously had the votes to override it.

Last year's bill would have permanently restored chapter 12 for family farmers, but President Clinton did not think that was an important enough matter. This matter is too important to family farmers for us to be fooling around and not making chapter 12 permanent. It is the only chapter of the bankruptcy code that is not permanent law, but our bankruptcy bill goes further than just making it permanent.

The bill enhances these protections and makes more farmers eligible for chapter 12. The bill lets farmers in bankruptcy avoid capital gains taxes. This is important because it will free up resources to be invested in a farming operation that is trying to turn around rather than going down the big black hole of the Federal Treasury.

Farmers need this chapter 12 safety net, and we in Congress should be standing up for our family farmers. We can do our duty and make sure the family farms are not gobbled up by giant corporate farms, which happens when bankruptcies occur. We can give farmers across America a fighting chance. I hope the Senate does not give in to people who are opposed to this bill and want to fight bankruptcy reform just because they do not want any bill whatsoever and let them hurt the family farmer by stalling this legislation. It is time we do this for the family farmer.

In addition, patients in hospitals and nursing homes get protection under this bill. They deserve it and need it. In the last Congress, the Senate adopted these protections unanimously as an amendment I offered. Let me provide an example of what could happen—and it has happened. This came out in a hearing I held on nursing home bankruptcies.

I learned of a situation in California a couple, 3 years ago where bankruptcy trustees just showed up at a nursing home on a Friday evening and evicted the residents. The bankruptcy trustees did not provide any notice whatsoever that this was going to happen. There was absolutely no chance for the nursing home residents to be relocated. The bankruptcy trustees literally put these elderly people out into the streets and changed the locks on the doors so they could not get back into the nursing home.

This bankruptcy bill will prevent this from ever happening again. For the first time, we will be giving these deserving folks these protections. We set up an ombudsman to look out for their interests.

Getting back to some basics, the truth is, bankruptcies hurt people. It is not fair to permit people who can repay to skip out on their debts. Yes, we do preserve and must preserve fair access to the bankruptcy courts for those who truly need a fresh start. The bankruptcy reform bill that we will pass

does just that, but let those people who can over time pay their debts live up to their responsibilities. Let's restore a proper balance in the bankruptcy system. This bill does that. Enacting bankruptcy reform will help stimulate the economy by lessening pressure on prices because people who can pay their debts do not. Also, interest rates go up, as Secretary Summers has told us.

Passing meaningful bankruptcy reform also can help our economy and simultaneously contribute to rebuilding our Nation's moral foundation by emphasizing, once again, personal responsibility.

I urge my colleagues to support this bill which has a new number, S. 420, but not much changed from the bill that was at the desk, S. 220. This is a product of much negotiation and compromise. It is fair, it is balanced, and it is long overdue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I appreciate the opportunity to make some remarks on the bankruptcy bill that will be pending this week. I also express my admiration for the work of Senator ENZI in the health subcommittee on labor issues that he chairs and his intensive work and concern to make sure we handle repetitive motion injuries in the right kind of way.

In my personal view, it would be unwise for us to dump a regulatory burden on American business, one that has been estimated to cost as much as $90 billion, at a time when the economy is in a slowdown and we are not really sure about the science that would justify that and all experts tell us the regulations are incredibly difficult to write. In fact, they are not able to write them. I think we are right to heed Senator ENZI's advice.

Mr. President, one of the objections to the bankruptcy bill was expressed in a letter that has been circulated from 91 law professors who wrote to show their opposition to the bankruptcy bill. We are continually seeing our professors sign off on letters that appear to have some substance, but when you examine them, they are not sound. This is a very unsound letter.

Since it has been referred to by Senator KENNEDY in the past, and I think maybe earlier today—although I don't think he relied on it in depth here today—we ought to talk about those charges. In their letter, these professors claim to be representing the interests of children and women in divorce. They claim to be concerned about poor people who are bankrupt and they want to help them. So do I.

So let's listen to what they say their complaints are. I would like to talk about them. It is in many ways quite stunning how inaccurate their opinions are.

The letter from the professors says women and children will have to compete with powerful creditors to collect their claims after bankruptcy.

The fact is this bill subjects assets, such as homestead, household effects, and tools of the trade—these are assets that cannot be seized and sold in bankruptcy. These are assets that the person who filed bankruptcy can keep—their homestead and household effects and so forth. But for the purposes of children and women and past-due alimony, this law will give them greater power than ever before, and they can seize those. They can be seized for child support and alimony. That is clearly a superior position under this bill than before.

Wives and mothers will not have to compete with anyone before, during, or after bankruptcy for these key assets.

In addition, Philip Strauss of the San Francisco Department of Child Support Services—this is one of the agencies around the country that was formed to help women and children collect their child support and alimony from deadbeat parents, or those who refuse to pay—wrote to us and made a firm statement on this matter. He said competition between these creditors and child support claimants just doesn't happen.

As he said:

No support collection professional that I know believes this concern to be serious. If support—

He means child support and alimony—

and credit card creditors were playing on a level playing field, banks with superior resources might have an advantage. However, nonbankruptcy law—

This is the nonbankruptcy collection law that favors alimony and child support—

has so tilted the field in favor of support creditors—

That is child support creditors—

that competition with financial institutions for the collection of post-discharge debt presents no problems for support creditors.

Senator BIDEN said it was laughable at our hearing recently to suggest that this bill does anything but enhance the position of women and children who may be claimants in bankruptcy.

The letter from the professors says:

Credit card claims increasingly will be excepted from discharge and remain legal obligations after bankruptcy.

The fact is this: Credit card debt that is incurred as a result of fraud is already nondischargeable under current law. This bill simply makes it slightly easier for creditors when a debtor has obtained the money from the creditor by fraud to win their case; only slightly more. They will still have to prove that the borrower—the debtor—defrauded them. And debtors who defraud creditors should not be able to discharge their debt in bankruptcy.

If somebody loans me money and I obtain that loan through fraud, why should I be able to go into bankruptcy court and never pay that person back the money I defrauded him out of?

That is the current law. That is historic law. This bill makes little or no change in it. It tightens it up slightly. If you have been defrauded, you will be able to collect your money.

The letter further says:

. . . large retailers will have an easier time obtaining reaffirmations of debt that legally could be discharged.

The fact is that in order to obtain a reaffirmation under this bill, retailers will have to make sure that new and comprehensive disclosures are given. They will be required to disclose material terms of debt obligation before the creditor and debtor can reaffirm any discharged debt. Judicial review is required in certain cases. Thus, it will be much more difficult—not easier—for retailers to reaffirm or get a reaffirmation of a debt that is being discharged in bankruptcy.

I know this. I was asked to negotiate this very question on behalf of Senator GRASSLEY and Chairman HATCH. I met with the White House and Senator REED from the other side. We worked hard and came up with language that is not excessively burdensome on the court but really provides substantial new procedural protections from anyone who would think about reaffirming a debt.

The reason people reaffirm the debt is they may have a washing machine, and they have paid on it for a while. They would rather reaffirm and keep that machine than have it taken away. Sometimes they do it on automobiles and things of that nature. It is a perfectly voluntary thing.

Frankly, I thought the issue was greatly overblown. But we worked this out. We increased the control under the new bankruptcy bill that is before us today compared to what it was before. A vote to reject this bill is a vote to continue the less restrictive reaffirmation practices that prevail in the absence of this bill.

Again, it makes you wonder what these professors are writing about.

The letter says:

Giving ''first priority'' to domestic support obligations does not address the problem . . . and that ''95 percent of bankruptcy cases make no distributions to any creditors because there are no assets to distribute. Granting women and children a first priority . . . permits them to stand first in line to collect nothing.

The fact is, the bill's means test will come into play only if the person filing bankruptcy makes more than the median income for the state in which he files. Only then will he be required to pay back some of his debt, and under that scenario his situation will be different from current law.

This bill's means test will place above-median income deadbeat dads into chapter 13—a 5-year repayment plan that will require them for 5 years under court-ordered direction to pay their money into court, and the first fruits of that money go to child support and alimony. That is a powerful incentive and guarantee that women and children will receive the support obligations due them.

The bill also will stop how chapter 13 is used today by deadbeat dads to delay or defeat their payment of child support—sometimes for as long as 5 years. This bill will strengthen the ability of women and children to receive their child support.

The letter goes on with another charge. It says: Under current law, child support and alimony share a protected post-bankruptcy position with only two other current collectors of debt—taxes and student loans. The bill would allow credit card debt and other consumer credit to share that position thereby elbowing aside women trying to collect on their own behalf.

The fact is, the bill only slightly expands what consumer debt is nondischargeable. The credit card has to be used for more than $250 worth of luxuries, and the debt has to be fraudulent to be nondischargeable. Even if you had a fraudulent debt of less than $250, it would be dischargeable.

Moreover, only alimony and child support claimants will be able to levy on the deadbeat dads' exempt assets, as I mentioned before, such as homestead and household furniture. Thus, mothers will not have to compete with the IRS, the student loan companies, credit card companies, or anyone else to attach exempt assets after bankruptcy.

Further, as Philip Strauss, a child support professional, said—he has 24 years of experience in collecting assets for women and children—

No support collection professional that I know believes this concern to be serious.

I agree with Senator BIDEN. It is laughable. Really. State attorneys general will be helping women collect child support and alimony.

Further, this bill will provide more assets for distribution to women and children before, during, and after bankruptcy.

Before bankruptcy, debtors will have to attend a credit counseling session that will help put fathers on a budget, keep them out of bankruptcy, and keep them paying this alimony and child support in the first place.

I offered an amendment to this bill that says before a person runs down to some bankruptcy lawyer whose primary motivation will be to get his fee and file bankruptcy with the least possible cost and time on his part in the case, they should at least talk with a credit counseling agency. Many of them can show debtors how to establish a budget, how to prioritize their debt payment. They can call creditors and ask: Would you hold off for 2 months? Then we will start paying next month. Otherwise, my client would have to file bankruptcy. They are working marvelously well throughout the country to avoid bankruptcy, to teach families and deadbeat dads or others how to manage money more effectively, and actually preserve families because experts say fights over credit are the No. 1 cause of divorce in this country. That is a good provision in this bill that would not be enacted into law if this bill is not passed.

I go on to note that during bankruptcy, deadbeat dads will be required to pay all past due alimony and child support and to undergo court supervision for up to 5 years under chapter 13 as they pay their first priority alimony and child support claims.

After bankruptcy, it is more likely that a father who has undergone credit counseling, has been subject to 5 years of court-ordered supervision of his finances where alimony and child support were the No. 1 priority, and knows he cannot shield his exempt assets from alimony and child support claims, will be up to date on all his post-bankruptcy payments, including alimony and child support.

The letter further charges:

[A] single mother with dependent children who is hopelessly insolvent and whose income is far below the national median income would have her bankruptcy case dismissed if she does not present copies of income tax returns for the past three years—even if those returns are in the possession of her ex-husband.

The fact is, although a prior version of the bill did require 3 years' tax returns to be submitted to the bankruptcy court—and there was good reason for that because people do not always tell the truth about their income, and 3 years of returns gives you some indication of what their true worth and financial ability is—but while it was in the previous bill, the conference report version, the present bill today that came out of committee only requires that 1 year's return be submitted. This bill only requires the current year's return be submitted, and even that obligation can be satisfied by a transcript of your return obtained from the IRS. These transcripts are free and promptly provided by the IRS.

Further, the bill relieves the obligation of filing even the current tax return if the debtor—the destitute mother, in this case—can show that she cannot file the return due to circumstances beyond her control. I think that more than answers that charge.

The letter further says:

A single mother who hoped to work through a Chapter 13 payment plan would be forced to pay every penny of the entire debt owed on almost worthless items of collateral, such as used furniture or children's clothes, even if it meant that successful completion of a repayment plan was possible.

The fact is, a single mother would only be placed in a chapter 13 repayment plan if, one, she was above the median income, and that is adjusted for family size—and for a family of four, the median income in my home state of Alabama is $47,000 a year—two, her income after deducting medical payments, private school tuition, and medical expenses exceeded the lesser of $10,000 or 25 percent of nonpriority unsecured debts—but at least $6,000; and special circumstances did not make completion of the payment plan impossible.

So there is an out for the judge. If he finds there are special circumstances that provide a hardship for a family, he can avoid this plan. Even then, if she did not want to pay for the worthless items of collateral, her plan needs only provide for their return to the creditor. Why should she have to keep a piece of furniture if she does not want to pay that debt on it, and it has been mortgaged?

The letter says:

The homestead provision in [this bill] will allow wealthy debtors to hide assets from their creditors.

The fact is, the current law presents two problems: One, debtors stuffing their cash into homesteads immediately before declaring bankruptcy, sometimes moving to another State that has a more favorable homestead law, to defeat the creditors; and, two, another problem is, wealthy people exempting their long-held homestead from the bankruptcy estate.

The Senate bill that preceded the conference report last year would have solved both of these problems with a $100,000 hard cap on all homestead exemptions. I supported that. Senator KOHL and I were the prime advocates of that amendment. I debated it on the floor, and we won that vote on the floor. The companion House bill that was passed by the House of Representatives would have solved neither one of those two problems. We solved both of them in our bill in the Senate.

So what about the bill that has come out of committee and is the bill before us today? The bill today solves the more egregious problem by providing, one, that all new equity added to a home within 2 years prior to filing bankruptcy in excess of $100,000 will be subject to the creditors and cannot be protected; and, two, if you move into a new State 2 years before filing bankruptcy, your homestead exemption is set by the law of the State you left.

So you cannot carry on the kind of effort that has been done in Alabama where a person leaves my hometown of Mobile and drives 50 miles to Pensacola, Florida, where they have no homestead exemption, puts all their money in a million-dollar house, files bankruptcy, and they do not have to pay their creditors because all their money is in the home. You would have to plan that at least 2 years in advance under this law. So there is no doubt, as Senator GRASSLEY has stated so clearly, that this law will be substantially more effective in cracking down on homestead abuse than current law.

We had problems. We had a number of people from Florida, from Texas, from Kansas, and some other States out West, whose State constitutions provided unlimited homestead protection for farmers and others. They did not want to give that up. They fought us tooth and nail, and it compromised the ability of this bill to even be passed. But by reaching a compromise on this language in the bill, it solved one of the two problems, the most egregious problem really, and we made progress over current law. We ought to pass this bill. To kill this bill would leave even the weaker current law in effect.

The letter further says:

Well-counseled debtors will have no problem timing their bankruptcies or tying up court in litigation to skirt the intent of [this bill's two-year look-back] provision.

The fact is, it will be very difficult for a debtor to plan 2 years ahead to place large amounts of cash into a homestead. Such planning, however, could establish a record of the debtor's intent to hinder or delay his creditors. If you can show they maneuvered over a 2-year period to establish a new homestead in a different State, or put extra money in there, then you have a remedy under this bill. If so, our legislation contains a 7-year look-back provision to bring any amount added to a homestead to defraud, hinder, or delay creditors back into the bankruptcy estate, used to pay off debtors of the estate.

So in conclusion, Mr. President, I reject the assertions in the October 30 letter by the anti-reform professors. This bankruptcy bill will place women and children in a better position than ever before. That is a major reason why an overwhelming bi-partisan majority of the House and the Senate supported this bill last year. And that is why we should pass it again this year, and the President should sign it.

I know there is a lot of talk about this bill being harsh and somehow unfair to poor people. But all debtors—all poor people filing bankruptcy—if the claimants are for child support or alimony, will be much advantaged.

The alimony and child support people will have much greater power under this bill to collect their money than under current law. Second, anybody making below median income for their State will not be affected by the means test and will not be converted to Chapter 7. And I do not know how many that is, but I would be willing to guess that at least 80 percent of the individual bankruptcy filings in this country are by people who make below median income. It is only a few at which we are looking. The same people who are concerned about those abusing the homestead law to defraud their creditors ought to also be concerned about doctors and other rich people who have run up a bunch of debts, bankrupt against them, and then the next year make $100,000 to $150,000 a year. By doing that, these people have effectively gotten out of their legitimate debts that could easily have been repaid by them. Make no mistake, that is the truth. You can go into bankruptcy court today, file under chapter 7 and if your income is $250,000 a year, wipe away the debt that you owe and, effectively, never pay your creditors. That is not right. It's an abuse. If you can pay part of your debts, you ought to.

We have come up with a bright line rule. If you make above median income for your State and you can pay the lesser of 25 percent or $10,000 of your debts over 5 years, you are required to pay at least a portion of those debts you can pay; in other words, you must file in Chapter 13. The judge will decide how much you pay and will set up a repayment schedule. In short, people should try to repay the debts that they owe. We don't need to create a bankruptcy system that is running out of control where lawyers are advertising night and day on the TV and in the free shopping guides in the grocery stores about how you can wipe out your debts and you don't have to pay what you owe.

When somebody fails to pay what they owe, whether it is to a hospital, whether it is to a doctor, whether it is to a bank, whether it is to a credit card company, what happens? It drives up the cost of those people's business. They have to raise the charges on the honest people who pay them.

There is no free lunch in this country. That is basic economics. There is no free lunch. If you don't pay your debt, then somebody else is going to pick up the burden.

We need to have a law that enhances our capacity to ensure people don't abuse bankruptcy; that if you are capable of repaying a portion of your debts, you do. That is fundamental and what most Americans do.

When I think about those families sitting around their kitchen tables right now worrying about their budgets, trying to decide whether or not they can afford to take vacation, and who ultimately decide that they can't because they have bills to pay - those are the people we ought to honor. Those are the people who demonstrate the kind of character and discipline that ought to be affirmed. We ought not to affirm people who make above the median income in America and who can easily pay back part of their debts, but who decide not to do so.

I don't believe you can assert one fact in this bill that is not fair and just. We have fought over this bill for 4 years. It has passed this body at least three times by overwhelming numbers. Unfortunately, it is not yet the law. I plan to listen carefully to the complaints about this bill that will surely be made on this floor, but frankly I don't believe that anybody's complaints will hold water.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

(The remarks of Ms. COLLINS pertaining to the submission of S. 455 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

A WEEK FOR WORKING PEOPLE

Mr. WELLSTONE. Mr. President, first of all, I haven't had a chance to review Senator COLLINS' legislation, but I will tell you that anything and everything that we can do that really nurtures and encourages small business we should do. The small businesspeople are a lot like family farmers. Everybody loves them in the abstract, but when it comes to access to capital and to the opportunities for them to grow, I think we can do much better.

I will tell you that in Minnesota—and I am sure it is the case in Maine—people are always more comfortable when the actual capital decisions are made by people who live in the community. They own the businesses there. I would put my emphasis on education and entrepreneurship at the community level. I thank my colleague for her work.

I am going to be quite brief because I have a feeling that over the next couple of weeks I won't be brief at all. This is going to be quite a week for working families, working people, in Minnesota and around the country. We start out tomorrow with a bang. We are going to have a resolution on the floor of the Senate that would summarily and permanently overturn OSHA standards that were designed to protect workers from serious and debilitating ergonomic injuries. We are talking about repetitive stress injuries and about 1.8 million workers who suffer from these disorders, 600,000 injuries so severe that people are forced to take off from work.

The terms of these injuries, such as carpal tunnel syndrome, tendonitis, and back injuries, sound familiar. I will give you one example, although there are many, and then I will make my larger point.

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

I will tell you something. This resolution is all about overturning our accountability as legislators, as Senators, to working people in this country, our accountability for their safety. I would bet that of the 1.6 million, 1.8 million workers who suffer from these injuries, well over 50 percent are women. I will just tell you that I believe part of the reason that Kita Ortiz is not so prominent in this effort is because to many people these workers and these injuries are just out of site, out of mind. But this is the most serious health and safety problem in the workplace.

We had OSHA spend 10 years to promulgate this rule and now we have this rush to judgment, where we are going to have 10 hours of debate, no amendments permissible—10 hours of debate to overturn a rule that was 10 years in the making based upon the heartfelt

testimony of men and women who have gone through this living hell of repetitive stress injury.

Why the rush to judgment? Some Senators can be very generous with the suffering of others. It is so interesting to me that we are going to pass a resolution that is going to not just say to OSHA there are problems, fix them, but basically its scorched earth approach on the floor of the Senate—10 hours, limited debate, no amendments, and basically OSHA's hands are tied for the future. We have to come back and go through a process all over again.

By the way, time is not neutral for a whole lot of people who suffer these injuries. I don't think most of them are our sons and daughters, to be blunt about it. This is a class thing. I don't know whether others want to say it on the floor, but it should be said. I will say it a lot over tomorrow. These aren't really our sons and daughters. These aren't our brothers and sisters, our husbands and wives. For most of us, I don't think these are people we know very well. These are working class people. It is interesting to me that we are so willing to have standards for schools, but we don't want to have standards for workplace safety.

It is going to be interesting to see how colleagues vote on this. I think this Federal testing that President Bush is talking about is probably the largest intrusion of the Federal Government on State and local school districts we have seen for a long time, which basically says, hey, for any of you who receive any title I money, you will do annual testing from third grade on—I think all the way to eighth grade. You do it. That is what we are telling them. We are not clear exactly whether or not or how this gets funded.

We are certainly not going to give the schools and teachers and the children the tools to be able to do well, but we are going to pound our chests and talk about how low-income children, and children in inner-city schools, and in schools that don't have good lab facilities and don't have the technology, and children who didn't come to kindergarten ready to learn, and kids who come to school hungry, and kids who live in a family that moves two, three times a year because of the lack of affordable housing, and we are set up for failure. We are willing to jam those tests down the throats of States and school districts, big Federal intrusion in education. So we are going to have the standards for schools, but we are not going to have the standards for workplace safety.

Tomorrow we are going to abolish standards for workplace safety. At least that is the effort. I hope it is not successful. This is quite a week for working families. We start out going after the ergonomics rule, which is so important to people who have gone through such a living hell with such pain from repetitive stress injury. It is a horrible injury. And you have some parts of the business community broadly defined—not all, thank goodness—coming in and saying we cannot afford it. It is terrible. How generous again some people are with other people's suffering. If it was you or if it was your loved one who was struggling, who was basically disabled for life, who was in unbelievable pain, you would want to see some kind of standard put into effect. That is what this debate is going to be about.

This is a class issue. That is what this is about, make no bones about it, and the question is, Where do working people fit into the deliberations of the Senate? We will see.

Then we go from there to the bankruptcy bill. I ask unanimous consent to print in the RECORD a letter from a variety of women's and children's organizations—American Association of University Women, Children's Defense Fund, Center for Law and Social Policy, National Center for Youth Law, National Organization of Women Legal Defense and Education Fund, National Women's Law Center, YWCA of the United States—that are in opposition to the bankruptcy bill.

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

MARCH 2, 2000.

Re Women and children's groups oppose S. 420, Bankruptcy Reform Act

DEAR SENATOR: The undersigned organizations write to urge you to stand with America's women, children, and working families and oppose S. 420, the Bankruptcy Reform Act of 2001.

If it becomes law, this bill will inflict greater pain on the hundreds of thousands of economically vulnerable women and families who are affected by the bankruptcy system each year. Over 150,000 women owed child support or alimony by men who file for bankruptcy become bankruptcy creditors. An even larger number of women owed child support or alimony—over 200,000—will be forced into bankruptcy themselves. Indeed, women are the largest and fastest growing group in bankruptcy.

S. 420 puts both women and children owned support who are bankruptcy creditors and those who must file for bankruptcy at greater risk. By increasing the rights of many other creditors, including credit card companies, finance companies, auto lenders and others, the bill would set up a competition for scarce resources between parents and children owed child support and these commercial creditors both during and after bankruptcy. And single parents facing financial crises—often caused by divorce, nonpayment of support, loss of a job, uninsured medical expenses, or domestic violence—would find it harder to regain their economic stability through the bankruptcy process. The bill would make it harder for these parents to meet the filing requirements; harder, if they got there, to save their homes, cars, and essential household items; and harder to meet their children's needs after bankruptcy because many more debts would survive.

Contrary to the claims of some, the domestic support provisions included in the bill would not solve these problems. The provisions only relate to the collection of support during bankruptcy from a bankruptcy filer: they do nothing to alleviate the additional hardships the bill would create for the hundreds of thousands of women forced into bankruptcy themselves. And even for women who are owed support by men who file for bankruptcy, the domestic support provisions fail to ensure that, in this intensified competition for the debtor's limited resources before and after bankruptcy, parents and children owed support will prevail over the sophisticated collection departments of these powerful interests.

We urge you to support amendments to ameliorate the bill's harsh effects on women and their families, insist on bankruptcy reform that is truly fair and balanced, and vote against S. 420.

Very truly yours,

American Association of University Women.
Children NOW.
Children's Defense Fund.
Center for Law and Social Policy (CLASP).
Feminist Majority Foundation.
National Association of Commissions for Women (NACW).
National Center for Youth Law.
National Organization for Women.
National Partnership for Women & Families.
National Youth Law Center.
National Women's Conference.
National Women's Law Center.
NOW Legal Defense and Education Fund.
OWL.
The Women Activist Fund, Inc..
Wider Opportunities for Women.
Women Employed.
Women Work!
Women's Law Center of Maryland, Inc.
YWCA of the U.S.A.

Mr. WELLSTONE. Mr. President, my colleague, Senator SESSIONS, was saying: What this bill says is if these men owe child support to their former wives, they are going to have to pay; therefore, the whole bill is a good bill for women and children.

All these organizations are opposed to it, and they are opposed to it for good reason. First of all, what my colleague and friend from Alabama did not tell us was, yes, these men are going to have to pay child support to women. It also says he is going to have to pay the credit card companies and other people who are all making claim on what little he has left.

That is not the main reason these major women's and children's organizations, civil rights organizations, consumer organizations, and labor organizations are opposed to this bill. The main reason is that it is going to be very difficult now for women and for other families who find themselves in difficult economic circumstances, through no fault of their own—50 percent of the bankruptcy cases in this country are because of a major medical bill. It is going to make it impossible for them to file for chapter 7 and rebuild their lives. That is what is so harsh about this piece of legislation.

I will not go into the details today because there is going to be a lot of opportunity for debate. I will make two very quick points.

One is, the first effort in the 107th Congress—and I hope people get a good look at this—is a resolution to overturn a rule 10 years in the making, a rule that is important to protecting people at the workplace.

Then the first major piece of legislation we get in the 107th Congress is an

unjust and unbalanced bankruptcy bill which is great for the big banks and the credit card companies and says nothing about their predatory lending practices. It requires no balance and no accountability on their part and says nothing about the way in which they continually push their credit cards on our children.

This legislation basically tears up the major safety net for middle-class—not just low-income—families to protect families from being put totally under and in economic bondage for the rest of their lives. That is what this bill does by setting up an onerous means test that will make it impossible for families to rebuild their lives.

I think my colleagues want to bring this up because they want to point to the differences between President George W. Bush and President Clinton because President Clinton vetoed this bill. I hope we can stop this bill, and, believe me, I will have many amendments and we will have much debate.

If, in fact, my colleagues want to point out the difference, I am glad to do so. I have been plenty critical of President Clinton in the last several weeks—there has been much to be critical of—but I want to point out to President Clinton: It is an honor to defend you on your veto of this bill.

President Clinton stood up for consumers. He stood up for low- and moderate-income families without a lot of clout in America; he stood up for working people; he stood up for civil rights; he stood up for communities of color. He basically stood up for them and ignored all of the lobbying, the political and economic clout of this financial services industry.

I will have a lot to say in this debate about their contributions and their role. He did the right thing. I am pleased to talk about the differences.

This bill comes to the floor negotiated by a relatively small number of Members. Until this year, this bankruptcy bill has never been on the floor of the Senate in an amendable fashion. I need to make that point tonight because we are going to go on this bill probably Wednesday afternoon.

The third point I want to make is, until the hearing was held by the Judiciary Committee on February 8, there had been no hearings on this legislation. In fact, the Senate has not conducted its own hearing on bankruptcy since 1998.

Here is my point: The first time in amendable form, harsh and unbalanced, unjust, and the financial services industry trying to jam this through.

I see no reason why we should not have extended debate on the Senate floor. Believe me, coming on the heels of this effort to undo 10 years of work on an ergonomics standard to protect people in the workplace, I, as a Senator from Minnesota, will be more than ready to have amendments and have debate.

One of the amendments on which I look forward to a vote will basically say: Before you say to people it is going to be impossible for you to file for chapter 7 and rebuild your lives, before you basically put people economically under for the rest of their lives with this very harsh and one-sided piece of legislation, at least in the case where people have had to file for bankruptcy because of a major medical bill, do not present them with this harsh means test. At least give people who went under because of a medical bill the opportunity to file chapter 7 the way they could before.

We will have a vote on that and a vote on many other amendments as well. That debate will start I suppose Wednesday afternoon.

What a week—it is not just this week; the debate will go on to next week. We have 2 weeks coming up that I think represent what the majority party is about, and I am sorry to say, because I like the Presiding Officer so much and it is not a personal argument, it is an institutional argument. I really believe this President and the majority party are going to do a great job representing the wealthy in America, a great job representing the financial services industry, a great job representing the insurance industry, a great job representing the oil companies, a great job representing the well-heeled, the well-financed, and the economically powerful.

The question most ordinary citizens in the country are asking is: Who will represent us? My hope is that the Democratic Party will do so.

I yield the floor and 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.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now be in a period of morning business with Senators speaking for up to 10 minutes each.

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

FAREWELL TO GIGI LOPATTO

Mr. HATCH. Mr. President, one of our dear staffers is present who has given a great deal of effort to the Judiciary Committee, and I want to pay her my respects for a few moments.

Today is Jeanne Lopatto's last day working in the Senate. She has worked on the Senate Judiciary Committee, and for me in particular, for the last 18 years and is currently press secretary for the full Judiciary Committee. It is with mixed emotions that I rise to thank her for all the good work she has performed in the past. I give her my best wishes for her future.

Gigi is a Capitol Hill success story. She began her career with me as an entry-level assistant, and she has moved up to spearhead the Judiciary Committee press operation, which is a big job and a very important one. As a result of her hard work and dedication, Gigi has earned the respect, admiration, and trust of all of us who have worked with her. Thus, it is with a certain degree of both sadness and pride that I am bidding her farewell.

Gigi will be joining our dear friend and former colleague, Spencer Abraham, at the Department of Energy as his spokesperson. In other words, she is going to be speaking for a Cabinet-level official. I think that is a great thing. Our loss—mine in particular—will be unquestionably Secretary Abraham's gain. I know she will have her hands full over there, but she is up to the challenge. If I might be so bold, I want to say that I share the pride of Gigi's great success with her wonderful family.

Gigi will be greatly missed here in the Senate, and certainly by me. I think she is going to be missed by the reporters and the press officials who have relied on her on a daily basis. Senate staff on both sides of the aisle are going to miss her, her friends and colleagues on the committee and on my personal staff, and, of course, most of all, I am going to miss her. So let me just say that I am very grateful to Gigi for the service she has given to the Senate and to our country at large and for working with us on the Judiciary Committee, as an essential part of the committee, as somebody who always acted with integrity, decency, honesty, love, and affection for all of us on the committee, regardless how cantankerous that committee is from time to time. She has had a steady hand on the tiller during a lot of really acrimonious debate at times, and she has really done this job as well as it could have been done. We love her, and we are going to miss her. We also wish her well as she proceeds on to even greater and better things, as she views it and as I view it.

So, Gigi, we are going to miss you. We all love you and appreciate you and want you to be successful in your next job, which I know you will be.

I yield the floor.

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

Mr. LEAHY. Mr. President, I join the Senator from Utah. We will now know anytime the Democrats are told they are not doing their job it will be coming straight from the Senator from Utah.

Senator Abraham is very fortunate to have her there. Senator Abraham is a good friend to all of us here, and she has been a good friend to all of us here. He is fortunate. I will do my best to fill in and help the chairman on some of these issues, especially as I know we can finish this bill in 2, 2½ days, so long as the leadership does not interrupt us for anything else.

ENERGY FROM A BROWN DWARF STAR

Mr. DOMENICI. Mr. President, I rise today to congratulate scientists working with the Very Large Array, VLA, astronomical radio observatory near Socorro, New Mexico on detecting energy from a brown dwarf star. For over twenty years, the VLA has provided significant scientific knowledge to astronomers.

Working on a student project, scientists, graduate, and undergraduate students discovered the first sustained radio emission from a brown dwarf star, an object similar to a small star without enough mass to sustain nuclear fusion of hydrogen. Discovered only 5 years ago, brown dwarf stars were considered unable to emit persistent radio emissions. This finding helps astronomers study the link between large, gaseous planets and small stars.

I am proud to support the VLA and the contributions being made to our understanding of the cosmos. I also applaud the work and efforts of the scientists and students involved in making this noteworthy discovery.

I ask that the February 21, 2001, New York Times article entitled, ''Surprise in the Heavens as Energy Is Detected in a Brown Dwarf'' be printed in the RECORD.

The article follows:

[From The New York Times Wed., Feb. 21, 2001]

SURPRISE IN THE HEAVENS AS ENERGY IS DETECTED IN A BROWN DWARF

(By James Glanz)

A dim, fading object wandering alone through space, something between a large planet and a tiny star, turns out to be roiled by storms several times more powerful than the most energetic flares on the Sun, a team of radio astronomers has found.

The existence of such powerful, stormy radio emissions in this kind of celestial object, a brown dwarf, is highly unexpected and could shed light on the dividing line between stars and planets.

The research had been considered so unpromising that the discovery was made not as part of any large-scale astronomical search but an accidental find in a student project at the Very Large Array a set of raido-telescopes at the National Radio Astronomy Observatory near Socorro, NM.

The students happened to have the array trained on the brown dwarf when it flared. Two senior radio astronomers, Dr. Dale A. Frail of the National Radio Astronomy Observatory and Dr. Shrinivas Kulkarni of the California Institute of Technology, then became involved in follow-up observations, which were led by Edo Berger, a graduate student at Caltech.

The follow-up observations showed that the object's magnetic fields were extremely weak, another surprise, since flares are normally powered by the energy in magnetic fields.

A paper on the study has been accepted at the journal Nature and was posted Monday and a Web site at the Los Alamos National Laboratory where most astronomers place their new work.

The existence of brown dwarfs, which are cool, dim and difficult to observe, was confirmed only five years ago by a team led by Dr. Kulkarni. Thought to have masses less than 8 percent that of the Sun, their cores never become hot enough to ignite the fusion process that allows ordinary stars to shine for billions of years.

Instead, brown dwarfs gradually cool and fade after they form. Because brown dwarfs have an identity somewhere between that of large, gaseous planets like Jupiter and that of the smallest ordinary stars, astronomers said the new discovery should illuminate the structure of a crucial link between the two better-known classes of astronomical objects.

Dr. Adam Burrows, an astrophysicist at the University of Arizona, said energetic particles and waves in the magnetic fields around Jupiter split out radio emissions that could be detected on Earth. But Dr. Burrows said that at the distance of the brown dwarf, more than a dozen light-years into deep space, those emissions could never be picked up.

''That they do see emission from a sister object at such a distance is quite amazing,'' he said.

Ordinary stars with relatively low masses do show energetic flaring, Dr. Burrows said, but their magnetic fields are also much stronger. Flares on the Sun often occur when magnetic fields ''reconnect,'' or suddenly snap like rubber bands after they break and then splice together in new configurations. So a weak magnetic field would not be expected to create strong flaring.

Another astrophysicist, Dr. Jeffrey Linsky of the University of Colorado, said those apparent mysteries might carry a message about the difference between true stars and brown dwarfs. The cooler cores of brown dwarfs, like a pot of soup on a low flame, might create less turbulence inside the dwarfs, Dr. Linsky said. That relative quiescence might generate weaker magnetic fields—but possibly with conformations, or geometries, that make them more likely to reconnect.

If that is the case, Dr. Linsky said, then perhaps ''the geometry is very different in such a way that it produces a few very large flares.''

Dr. Lars Bildsten, an astrophysicist at the Institute for Theoretical Physics at the University of California at Santa Barbara, cautioned that because brown dwarfs were so different from the Sun, it was hard to know what to expect from them. The radio observations were at least consistent with sketchy observations in other bands of the spectrum, Dr. Bildsten said.

Other scientists said they were at a loss to explain the puzzling findings, whose authors include Mr. Berger, Dr. Kulkarni and Dr. Frail as well as about a dozen graduate and undergraduate students from places like Oberlin College in Ohio, Agnes Scott College in Decatur, Ga., and New Mexico State University in Las Cruces.

''This is a pretty amazing result,'' said Dr. Jill Knapp, a Princeton astronomer. ''There seem to be some quite unexpected things going on with these very cool, low-mass objects.''

THE AIRLINE CUSTOMER SERVICE IMPROVEMENT ACT OF 2001

Mr. FEINGOLD. Mr. President, I rise today to voice my support for the Airline Customer Service Improvement Act. I commend Senator MCCAIN for continuing to press this crucial consumer issue before the Senate in a bipartisan manner. I also applaud the efforts of Senator WYDEN. Both have been leading advocates for air travelers. I am confident that we can work together to pass a pro-consumer bill into law.

I am sure that each and every one of us in this body has experienced his or her fair share of frustration with air travel as have millions of Americans. Whether it's late flights, long lines, or lost luggage, we've all gotten the short end of the stick at one point or another.

When it comes to air travel, we are all consumers. And this bill assures the protection of consumer interests. The Airline Customer Service Improvement Act would, among other things, ensure that passengers have the information that they need to make informed choices in their air travel plans.

I think we were all encouraged in 1999 when the airlines came out with their own plan to improve customer service. While many of the airlines made improvements and responded to suggestions from the Department of Transportation's Inspector General, much more remains to be done.

It is time air travelers' interests once again receive our attention. According to the Department of Transportation, consumer complaints about air travel went up by 14 percent from 1999 to 2000. This, coupled with a 25 percent increase from 1998 to 1999, adds up to an increase of almost 40 percent in two years. These complaints run the gamut: unstable ticket pricing; oversold flights; lost luggage; and flight delays, changes, and cancellations. In addition, in 2000 one in four flights was delayed, canceled, or diverted, affecting about 163 million passengers. Obviously, the airlines are not solely responsible as weather and mechanical breakdowns are part of the business, and of course we need to ensure that we maintain and improve airport infrastructure. But this bill addresses some problems that the airlines can fix.

Perhaps of more importance, this bill does so without forcing airlines to compile information that they don't already keep. The bill simply allows air travelers the right to that basic information and the ability to make informed decisions.

I am fortunate enough to be a customer of the premier airline when it comes to customer satisfaction and to represent most of its employees. For years, Midwest Express Airlines has been showered with some of the highest airline customer satisfaction ratings in the country. For those of my colleagues who have not yet experienced a flight on Midwest Express, I, and I am sure I speak for the senior Senator from Wisconsin, encourage you to do so.

How does Midwest Express continue to maintain these superlative ratings? The answer is simple, it already incorporates some of the provisions spelled out in this bill. Midwest Express already tries to notify its travelers if it anticipates a flight delay, flight change, or flight cancellation. The airline already attempts to make information on oversold flights available to

its customers. Midwest Express already makes efforts to allow its customers access to frequent flyer program information. People fly the airline because the airline cares about its customers.

These are some of the reasons the airline has been awarded the Consumer Reports Travel Letter Best Airline Award every year from 1992 to 2000; Zagat Airline Survey's #1 Domestic Airline award in 1994 and 1996; Travel & Leisure's World's Best Awards for Best Domestic Airline in 1997, 1998, and 2000; Conde Nast Traveler's Business Travel Awards for Best U.S. Airline in 1998 through 2000; and Conde Nast Traveler Reader's Choice Awards from 1995 through 2000; among many awards.

Other airlines should see this bill as a challenge to meet the lofty standards set by airlines like Midwest Express.

Air travel is on the rise, but so are air travel complaints. As we enter the summer travel season, we should do what we can to ensure that the flying public is treated fairly. This bill will give our constituents access to the information they need to make wise choices in air travel and help them to avoid frustration, inconvenience, and sometimes costly delays. Airlines truly concerned about their customers should already be making these efforts. I urge my colleagues to join in this effort.

Mr. DOMENICI. Mr. President, as we acknowledge the passing of an entire decade since the victory of coalition forces in Desert Storm, we must simultaneously admit that this military victory has not translated into achievement of desired objectives.

Recent events and intelligence assessments have once again focused attention on Iraq. Saddam Hussein has rebuilt any weapons production capabilities that were damaged or destroyed in the Desert Fox operations in late 1998. Despite military defeat, despite thwarted attempts by the U.N. Special Commission, and despite a decade of sanctions, Iraq under Saddam Hussein's leadership remains a threat.

Two weeks ago strikes at command and control centers outside of the no-fly zones reminded the American public that our pilots have been patrolling Iraqi skies for ten years. Although we haven't yet lost any pilots or planes in this ongoing operation, a decade of this routine and the wear and tear on the aircraft without any end in sight has caused many people to question the prudence of this policy and approach.

The reason for this attack underscored again the constant risk to British and U.S. pilots in this mission. This article entitled ''Highly Dangerous'' highlights that risk.

New Mexicans or New Mexico-based wings have been heavily involved in this mission. Cannon's 27th Fighter Wing and the 150th Fighter Wing, the ''Tacos'' of the New Mexico Air National Guard fly these patrols.

As Iraqi air defenses get upgraded and Iraqi pilots continue to violate the no-fly restrictions, we must do everything possible to protect the U.S. personnel involved in these missions.

I am grateful that Secretary Powell took it upon himself to tour the Middle East and began formulating new policies for the Bush Administration on Iraq. The baton passed from the Clinton Administration on Iraq offered no exit strategy.

I guess as long as no one got killed, the previous Administration was comfortable wearing out our pilots and our military aircraft under the pretense that their policy was working.

It wasn't and it's not. We need a comprehensive rethink. If our pilots are over there, it should be more than to patrol airspace while Saddam rebuilds his weapons production capacity and starves his people on the ground.

I look forward to an enlightened and effective policy on Iraq. And I think daily about the safety of the pilots who continue to perform their duty.

I ask unanimous consent that an article from the Albuquerque Journal be printed in the RECORD.

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

[From the Albuquerque Journal, Feb. 25, 2001]

HIGHLY DANGEROUS—NEW MEXICO-BASED FIGHTER PILOTS PATROL IRAQ NO-FLY ZONES KNOWING THEY COULD BE SHOT DOWN AT ANY TIME

(By John J. Lumpkin)

CANNON AIR FORCE BASE—The pilots call it ''going to the desert.''

Life is often dull. The work is repetitive. Yet danger always is in the air.

Most of the pilots with Cannon's 27th Fighter Wing have gone at least once, and some repeatedly. They, and their F–16 fighters, are prime tools in the United States' decade-long, low-intensity war against the machinations of Iraqi President Saddam Hussein.

The three F–16 combat squadrons at Cannon are part of the rotation for Operations Northern and Southern Watch, which patrol the no-fly zones over northern and southern Iraq. The squadrons take their turns with other fighter units from a U.S. and British coalition to enforce the zones, over which Iraq has been prohibited from flying military aircraft since the Gulf War.

They are called up for 90 to 120 days. Pilots, restricted to an air base, say the uneventful stays are punctuated by several long, usually uneventful patrols over Iraq.

But the routine gets exciting from time to time when Iraq tests its limits.

''The intensity is still there,'' said Lt. Col. Bob ''Wilbur'' Wright, commander of the 523rd Fighter Squadron, the ''Crusaders,'' who returned from a tour with Southern Watch late last summer. ''You're always flying with the chance of getting shot down. At any moment we could lose an aircraft.''

U.S. and British aircraft struck an Iraqi air defense system near Baghdad on Feb. 16 in a move the Pentagon described as self-protection. The strikes were made to reduce the chances of losing aircraft to surface-to-air missiles or gunfire.

Iraq began regularly challenging the no-fly zones in December 1998, after the four-day ''Desert Fox'' Allied bombing campaign.

Cannon's 522nd Fighter Squadron, the ''Fireballs,'' took part in the bombing. Cannon's third combat squadron, the ''Hounds'' of the 524th, also have taken frequent turns in the desert.

PLANES AND MISSILES

Since Desert Fox, Iraq has fired missiles or anti-aircraft guns at coalition planes about 700 times. Not a single one has been shot down.

Iraqi aircraft also have violated the no-fly zones more than 150 times. When Iraqi aircraft cross out of the no-fly zone, coalition air-craft chase them back.

Wright and a wingman were part of one of those encounters during his summer deployment, when an Iraqi fighter crossed the border into the southern no-fly zone. Wright and his wingman locked their radars on the plane, which fled.

''I think they test the water periodically,'' said Wright, who has been to the region five times in the last decade—three times over the north, twice over the south.

His plane, an F–16C Fighting Falcon, is a nimble, single-seat fighter that can both dog-fight and bomb targets.

When Iraq fires at U.S. or British planes, the aircraft usually return fire or bomb other elements of Iraq's air defense system. Usually those targets are within the no-fly zones.

The strikes happen almost weekly and usually rate little news coverage. But Iraq has said the attacks have killed 300 people and injured more than 800, including civilians.

The Washington Post reported in October that the United States scaled back the aggressiveness of its patrols after intelligence analysts misidentified a sheep-watering tank as a surface-to-air missile launcher on satellite photos. U.S. aircraft bombed and strafed the site, and Iraq said 19 people, shepherds and villagers, were killed.

Wright said intelligence officials, air staff and pilots make great efforts to avoid hitting civilians.

''What we go after and what we hit are militarily significant targets,'' he said. ''I have a conscience, too. I want to be sure of what we're hitting.''

SUPPORT FOR REBELS

With United Nations' approval, the two no-fly zones were born after the 1991 Gulf War in an attempt to limit Saddam's use of his air power against uprisings in the northern and southern reaches of his country. Iraq isn't allowed to fly aircraft in those regions.

Southern Watch flies out of air bases in Kuwait and Saudi Arabia, and planes patrol a region south of the 33rd parallel.

It was intended to support an uprising of Shiite Muslim rebels in the south. Saddam crushed that rebellion in the early 1990s.

Norther Watch flies out of Incirlik, an airbase in Turkey. Planes patrol a comparatively small part of Iraq north of the 36th parallel. The operation began in 1997.

Several F-16 fighters and a few hundred airmen of the 150th Fighter Wing—the ''Tacos'' of the Air National Guard from Kirtland Air Force Base—now fly patrols with Northern Watch.

Northern Watch was intended to support uprisings by the Kurdish minority.

Recent reports indicate some Kurdish towns are thriving. But the Kurds still face attacks from Turkey, which fears internal Kurdish dissent and uses U.S.-made jets to bomb Kurdish territory in Iraq.

The no-fly zones have grown less popular over the years among other nations, even those that were part of the coalition that opposed Iraq's invasion of Kuwait. China says the no-fly zones violate the territorial integrity of Iraq. Russia now says they don't have U.N. backing. France, once a partner in the coalition, stopped flying aircraft over the zones in 1998, declaring them ''pointless and deadly.''

Wright, for one, is a believer.

''We keep the area somewhat stable,'' he said. ''We've prevented Saddam Hussein from further injuring his own people.''

BETTER DEFENSES

Despite their inability to hit anything, Iraqi gunners and missile operators are getting better.

''There's some indications they have learned from their experience,'' Wright said. ''They've seen us for 10 years now.''

Pentagon spokesmen said that the Feb. 16 strikes were in response to the increased ''frequency and sophistication of their (air defense) operations.''

U.S. officials also have confirmed that China is supplying Iraq with a fiber-optic communications system that would integrate the operations of the country's air defenses.

Capt. Steve ''Roid'' Astor has been to the desert twice with F-16 units. He said the greatest danger is that pilots lose their focus on the long, uneventful patrols.

''Let's not get complacent,'' he said. ''It can be deadly.''

To hear the pilots tell it, life on an air base in these faraway lands is fairly dull. Threats of terrorism keep them restricted to the bases, especially for the Southern Watch pilots in Kuwait and Saudi Arabia.

Cannon pilot Capt. Shannon ''Pinball'' Prasek flew nine combat missions with Southern Watch from February to April 1998. She protected airborne radars should they be attacked by Iraqi aircraft.

''It was pretty quiet. It was a religious holiday (for the Iraqis),'' she said. She describes with some humor the polite bewilderment of Kuwaiti fighter pilots at seeing a woman combat pilot at their joint airbase.

One of Wright's ''Crusaders,'' 1st Lt. Trena Emerson is waiting for her first rotation overseas. She is eager to fly her first missions in a combat area, although she said she hasn't heard much about the region from her more seasoned colleagues, and her impressions are limited: ''Everyone comes back in shape and tan,'' she joked.

SADDAM'S BOUNTY

The Cannon pilots regard the conflict as one against Saddam, rather than the Iraqi people or even the country's armed forces.

When they fly over Iraq, the pilots have a price on their head. The Iraqi president has reportedly offered a reward to anyone who shoots down an aircraft.

Wright expects to return to the desert late this year. ''I'll miss another Christmas. . . . It does have an effect on the family.''

But he praises the ''esprit de corps'' in his squadron, brought on, in part, by the remoteness of Cannon Air Force Base. ''This is almost like an overseas assignment.''

Wright is a pilot of some renown in the Air Force. He was the first U.S. pilot since the Korean War to get three kills in a single mission when he shot down three Bosnian Serb Jastreb fighter-bombers violating a no-fly zone on Feb. 28, 1994, over Bosnia. This mission also marked NATO's first military strikes in its history, and Wright earned the Distinguished Flying Cross for his role.

Wright was also Capt. Scott O'Grady's wing-leader in June 1995 over Bosnia when O'Grady was shot down by a Bosnian Serb surface-to-air missile. O'Grady was rescued five days later.

ADDITIONAL STATEMENTS

COMMEMORATING MARIA MARGARITA ''MARGARET'' TAFOYA

• Mr. DOMENICI. Mr. President, I rise today to join the community of Santa Clara Pueblo, New Mexico in mourning the loss of Maria Margarita ''Margaret'' Tafoya. New Mexico is comprised of imaginative people of many cultures who express their cultural values artistically and creatively. The people of New Mexico will miss the guidance of the ''matriarch of Santa Clara potters.''

Respected and renowned throughout the pottery community, Margaret inspired others to take up pottery. She crafted many pots and other forms in the tradition of Santa Clara polished blackware and redware. Her art is the fine workmanship of highly skilled hands.

For her quality work, Margaret received numerous awards. The National Academy of Western Art at the Cowboy Hall of Fame and Western Heritage Center in Oklahoma City awarded her the Lifetime Contribution Award. She was the only American Indian to receive this award. In 1984, the National Endowment for the Arts awarded her the National Heritage Fellowship Award. In addition, her works have been displayed on the Mall in Washington, D.C. at the Folklife Festival sponsored by the Smithsonian Institute. However, Margaret did not work for recognition, she worked to improve the quality of life for her family and children.

Her loss leaves a void for her family and the art community. Mr. President, I share the grief of the community of Santa Clara Pueblo and my heartfelt condolences go out to her family.

I ask that an article in today's New York Times be printed in the RECORD.

The article follows.

MARGARET TAFOYA, PUEBLO POTTER WHOSE WORK FOUND A GLOBAL AUDIENCE, DIES AT 96

(By Douglas Martin)

Margaret Tafoya, whose nimble, ingenious hands turned the chocolate-colored clay of her New Mexico pueblo into black-on-black and red-on-red pottery of such profound and graceful beauty that it acquired a global reputation, died on Feb. 25 at her home in Santa Clara Pueblo near Santa Fe. She was 96.

Her name in Tewa, the language of seven Southwestern pueblos, six in New Mexico and one in Arizona, was Corn blossom. She was the matriarch of Santa Clara Pueblo potters, who are more numerous and produce more pottery than those of any other pueblo.

Her work, know for exceptionally large vessels, is exhibited in public and private collections around the world. She was named folk artist of the year by the National Endowment for the Arts in 1984.

The art form she practiced has long been dominated by women, and Corn Blossom was the last of a group of women who attained fame through their mastery of it. Gone are Blue Corn and Maria Martinez of the San Ildefonso Pueblo, Christina Naranjo of Santa Clara and Grace Chapella, a Hopi.

Today Indian arts command astronomic prices and space on museum shelves in faraway cities, but fewer and fewer Pueblo Indians can speak or ever understand Tewa. Mrs. Tafoya, though, was rooted in the old ways.

She spurned inventions like the potters' wheel. She kept chickens, milked her own cows, churned her own butter and rejected natural gas heat in favor of the traditional beehive fireplace.

After a brief fling with an Apache, she married a young man from the home pueblo, a distant relative with the same last name.

According to the Web site of the National Museum of American History (www.americanhistory.si.edu), Santa Clarans use the same word for clay and for people: nung.

Mrs. Tafoya always prayed to Mother Clay before working. ''You can't go to Mother Clay without the cornmeal and ask her permission to touch her,'' the museum Web site quotes Mrs. Tafoya as saying. ''Talk to Mother Clay.''

Though she was one of the last to make pots with handles and criticized others for adding semiprecious gems to pottery, she also liked to experiment.

She used different colors of slips, or thinned clays applied to the outside of her vessels, and her later forms were thinner, lighter and more graceful. Her shiny finishes became ever more polished. She even adapted Greek and Roman forms to classic Santa Clara shapes.

Mrs. Tafoya clearly loved her art, but it was also how she supported her 10 children who survived their first year; 2 others did not. As she said, ''I have dressed my children with clay.''

Maria Margarita Tafoya was born in her pueblo on Aug. 13, 1904. Her mother, Sara Fina Gutierrez Tafoya, or Autumn Leaf, was ''undoubtedly the outstanding Tewa potter of her time,'' Mary Ellen and Laurence Blair wrote in ''Margaret Tafoya: A Tewa Potter's Heritage and Legacy'' (Schiffer, 1986).

Her father, Geronimo, or White Flower, was mainly concerned with raising food for the family, but he was also the main marketer of his wife's pottery. He would load up his burros and make sales trips of up to 500 miles.

Five of the couple's eight children became excellent potters, driven and inspired by their perfectionist mother. Margaret's rigidly traditional approach was suggested by her insistence on using corn cobs, rather than sandpaper, for polishing. •

MESSAGE FROM THE HOUSE

At 3:07 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. 333. An act to amend title 11, United States Code, and for other purposes.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar.

H.R. 333. An Act to amend title 11, United States Code, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–899. A communication from the from the Railroad Retirement Board, transmitting, pursuant to law, the report under the Government in the Sunshine Act for calendar year 2000; to the Committee on Governmental Affairs.

EC–900. A communication from the Acting Chief of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, transmitting, pursuant to

law, the report of a rule entitled ''Final Rule Establishing the Fair Play Viticultural Area (2000R–170P)'' (RIN1512–AA07) received on February 27, 2001; to the Committee on Finance.

EC–901. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Tentative Differential Earnings Rate'' (Notice 2001–24) received on February 21, 2001; to the Committee on Finance.

EC–902. A communication from the Paralegal Specialist of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Learjet Model 45 Airplanes'' ((RIN2120–AA64)(2001–0148)) received on February 27, 2001; to the Committee on Commerce, Science, and Transportation.

EC–903. A communication from the Paralegal Specialist of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bell Helicopter Textron, Inc. Model 204B Helicopters'' ((RIN2120–AA64)(2001–0147)) received on February 27, 2001 ; to the Committee on Commerce, Science, and Transportation.

EC–904. A communication from the Paralegal Specialist of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 707 Series Airplanes'' ((RIN2120–AA64)(2001–0146)) received on February 27, 2001; to the Committee on Commerce, Science, and Transportation.

EC–905. A communication from the Paralegal Specialist of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 777 Series Airplanes'' ((RIN2120–AA64)(2001–0142)) received on February 27, 2001; to the Committee on Commerce, Science, and Transportation.

EC–906. A communication from the Paralegal Specialist of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A330 and A340 Series Airplanes'' ((RIN2120–AA64)(2001–0143)) received on February 27, 2001; to the Committee on Commerce, Science, and Transportation.

EC–907. A communication from the Paralegal Specialist of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Final Rule Boeing Model 767 Series Airplanes Powered by Pratt and Whitney Engines'' ((RIN2120–AA64)(2001–0144)) received on February 27, 2001; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

From the Committee on Small Business, without amendment:

S. Res. 42. An original resolution authorizing expenditures by the Committee on Small Business.

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. MURKOWSKI (for himself, Mr. KERRY, Mr. KYL, Mr. SMITH of New Hampshire, Mr. HELMS, Mr. REID, Mrs. LINCOLN, and Mr. HAGEL):

S. 452. A bill to amend title XVIII of the Social Security Act to ensure that the Secretary of Health and Human Services provides appropriate guidance to physicians, providers of services, and ambulance providers that are attempting to properly submit claims under the medicare program to ensure that the Secretary does not target inadvertent billing errors; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 453. A bill for the relief of Denes and Gyorgyi Fulop; to the Committee on the Judiciary.

By Mr. BINGAMAN:

S. 454. A bill to provide permanent funding for the Bureau of Land Management Payment in Lieu of Taxes program and for other purposes; to the Committee on Energy and Natural Resources.

By Ms. COLLINS (for herself, Mr. CLELAND, Mr. BREAUX, Mr. ALLARD, Mr. CHAFEE, Mr. LIEBERMAN, Ms. LANDRIEU, Mr. HATCH, and Mr. HUTCHINSON):

S. 455. A bill to amend the Internal Revenue Code of 1986 to increase and modify the exclusion relating to qualified small business stock and for other purposes; to the Committee on Finance.

By Ms. SNOWE:

S. 456. A bill to amend title 38, United States Code, to enhance the assurance of efficiency, quality, and patient satisfaction in the furnishing of health care to veterans by the Department of Veterans Affairs, and for other purposes; to the Committee on Veterans' Affairs.

By Ms. SNOWE:

S. 457. A bill to amend title 38, United States Code, to establish a presumption of service-connection for certain veterans with Hepatitis C, and for other purposes; to the Committee on Veterans' Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BOND:

S. Res. 42. An original resolution authorizing expenditures by the Committee on Small Business; from the Committee on Small Business; to the Committee on Rules and Administration.

By Mr. MURKOWSKI (for himself, Mr. DASCHLE, and Mr. DEWINE):

S. Res. 43. A resolution expressing the sense of the Senate that the President should designate the week of March 18 through March 24, 2001, as ''National Inhalants and Poisons Awareness Week''; to the Committee on the Judiciary.

By Mr. HOLLINGS:

S. Con. Res. 20. A concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2002; to the Committee on the Budget.

ADDITIONAL COSPONSORS

S. 60

At the request of Mr. BYRD, the names of the Senator from Wisconsin (Mr. KOHL) and the Senator from Colorado (Mr. ALLARD) were added as cosponsors of S. 60, a bill to authorize the Department of Energy programs to develop and implement an accelerated research and development program for advanced clean coal technologies for use in coal-based electricity generating facilities and to amend the Internal Revenue Code of 1986 to provide financial incentives to encourage the retrofitting, repowering, or replacement of coal-based electricity generating facilities to protect the environment and improve efficiency and encourage the early commercial application of advanced clean coal technologies, so as to allow coal to help meet the growing need of the United States for the generation of reliable and affordable electricity.

S. 115

At the request of Mr. FEINGOLD, the name of the Senator from New Hampshire (Mr. GREGG) was added as a cosponsor of S. 115, a bill to amend the Internal Revenue Code of 1986 to repeal the percentage depletion allowance for certain hardrock mines, and for other purposes.

S. 123

At the request of Mrs. FEINSTEIN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 123, a bill to amend the Higher Education Act of 1965 to extend loan forgiveness for certain loans to Head Start teachers.

S. 126

At the request of Mr. CLELAND, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 126, a bill to authorize the President to present a gold medal on behalf of Congress to former President Jimmy Carter and his wife Rosalynn Carter in recognition of their service to the Nation.

S. 148

At the request of Mr. CRAIG, the names of the Senator from Arkansas (Mrs. LINCOLN) and the Senator from Iowa (Mr. HARKIN) were added as cosponsors of S. 148, a bill to amend the Internal Revenue Code of 1986 to expand the adoption credit, and for other purposes.

S. 167

At the request of Mr. FRIST, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 167, a bill to allow a State to combine certain funds to improve the academic achievement of all its students.

S. 177

At the request of Mr. AKAKA, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 177, a bill to amend the provisions of title 19, United States Code, relating to the manner in which pay policies and schedules and fringe benefit programs for postmasters are established.

S. 281

At the request of Mr. HAGEL, the names of the Senator from Mississippi (Mr. LOTT), the Senator from Wisconsin (Mr. FEINGOLD), the Senator from Alaska (Mr. STEVENS), the Senator from Ohio (Mr. VOINOVICH), the Senator from Oregon (Mr. SMITH), the

Senator from New Mexico (Mr. BINGAMAN), and the Senator from West Virginia (Mr. ROCKEFELLER) were added as cosponsors of S. 281, a bill to authorize the design and construction of a temporary education center at the Vietnam Veterans Memorial.

S. 284

At the request of Mr. MCCAIN, the names of the Senator from Delaware (Mr. CARPER) and the Senator from Minnesota (Mr. DAYTON) were added as cosponsors of S. 284, a bill to amend the Internal Revenue Code of 1986 to provide incentives to expand health care coverage for individuals.

S. 296

At the request of Ms. COLLINS, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 296, a bill to authorize the conveyance of a segment of the Loring Petroleum Pipeline, Maine, and related easements.

S. 301

At the request of Mr. THOMAS, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. 301, a bill to amend the National Environmental Policy Act of 1969 to require that Federal agencies consult with state agencies and county and local governments on environmental impact statements.

S. 311

At the request of Mr. DODD, the names of the Senator from Nevada (Mr. REID) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. 311, a bill to amend the Elementary and Secondary Education Act of 1965 to provide for partnerships in character education.

S. 319

At the request of Mr. MCCAIN, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 319, a bill to amend title 49, United States Code, to ensure that air carriers meet their obligations under the Airline Customer Service Agreement, and provide improved passenger service in order to meet public convenience and necessity.

S. 322

At the request of Mr. THOMAS, the names of the Senator from Idaho (Mr. CRAIG) and the Senator from Wyoming (Mr. ENZI) were added as cosponsors of S. 322, a bill to limit the acquisition by the United States of land located in a State in which 25 percent or more of the land in that State is owned by the United States.

S. 330

At the request of Mr. TORRICELLI, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 330, a bill to expand the powers of the Secretary of the Treasury to regulate the manufacture, distribution, and sale of firearms and ammunition, and to expand the jurisdiction of the Secretary to include firearm products and non-powder firearms.

S. 334

At the request of Mr. FRIST, the name of the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of S. 334, a bill to provide for a Rural Education Initiative.

S. 413

At the request of Mr. COCHRAN, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 413, a bill to amend part F of title X of the Elementary and Secondary Education Act of 1965 to improve and refocus civic education, and for other purposes.

S. 436

At the request of Mr. KOHL, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 436, a bill to amend chapter 44 of title 18, United States Code, to require the provision of a child safety lock in connection with the transfer of a handgun and provide safety standards for child safety locks.

S. CON. RES. 14

At the request of Mr. CAMPBELL, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. Con. Res. 14, a concurrent resolution recognizing the social problem of child abuse and neglect, and supporting efforts to enhance public awareness of it.

S.J. RES. 6

At the request of Mr. NICKLES, the name of the Senator from Tennessee (Mr. THOMPSON) was added as a cosponsor of S.J. Res. 6, a joint resolution providing for congressional disapproval of the rule submitted by the Department of Labor under chapter 8 of title 5, United States Code, relating to ergonomics.

S. RES. 24

At the request of Mr. SANTORUM, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. Res. 24, a resolution honoring the contributions of Catholic schools.

S. RES. 25

At the request of Mr. CRAIG, the names of the Senator from Kentucky (Mr. BUNNING), the Senator from Alabama (Mr. SESSIONS), the Senator from Colorado (Mr. ALLARD), the Senator from Louisiana (Ms. LANDRIEU), the Senator from Wisconsin (Mr. FEINGOLD), the Senator from Alaska (Mr. MURKOWSKI), and the Senator from Idaho (Mr. CRAPO) were added as cosponsors of S. Res. 25, a resolution designating the week beginning March 18, 2001 as ''National Safe Place Week''.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MURKOWSKI (for himself, Mr. KERRY, Mr. KYL, Mr. SMITH of New Hampshire, Mr. HELMS, Mr. REID, Mrs. LINCOLN, and Mr. HAGEL):

S. 452. A bill to amend title XVIII of the Social Security Act to ensure that the Secretary of Health and Human Services provides appropriate guidance to physicians, providers of services, and ambulance providers that are attempting to properly submit claims under the medicare program to ensure that the Secretary does not target inadvertent billing errors; to the Committee on Finance.

Mr. MURKOWSKI. Mr. President, right now, all across America, Medicare beneficiaries are seeking medical care from a flawed health care system. Reduced benefit packages, ever escalating costs, and limited access in rural areas are just a few of the problems our system faces on a daily basis. For these reasons, Congress must continue to move towards the modernization of Medicare. But as we address the needs of beneficiaries, we must not turn our back upon the very providers that seniors rely upon for their care.

Who are providers? They are the physicians, the hospitals, the nursing homes, and others who deliver quality care to our needy Medicare population. They are the backbone of our complex health care network. When our nation's seniors need care, it is the provider who heals, not the health insurer, and certainly not the federal government.

But more, and more often, seniors are being told by providers that they don't accept Medicare. This is becoming even more common in rural areas, where the number of physicians is limited and access to quality care is extremely restricted. Quite simply, beneficiaries are being told that their insurance is simply not wanted. Why? Well it's not as simple as low reimbursement rates. In fact it's much more complex.

The infrastructure that manages the Medicare program, the Health Care Financing Administration, HCFA, and its network of contractors, have built up a system designed to block care and micro-manage independent practices. Providers simply cannot afford to keep up with the seemingly endless number of complex, redundant, and unnecessary regulations. And if providers do participate? Well, a simple administrative error in submitting a claim could subject them to heavy-handed audits and the financial devastation of their practice. Should we force providers to choose between protecting their practice and caring for seniors?

I believe the answer is no. For this reason, I am introducing the ''Medicare Education and Regulatory Fairness Act of 2001.'' Co-sponsored by Senators KERRY, KYL, HELMS, REID, LINCOLN, HAGEL, and BOB SMITH, this legislation will restore fairness to the Medicare system. It will allow providers to practice medicine without fearing the threats, intimidation, and aggressive tactics of a faceless bureaucratic machine.

Most importantly, this bill will reform the flawed appeals process within HCFA. Currently, a provider who allegedly has received an overpayment is forced to choose between three options: admit the overpayment, submit additional information to mitigate the charge, or appeal the decision. However, providers who choose to submit

additional evidence must subject their entire practice to review and waive their appeal rights. That's right—to submit additional evidence you must waive your right to an appeal!

And what is the result of this maddening system that runs contrary to our nation's history of fair and just administrative decisions? Often, providers are intimidated into accepting the arbitrary decision of an auditor employed by a HCFA contractor. Sometimes, they are even forced to pull out of the Medicare program. In the end, our senior population suffers.

I was particularly heartened to see that our new President agrees with the spirit of this bill. In his recent budget, the administration stated that the ''current system is too complex, too centralized, and becoming more so each year. Burdensome regulations and other central directives force providers to take time away from patients to comply with excessive and complex paperwork.'' I completely agree.

Under my bill, providers will be allowed to retain their appeal rights should they choose to first submit additional evidence to mitigate the charge. Many providers receive an overpayment as the result of a simple administrative mistake. For cases not involving fraud, a provider will be able to return that overpayment within twelve months without fear of prosecution. This is a common sense approach, and will not lead to any additional costs to the Medicare system.

To bring additional fairness to the system, my bill will prohibit the retroactive application of regulations, and allow providers to challenge the constitutionality of HCFA regulations. Further, it will prohibit the crippling recovery of overpayments during an appeal, and bar the unfair method of withholding valid future payments to recover past overpayments. These common sense measures maintain the financial viability of medical practices during the resolution of payment controversies, and restore fundamental fairness to the dispute resolution procedures existing within HCFA.

Like many of our nation's problems, the key to improvement is found in education. For this reason, I have included language that stipulates that at least 10 percent of the Medicare Integrity Program funds, and two percent of carrier funds, must be devoted to provider education programs. Providers cannot be expected to comply with the endless number of Medicare regulations if they are not shown how to submit clean claims. We must ensure that providers are given the information needed to eliminate future billing errors, and improve the responsiveness of HCFA.

It is with the goal of protecting our Medicare population, and the providers who tend care, that leads me to introduce the ''Medicare Education and Regulatory Fairness Act of 2001.'' This bill will ensure that providers are treated with the respect that they deserve, and that Medicare beneficiaries aren't told that their health insurance isn't wanted. We owe it to our nation's seniors. I urge immediate action on this worthy bill.

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. 452

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Medicare Education and Regulatory Fairness Act of 2001''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. FINDINGS.

Congress finds the following:

(1) Congress should focus more resources on and work with physicians and health care providers to combat fraud in the medicare program.

(2) The overwhelming majority of physicians and other providers in the United States are law-abiding citizens who provide important services and care to patients each day.

(3) Physicians and other providers of services that participate in the medicare program often have trouble wading through a confusing and sometimes even contradictory maze of medicare regulations. Keeping track of the morass of medicare regulations detracts from the time that physicians have to treat patients.

(4) Due to the overly complex nature of medicare regulations and the risk of being the subject of an aggressive government investigation, many physicians are leaving the medicare program, limiting the number of medicare patients they see, or refusing to accept new medicare patients at all. If this trend continues, health care for the millions of patients nationwide who depend on medicare will be seriously compromised. Congress has an obligation to prevent this from happening.

(5) Regulatory fairness for physicians and providers as well as increased access to education about medicare regulations are necessary to preserve the integrity of our health care system and provide for the health of our population.

SEC. 3. DEFINITIONS.

In this Act:

(1) BILLING.—The term ''billing'' includes any requirement related to the content and timing of an order for care or a plan of treatment by a physician, a provider of service, or a provider of ambulance services.

(2) CARRIER.—The term ''carrier'' means a carrier (as defined in section 1842(f) of the Social Security Act (42 U.S.C. 1395u(f))) with a contract under title XVIII of such Act to administer benefits under part B of such title.

(3) EXTRAPOLATION.—The term ''extrapolation'' has the meaning given such term in section 1861(ww)(1) of the Social Security Act (as added by section 203(a)).

(4) FISCAL INTERMEDIARY.—The term ''fiscal intermediary'' means a fiscal intermediary (as defined in section 1816(a) of the Social Security Act (42 U.S.C. 1395h(a))) with an agreement under section 1816 of such Act to administer benefits under part A or B of such title.

(5) HCFA.—The term ''HCFA'' means the Health Care Financing Administration.

(6) MEDICARE PROGRAM.—The term ''medicare program'' means the health benefits program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(7) PHYSICIAN.—The term ''physician'' has the meaning given such term in section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)).

(8) PREPAYMENT REVIEW.—The term ''prepayment review'' has the meaning given such term in section 1861(ww)(2) of the Social Security Act (as added by section 203(a)).

(9) PROVIDER OF SERVICES.—The term ''provider of services'' has the meaning given such term in section 1861(u) of the Social Security Act (42 U.S.C. 1395x(u)).

(10) PROVIDER OF AMBULANCE SERVICES.—The term ''provider of ambulance services'' means a provider of ambulance services described in section 1861(s)(7) of the Social Security Act (42 U.S.C. 1395x(s)(7)).

(11) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

TITLE I—REGULATORY REFORM

SEC. 101. PROSPECTIVE APPLICATION OF CERTAIN REGULATIONS.

Section 1871(a) of the Social Security Act (42 U.S.C. 1395hh(a)) is amended by adding at the end the following new paragraphs:

''(3) Any regulation described under paragraph (2) shall not take effect earlier than the effective date of the final regulation. Any regulation described under such paragraph that applies to an agency action, including any agency determination, shall only apply as that regulation is in effect at the time that agency action is taken.

''(4) The Secretary shall issue a final rule within 12 months of the date of publication

of an interim final rule. Such final rule shall provide responses to comments submitted in response to the interim final rule. Such final rule shall not establish or change a legal standard not raised in the interim final rule unless a new 60-day comment period is provided.

''(5) Carriers, fiscal intermediaries, and States pursuant to an agreement under section 1864 shall not apply new policy guidances or policy changes retroactively to services provided before the date the new policy was issued.''.

SEC. 102. REQUIREMENTS FOR JUDICIAL AND REGULATORY CHALLENGES OF REGULATIONS.

(a) RIGHT TO CHALLENGE CONSTITUTIONALITY AND STATUTORY AUTHORITY OF HCFA REGULATIONS.—Section 1872 of the Social Security Act (42 U.S.C. 1395ii) is amended to read as follows:

''APPLICATION OF CERTAIN PROVISIONS OF TITLE II

''SEC. 1872. Subject to subparagraphs (A), (B), (D), and (E) of section 1848(i)(1), the provisions of sections 206 and 216(j), and of subsections (a), (d), (e), (h), (i), (j), (k), and (l) of section 205, shall also apply with respect to this title to the same extent as they are applicable with respect to title II, except that—

''(1) in applying such provisions with respect to this title, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively; and

''(2) section 205(h) shall not apply with respect to any action brought against the Secretary under section 1331, 1346, 1361, or 2201 of title 28, United States Code, regardless of whether such action is unrelated to a specific determination of the Secretary, that challenges—

''(A) the constitutionality of any provision of this title;

''(B) the constitutionality of substantive or interpretive rules of general applicability issued by the Secretary to carry out this title'';

''(C) the Secretary's statutory authority to promulgate such substantive or interpretive rules of general applicability; or

''(D) a finding of good cause under subparagraph (B) of the third sentence of section 553(b)(3) of title 5, United States Code, if used in the promulgation of such substantive or interpretive rules of general applicability.''.

(b) ADMINISTRATIVE AND JUDICIAL REVIEW OF SECRETARY DETERMINATIONS.—Section 1866(h) of the Act (42 U.S.C. 1395cc(h)) is amended—

(1) in paragraph (1), by striking ''(1)'' and all that follows and inserting the following: ''(1) Except as provided in paragraph (3), an institution or agency dissatisfied with a determination by the Secretary that it is not a provider of services or with a determination described in subsection (b)(2) (regardless of whether such determination has been made by the Secretary or by a State pursuant to an agreement entered into with the Secretary under section 1864 and regardless of whether the Secretary has imposed or may impose a remedy, penalty, or other sanction on the institution or agency in connection with such determination) shall be entitled to a hearing thereon by the Secretary (after reasonable notice) to the same extent as is provided in section 205(b), and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g), except that, in so applying such sections and in applying section 205(l) thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively, and such hearings are subject to the deadlines specified in paragraph (2)f.'';

(2) by redesignating paragraph (2) as paragraph (3);

(3) by inserting after paragraph (1) the following new paragraph:

''(2)(A)(i) Except as provided in clause (ii), an administrative law judge shall conduct and conclude a hearing on a determination described in subsection (b)(2) and render a decision on such hearing by not later than the end of the 90-day period beginning on the date a request for hearing has been timely filed.

''(ii) The 90-day period under clause (i) shall not apply in the case of a motion or stipulation by the party requesting the hearing to waive such period.

''(B) The Department Appeals Board of the Department of Health and Human Services shall conduct and conclude a review of the decision on a hearing described in subparagraph (A) and make a decision or remand the case to the administrative law judge for reconsideration by not later than the end of the 90-day period beginning on the date a request for review has been timely filed.

''(C) In the case of a failure by an administrative law judge to render a decision by the end of the period described in subparagraph (A)(i), the party requesting the hearing may request a review by the Departmental Appeals Board of the Departmental of Health and Human Services, notwithstanding any requirements for a hearing for purposes of the party's right to such a review.

''(D) In the case of a request described in subparagraph (D), the Departmental Appeals Board shall review the case de novo. In the case of the failure of the Departmental Appeals Board to render a decision on such hearing by not later than the end of the 60-day period beginning on the date a request for such a Department Appeals Board hearing has been filed, the party requesting the hearing may seek judicial review of the Secretary's decision, notwithstanding any requirements for a hearing for purposes of the party's right to such review.

''(E) In the case of a request described in subparagraph (D), the court shall review the case de novo.''; and

(4) by adding at the end the following new paragraph:

''(4) An institution or agency dissatisfied with a finding or determination by the Secretary, or by a State pursuant to an agreement under section 1864, that the institution of agency if out of compliance with any standard or condition of participation under this title (except a determination described in subsection (b)(2)) shall be entitled to a formal review or reconsideration of the finding or determination, in accordance with the regulations prescribed by the Secretary, prior to the imposition of any remedy, penalty, corrective action, or other sanction in connection with the finding or determination.''.

SEC. 103. PROHIBITION OF RECOVERING PAST OVERPAYMENTS BY CERTAIN MEANS.

(a) IN GENERAL.—Subject to section 104 and except as provided in subsection (b) and notwithstanding sections 1815(a), 1842(b), and 1861(v)(1)(A)(ii) of the Social Security Act (42 U.S.C. 1395g(a), 1395u(a), and 1395x(v)(1)(A)(ii)), or any other provision of law, for purposes of applying sections 1842(b)(3)(B)(ii), 1866(a)(1)(B)(ii), 1870, and 1893 of such Act (42 U.S.C. 1395u(b)(3)(B)(ii), 1395cc(a)(1)(B)(ii), 1395gg, and 1395ddd) to pending and future audits, the Secretary shall give a physician, provider of services, or provider of ambulance services the option of entering into an arrangement to offset alleged overpayments against future payments or entering into a repayment plan with its carrier or fiscal intermediary to recoup such an overpayment. Under such an arrangement or plan, a physician, provider of services, or provider of ambulance services shall have up to 3 years to offset or repay the overpayment if the amount of such overpayment exceeds $5,000.

(b) EXCEPTION.—This section shall not apply to cases in which the Secretary finds clear and convincing evidence of fraud or similar fault on the part of the physician, provider of services, or provider of ambulance services or in the case of overpayments for which an offset arrangement is in place as of the date of the enactment of this Act.

SEC. 104. PROHIBITION OF RECOVERING PAST OVERPAYMENTS IF APPEAL PENDING.

Notwithstanding any provision of law, for purposes of applying sections 1842(b)(3)(B)(ii), 1866(a)(1)(B)(ii), 1870, and 1893 of the Social Security Act (42 U.S.C. 1395u(b)(3)(B)(ii), 1395cc(a)(1)(B)(ii), 1395gg, and 1395ddd), the Secretary may not take any action (or authorize any other person, including any fiscal intermediary, carrier, and contractor under section 1893 of such Act (42 U.S.C. 1395ddd)) to recoup an overpayment or to impose a penalty during the period in which a physician, provider of services, or provider of ambulance services is appealing a determination that such an overpayment has been made or the amount of the overpayment.

SEC. 105. PROHIBITION OF RANDOM PREPAYMENT AUDITS.

Carriers may not, prior to paying a claim under the medicare program, demand the production of records or documentation absent cause.

SEC. 106. EXCEPTION ON PROHIBITION OF WAIVING MEDICARE COPAYMENT.

(a) IN GENERAL.—Section 1128A(i)(6)(A) of the Social Security Act (42 U.S.C. 1320a–7a(i)(6)(A)) is amended by inserting '', except for written, mailed communication with existing patients,'' before ''waiver is not''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to communications made on or after the date of the enactment of this Act.

SEC. 107. EFFECTIVE DATE.

Except as otherwise provided in section 106(b), the amendments made by this title shall take effect 60 days after the date of enactment of this Act.

TITLE II—APPEALS PROCESS REFORMS

SEC. 201. CONSTRUCTION OF HEARING RIGHTS RELATED TO DECISIONS TO DENY OR NOT RENEW A PHYSICIAN ENROLLMENT AGREEMENT.

Section 1842 of the Social Security Act (42 U.S.C. 1395u) is amended by adding at the end the following new subsection:

''(u) A carrier decision to deny an initial physician enrollment application and a carrier decision not to renew a physician enrollment agreement shall be treated as an initial determination subject to the same course of appeals as other initial determinations under section 1869.''.

SEC. 202. REFORM OF POST-PAYMENT AUDIT PROCESS.

(a) CARRIERS.—Section 1842 of the Social Security Act (42 U.S.C. 1395u), as amended by section 201, is further amended by adding at the end the following new subsection:

''(v) In carrying out its contract under subsection (b)(3), with respect to physicians' services or ambulance services, the carrier shall provide for the recoupment of overpayments in the following manner:

''(1)(A) During the 1-year period (or 18-month period in the case of a physician who is in a practice with fewer than 10 full-time

equivalent employees, including physicians) beginning on the date on which a physician or provider of ambulance services receives an overpayment, the physician or provider of ambulance services may return the overpayment without penalty or interest to the carrier making such overpayment if—

''(i) the carrier has not requested any relevant record or file; or

''(ii) the case has not been referred before the date of repayment to the Department of Justice or the Office of Inspector General.

''(B) If a physician or provider of ambulance services returns an overpayment under subparagraph (A), neither the carrier, contractor under section 1893, nor any law enforcement agency may begin an investigation or target such physician or provider of ambulance services based on any claim associated with the amount the physician or provider of ambulance services has repaid.

''(2) If a carrier has decided to conduct a post-payment audit of the physician or provider of ambulance services, the carrier shall send written notice to the physician or provider of ambulance services. If the physician or provider of ambulance services practices in a rural area (as defined in section 1886(d)(2)(D)), such notice must be sent by registered mail.

''(3) The carrier or a contractor under section 1893 may not recoup or offset payment amounts based on extrapolation (as defined in section 1861(ww)(1)) for the first time that the physician or provider of ambulance services is alleged as a result of a post-payment audit to have received an overpayment.

''(4) As part of any written consent settlement communication, the carrier or a contractor under section 1893 shall clearly state that the physician or provider of ambulance services may submit additional information (including evidence other than medical records) to dispute the overpayment amount without waiving any administrative remedy or right to appeal the amount of the overpayment.

''(5)(A) Each consent settlement communication from the carrier or a contractor under section 1893 shall clearly state that prepayment review (as defined in section 1861(ww)(2)) may be imposed where the physician or provider of ambulance services submits an actual or projected repayment to the carrier or a contractor under section 1893. Subject to subparagraph (D), any prepayment review shall cease when the physician or provider of ambulance services has submitted claims, found by carrier to be covered services and coded properly for the same services that were the basis for instituting the prepayment review, in a 180-day period or after processing claims of at least 75 percent of the volume of the claims (whichever occurs first) received by the carrier in the full month preceding the start of the prepayment review. The 180-day period begins with the date of the carrier's written notification that the physician or provider of ambulance services is being placed on prepayment review.

''(B) Prepayment review may not be applied under this part as a result of the voluntary submission of a claim or record under section 1897(b)(2) or as a result of information provided pursuant to a request under section 302(b) of the Medicare Education and Regulatory Fairness Act of 2001.

''(C) Carrier prepayment and coverage policies and claims processing screens used to identify claims for medical review must be incorporated as part of the education programs on medicare policy and proper coding made available to physicians and providers of ambulance services.

''(D) The time and percentage claim limitations in paragraph (5)(A) shall not apply to cases that have been referred to the Department of Justice or the Office of the Inspector General.''.

(b) FISCAL INTERMEDIARIES.—Section 1816 of the Social Security Act (42 U.S.C. 1395h) is amended by adding at the end the following new subsection:

''(m) In carrying out its agreement under this section, with respect to payment for items and services furnished under this part, the fiscal intermediary shall provide for the recoupment of overpayments in the following manner:

''(1)(A) During the 1-year period beginning on the date on which a provider of services receives an overpayment, the provider of services may return the overpayment without penalty or interest to the fiscal intermediary making such overpayment if—

''(i) the fiscal intermediary has not requested any relevant record or file; or

''(ii) the case has not been referred before the date of repayment to the Department of Justice or the Office of Inspector General.

''(B) If a provider of services returns an overpayment under subparagraph (A), neither the fiscal intermediary, contractor under section 1893, nor any law enforcement agency may begin an investigation or target such provider of services based on any claim associated with the amount the provider of services has repaid.

''(2) If a fiscal intermediary has decided to conduct a post-payment audit of the provider of services, the fiscal intermediary shall send written notice to the provider of services. If the provider of services practices in a rural area (as defined in section 1886(d)(2)(D)), such notice must be sent by registered mail.

''(3) The fiscal intermediary or a contractor under section 1893 may not recoup or offset payment amounts based on extrapolation (as defined in section 1861(ww)(1)) for the first time that the provider of services is alleged as a result of a post-payment audit to have received an overpayment.

''(4) As part of any written consent settlement communication, the fiscal intermediary or a contractor under section 1893 shall clearly state that the provider of services may submit additional information (including evidence other than medical records) to dispute the overpayment amount without waiving any administrative remedy or right to appeal the amount of the overpayment.

''(5)(A) Each consent settlement communication from the fiscal intermediary or a contractor under section 1893 shall clearly state that prepayment review (as defined in section 1861(ww)(2)) may be imposed where the provider of services submits an actual or projected repayment to the fiscal intermediary or a contractor under section 1893. Subject to subparagraph (D), any prepayment review shall cease when the provider of services has submitted claims, found by the fiscal intermediary to be covered services and coded properly for the same services that were the basis for instituting the prepayment review, in a 180-day period or after processing claims of at least 75 percent of the volume of the claims (whichever occurs first) received by the fiscal intermediary in the full month preceding the start of the prepayment review. The 180-day period begins with the date of the fiscal intermediary's written notification that the provider of services is being placed on prepayment review.

''(B) Prepayment review may not be applied under this part as a result of the voluntary submission of a claim, cost report, or record under section 1897(b)(2) or as a result of information provided pursuant to a request under section 302(b) of the Medicare Education and Regulatory Fairness Act of 2001.

''(C) Fiscal intermediary prepayment and coverage policies and claims processing screens used to identify claims for medical review must be incorporated as part of the education programs on medicare policy and proper coding made available to providers of services.

''(D) The time and percentage claim limitations in paragraph (5)(A) shall not apply to cases that have been referred to the Department of Justice or the Office of the Inspector General.''.

SEC. 203. DEFINITIONS RELATING TO PHYSICIANS, PROVIDERS OF SERVICES, AND PROVIDERS OF AMBULANCE SERVICES.

(a) IN GENERAL.—Section 1861 of the Social Security Act (42 U.S.C. 1395 et seq.), as amended by section 102(b) and 105(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (as enacted into law by section 1(a)(6) of Public Law 106–554), is amended by adding at the end the following new subsection:

''Definitions Relating to Physicians, Providers of Services, and Providers of Ambulance Services

''(ww) For purposes of provisions of this title relating to physicians, providers of services, and providers of ambulance services:

''(1) EXTRAPOLATION.—The term 'extrapolation' means the application of an overpayment dollar amount to a larger grouping of claims than those in the audited sample to calculate a projected overpayment figure.

''(2) PREPAYMENT REVIEW.—The term 'prepayment review' means a carrier's and fiscal intermediary's practice of withholding claim reimbursements from physicians, providers of services, and providers of ambulance services pending review of a claim even if the claims have been properly submitted and reflect medical services provided.''.

SEC. 204. RIGHT TO APPEAL ON BEHALF OF DECEASED BENEFICIARIES.

Notwithstanding section 1870 of the Social Security Act (42 U.S.C. 1395gg) or any other provision of law, the Secretary shall permit any physician, provider of services, and provider of ambulance services to appeal any determination of the Secretary under the medicare program on behalf of a deceased beneficiary where no substitute party is available.

SEC. 205. EFFECTIVE DATE.

The amendments made by this title shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act.

TITLE III—EDUCATION COMPONENTS

SEC. 301. DESIGNATED FUNDING LEVELS FOR PHYSICIAN AND PROVIDER EDUCATION.

(a) EDUCATION PROGRAMS FOR PHYSICIANS, PROVIDERS OF SERVICES, AND PROVIDERS OF AMBULANCE SERVICES.—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:

''EDUCATION PROGRAMS FOR PHYSICIANS, PROVIDERS OF SERVICES, AND PROVIDERS OF AMBULANCE SERVICES

''SEC. 1897. (a) EDUCATION PROGRAM DEFINED.—In this section, the term 'education programs' means programs undertaken in conjunction with health care associations that focus on current billing, coding, cost reporting, and documentation laws, regulations, program memoranda, instructions to regional offices, and fiscal intermediary and carrier manual instructions that place special emphasis on billing, coding, cost reporting, and documentation errors that the Secretary has found occur frequently and remedies for these improper billing, coding, cost reporting, and documentation practices.

''(b) CONDUCT OF EDUCATION PROGRAMS.—

''(1) IN GENERAL.—Carriers, fiscal intermediaries, and contractors under section 1893 shall conduct education programs for any physician (or a designee), provider of services, or provider of ambulance services that submits a claim or cost report under paragraph (2)(A). Such carriers, intermediaries, and contractors under section 1893 shall conduct outreach to specifically contact physicians and their designees, providers of services, and providers of ambulance services with fewer than 10 full-time-equivalent employees (including physicians) to implement education programs tailored to their education needs and in proximity to their practices.

''(2) PROVIDER EDUCATION.—

''(A) SUBMISSION OF CLAIMS, COST REPORTS, AND RECORDS.—Any physician, provider of services, or provider of ambulance services may voluntarily submit any present or prior claim, cost report, or medical record to the carrier or fiscal intermediary to determine whether the billing, coding, and documentation associated with the claim or cost report is appropriate.

''(B) PROHIBITION OF EXTRAPOLATION.—No claim submitted under subparagraph (A) is subject to any type of extrapolation (as defined in section 1861(ww)(1)).

''(C) SAFE HARBOR.—No submission of a claim, cost report, or record under this section shall result in the carrier, fiscal intermediary, a contractor under section 1893, or any law enforcement agency beginning an investigation or targeting an investigation based on any claim, cost report, or record submitted under such subparagraph.

''(3) TREATMENT OF CLAIMS.—If the carrier or fiscal intermediary finds a claim or cost report under paragraph (2) to be improper, the physician, provider of services, or provider of ambulance services shall have the following options:

''(A) CORRECTION OF PROBLEMS.—To correct the documentation, coding, or billing problem to appropriately substantiate the claim or cost report and either—

''(i) remit the actual overpayment; or

''(ii) receive the appropriate additional payment from the carrier or fiscal intermediary.

''(B) REPAYMENT.—To repay the actual overpayment amount if the service is excluded from medicare coverage under this title or if adequate documentation does not exist.

''(4) PROHIBITION OF PHYSICIAN AND PROVIDER OF SERVICES TRACKING.—Carriers, fiscal intermediaries, and contractors under section 1893 may not use the record of attendance or information gathered during an education program conducted under this section or the inquiry regarding claims or cost reports under paragraph (2)(A) to select, identify, or track such physician, provider of services, or provider of ambulance services for the purpose of conducting any type of audit or prepayment review.''.

(b) FUNDING OF EDUCATION PROGRAMS.—

(1) MEDICARE INTEGRITY PROGRAM.—Section 1893(b)(4) of such Act (42 U.S.C. 1395ddd(b)(4)) is amended by adding at the end the following new sentence: ''No less than 10 percent of the program funds shall be devoted to the education programs for physicians, providers of services, and providers of ambulance services under section 1897.''.

(2) CARRIERS.—Section 1842(b)(3)(H) of such Act (42 U.S.C. 1395u(b)(3)(H)) is amended by adding at the end the following new clause:

''(iii) No less than 2 percent of carrier funds shall be devoted to the education programs for physicians under section 1897.''.

(3) FISCAL INTERMEDIARIES.—Section 1816(b)(1) of such Act (42 U.S.C. 1395h(b)(1)) is amended—

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

(B) in subparagraph (B), by striking ''; and'' and inserting a comma; and

(C) by adding at the end the following new subparagraph:

''(C) that such agency or organization is using no less than 1 percent of its funding for education programs for providers of services and providers of ambulance services under section 1897.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fiscal years beginning after the date of the enactment of this Act.

SEC. 302. INFORMATION REQUESTS.

(a) CLEAR, CONCISE, AND ACCURATE ANSWERS.—Fiscal intermediaries and carriers shall do their utmost to provide physicians, providers of services, and providers of ambulance services with a clear, concise, and accurate answer regarding billing and cost reporting questions under the medicare program, and will give their true first and last names to such physicians, providers of services, and providers of ambulance services.

(b) WRITTEN REQUESTS.—

(1) IN GENERAL.—The Secretary shall establish a process under which a physician, provider of services, or provider of ambulance services may request, free of charge and in writing from a fiscal intermediary or carrier, assistance in addressing questions regarding coverage, billing, documentation, coding, and cost reporting procedures under the medicare program and then the fiscal intermediary or carrier shall respond in writing within 30 business days with the correct substantive or procedural answer.

(2) USE OF WRITTEN STATEMENT.—

(A) IN GENERAL.—Subject to subparagraph (C), a written statement under paragraph (1) may be used by the physician, provider of services, or provider of ambulance services who submitted the information request and submitted claims in conformance with the answer of the carrier or fiscal intermediary as proof against a future audit or overpayment allegation under the medicare program.

(B) EXTRAPOLATION PROHIBITION.—Subject to subparagraph (C), no claim submitted under this section shall be subject to extrapolation, if the claim adheres to the conditions set forth in the information response.

(C) LIMITATION ON APPLICATION.—Subparagraphs (A) and (B) shall not apply to cases of fraudulent billing.

(3) SAFE HARBOR.—If a physician, provider of services, or provider of ambulance services requests information under this subsection, neither the fiscal intermediary, the carrier, a contractor under section 1893 of the Social Security Act (42 U.S.C. 1395ddd), nor any law enforcement agency may begin an investigation or target such physician or provider based on the request.

(c) BROAD POLICY GUIDANCE BY THE SECRETARY.—The Secretary shall develop a mechanism to address written questions regarding medicare policy and regulations, which are submitted by health care associations. The Secretary shall issue such answers within 90 calendar days from the date of the receipt of the question and shall make the responses available to the public in an indexed, easily accessible format.

(d) NOTICE OF CHANGES IN POLICY.—Carriers and fiscal intermediaries shall provide written, mailed notice within 30 calendar days to physicians, providers of services, and providers of ambulance services of all policy or operational changes to the medicare program. Physicians, providers of services, and providers of ambulance services shall have not less than 30 days to comply with such policy changes.

(e) EFFECTIVE DATE.—This section shall take effect 180 days after the date of the enactment of this Act.

TITLE IV—SUSTAINABLE GROWTH RATE REFORMS

SEC. 401. INCLUSION OF REGULATORY COSTS IN THE CALCULATION OF THE SUSTAINABLE GROWTH RATE.

(a) IN GENERAL.—Section 1848(f)(2) of the Social Security Act (42 U.S.C. 1395w–4(f)(2)) is amended—

(1) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively;

(2) by striking ''SPECIFICATION OF GROWTH RATE.—The sustainable growth rate'' and inserting ''SPECIFICATION OF GROWTH RATE.—

''(A) IN GENERAL.—The sustainable growth rate''; and

(3) by adding at the end the following new subparagraphs:

''(B) INCLUSION OF SGR REGULATORY COSTS.—The estimate established under clause (iv) or any successor thereto shall include—

''(i) the impact on costs for physicians' services resulting from regulations implemented by the Secretary during the year for which the sustainable growth rate is estimated, including those regulations that may be implemented during such year; and

''(ii) the costs described in subparagraph (C).

''(C) INCLUSION OF OTHER REGULATORY COSTS.—The costs described in this subparagraph are per procedure costs incurred by physicians' practices in complying with regulations promulgated by the Secretary, regardless of whether such regulation affects the fee schedule established under subsection (b)(1).

''(D) INCLUSION OF COSTS IN REGULATORY IMPACT ANALYSES.—With respect to any regulation promulgated that may impose a regulatory cost described in subparagraph (B)(i) or (C) on a physician, the Secretary shall include in the regulatory impact analysis accompanying such regulation an estimate of any such cost.

''(E) INCLUSION OF ESTIMATED COST ON RURAL PHYSICIANS.—In promulgating regulations, the Secretary shall specifically estimate the costs to rural physicians and physicians practices in rural areas and the estimated number of hours needed to comply with the regulation.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to any estimate made (or regulation promulgated) by the Secretary of Health and Human Services on or after 1 year after the date of enactment of this Act.

TITLE V—POLICY DEVELOPMENT REGARDING E&M GUIDELINES

SEC. 501. POLICY DEVELOPMENT REGARDING E&M DOCUMENTATION GUIDELINES.

(a) IN GENERAL.—HCFA may not implement any new evaluation and management documentation guidelines (in this section referred to as ''E&M guidelines'') under the medicare program, unless HCFA—

(1) has provided for an assessment of the proposed guidelines by organizations representing physicians;

(2) has established a plan that contains specific goals, including a schedule, for improving use of such guidelines;

(3) has completed a minimum of 4 pilot projects consistent with subsection (b) in at least 4 different HCFA regions administered by 4 different carriers (to be specified by the Secretary) to test such guidelines; and

(4) finds that the objectives described in subsection (c) will be met in the implementation of such guidelines.

(b) PILOT PROJECTS.—

(1) LENGTH AND CONSULTATION.—Each pilot project under this subsection shall—

(A) be of sufficient length to allow for preparatory physician and carrier education, analysis, and use and assessment of potential E&M guidelines; and

(B) be conducted, throughout the planning and operational stages of the project, in consultation with organizations representing physicians.

(2) PEER REVIEW PILOT PROJECTS.—Of the pilot projects conducted under this subsection—

(A) at least one shall focus on a peer review method by physicians (not employed by a carrier) which evaluates medical record information for claims submitted by physicians identified as statistical outliers relative to definitions published in the CPT book;

(B) at least one shall be conducted for services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Social Security Act, 42 U.S.C. 1395ww(d)(2)(D)); and

(C) at least one shall be conducted in a setting where physicians bill under physicians services in teaching settings (described in section 415.150 of title 42, Code of Federal Regulations).

(3) BANNING OF TARGETING OF PILOT PROJECT PARTICIPANTS.—Data collected under this subsection shall not be used as the basis for overpayment demands or post-payment audits.

(4) STUDY OF IMPACT.—Each pilot project shall examine the effect of the E&M guidelines on—

(A) different types of physician practices, including those with few than 10 full-time employees (including physicians); and

(B) the costs of physician compliance, including education, implementation, auditing, and monitoring.

(c) OBJECTIVES FOR E&M GUIDELINES.—The objectives for E&M guidelines specified in this subsection are as follows (relative to the E&M guidelines and review policies in effect as of the date of the enactment of this Act):

(1) Enhancing clinically relevant documentation needed to code accurately and assess coding levels accurately.

(2) Decreasing the level of non-clinically pertinent and burdensome documentation time and content in the record.

(3) Increased accuracy by carrier reviewers.

(4) Education of both physicians and reviewers.

(5) Promote appropriate use of E&M codes by physicians and their staffs.

(6) The extent to which the tested E&M documentation guidelines substantially adhere to the CPT coding definitions and rules.

(d) REPORT ON HOW MET PILOT PROJECT OBJECTIVES.—HCFA shall submit a report to the Committees on Energy and Commerce and Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Practicing Physicians Advisory Council, six months after the conclusion of the pilot projects. Such report shall include the extent to which the pilot projects met the objectives specified in subsections (b)(4) and (c).

By Mrs. FEINSTEIN:

S. 453. A bill for the relief of Denes and Gyorgyi Fulop; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I am pleased to offer today, legislation to provide lawful permanent residence status to Denes and Gyorgyi Fulop, Hungarian nationals who have lived in California for more than 18 years. The Fulops are the parents of six United States citizen children. Today, they face deportation.

The Fulop's story is a compelling one; one I believe merits Congress' consideration for humanitarian relief. In May of last year, the Fulops suffered the loss of their eldest child, Robert ''Bobby'' Fulop, an accomplished 15-year-old teenager who died suddenly of a heart aneurism. Bobby was considered the shining star in his family. He was very bright and very helpful to his parents.

That same year the Fulop's six-year-old daughter, Elizabeth, was diagnosed with moderate pulmonary stenosis, a potentially life-threatening heart condition. Not long ago, she underwent heart surgery. I am pleased to report that she is doing much better.

Compounding this unfortunate series of events is the fact that, today, the Fulops face deportation. They face deportation, in part, because in 1995 they went back to Hungary and stayed for more than 90 days. Under the pre-1996 immigration laws, their stay in Hungary would not have been a factor in their deportation and they would have qualified for adjustment to lawful permanent resident status.

Indeed, in 1996, Mr. and Mrs. Fulop applied to the Immigration and Naturalization Service, INS, for permanent resident status. The INS did not interview them until 1998. By the time the INS had processed their application, the new 1996 immigration laws had taken effect, which barred from relief long-term resident aliens who traveled outside the U.S. for more than 90 days.

One cannot help but conclude that had the INS acted on their application for relief from deportation in a more timely manner, the Fulops would have qualified for suspension of deportation under the pre-1996 laws, given that they are long-term residents of the U.S. with U.S. citizen children.

This is a tragic situation. The rules of the game were changed in the middle of the Fulop's application for permanent residence, and because the INS failed to process their application in a timely fashion they are now facing deportation. The Fulop's children, who are United States citizens, were not included in the deportation order. But because they are minors they would likely have to follow their parents to Hungary. Growing up in the American school system, the Fulop children are not able to read or write the Hungarian language, and I believe that forcing them to leave the only country they have known would pose an extreme hardship for them.

It is my hope that Congress sees fit to provide an opportunity for this family to remain together in the United States.

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. 453

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PERMANENT RESIDENT STATUS FOR DENES AND GYORGYI FULOP.

(a) IN GENERAL.—Notwithstanding subsections (a) and (b) of section 201 of the Immigration and Nationality Act, Denes and Gyorgyi Fulop shall be eligible for issuance of immigrant visas or for adjustment of status to that of aliens lawfully admitted for permanent residence upon filing an application for issuance of immigrant visas under section 204 of such Act or for adjustment of status to lawful permanent resident.

(b) ADJUSTMENT OF STATUS.—If Denes Fulop or Gyorgyi Fulop enters the United States before the filing deadline specified in subsection (c), the alien shall be considered to have entered and remained lawfully and shall, if otherwise eligible, be eligible for adjustment of status under section 245 of the Immigration and Nationality Act as of the date of enactment of this Act.

(c) DEADLINE FOR APPLICATION AND PAYMENT OF FEES.—Subsections (a) and (b) shall apply only if the application for issuance of immigrant visas or the application for adjustment of status are filed with appropriate fees within 2 years after the date of enactment of this Act.

(d) REDUCTION OF IMMIGRANT VISA NUMBERS.—Upon the granting of immigrant visas or permanent residence to Denes and Gyorgyi Fulop, the Secretary of State shall instruct the proper officer to reduce by the appropriate number, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of the aliens' birth under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas that are made available to natives of the country of the aliens' birth under section 202(e) of such Act.

By Mr. BINGAMAN:

S. 454. A bill to provide permanent funding for the Bureau of Land Management Payment in Lieu of Taxes Program and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, the bill I am introducing today, the PILT and Refuge Revenue Sharing Permanent Funding Act, deals with an issue that I believe must be addressed in this Congress. The bill is a measure to make permanent funding for two important programs managed by the Department of the Interior: the Payment in Lieu of Taxes Program, or PILT, in the Bureau of Land Management and the Refuge Revenue Sharing Program in the Fish and Wildlife Service. Those programs provide support to local governments in areas in which these two agencies hold land. Under the authorizations for these programs, the funds are to be provided as an offset to the local property tax base lost by virtue of the Federal ownership of these lands.

Federal ownership of lands in the American West, in states like New Mexico, does not come without its share of burdens for local governments. If there is a fire or other emergency, they must help respond. If there is increased traffic to and from the site, they must maintain the public roads that provide the necessary access to the public. In enacting the original authorizing legislation, Congress decided that, as a matter of policy, it was appropriate for the Federal government

to bear a fair share in paying for these costs, in lieu of the taxes that would be levied on any private landowner in these localities.

But in setting up these programs, Congress decided to make them subject to annual appropriations, either partially, in the case of Refuge Revenue Sharing, or completely, in the case of PILT. In retrospect, this was a mistake. The annual appropriations process has never come even close to providing the funds agreed upon by the underlying authorizing law. Moreover, the amount made available has changed significantly from one year to the next, frustrating the ability of localities to plan effectively for the use of these funds. Many of the burdens they face as a result of Federal land ownership require expenditures and commitments that are long-term. If you want to have a reasonable system of county roads, you need to have a consistent multi-year plan. If you want adequate fire protection, you can't be hiring a dozen new firefighters in one year and firing them the next, as appropriation levels gyrate up and down.

The Federal government needs to be a better neighbor and a more reliable partner to local governments in the rural West. Since the system of meeting our obligations to these localities through the annual appropriations process has not worked, I am proposing that we start treating our payments in lieu of taxes in the same way that we account for incoming tax revenues to the Federal government—on the mandatory side of the Federal ledger. By making the funding for these crucial programs full and permanent, we will be keeping the commitments to rural communities throughout the West made in the original PILT and Refuge Revenue Sharing authorizing legislation. It's a matter of simple justice to rural communities. I hope that enacting legislation along the lines of what I am proposing today will receive high priority in the next Congress.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 454

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 ''PILT and Refuge Revenue Sharing Permanent Funding Act''.

SEC. 2. PERMANENT FUNDING FOR PILT AND REFUGE REVENUE SHARING.

(a) PAYMENTS IN LIEU OF TAXES.—Section 6906 of title 31, United States Code, is amended to read as follows:

''There is authorized to be appropriated such sums as may be necessary to the Secretary of the Interior to carry out this chapter. Beginning in fiscal year 2002 and each year thereafter, amounts authorized under this chapter shall be made available to the Secretary of the Interior, out of any other funds in the Treasury not otherwise appropriated and without further appropriation, for obligation or expenditure in accordance with this chapter.''.

(b) REFUGE REVENUE SHARING.—Section 401(d) of the Act of June 15, 1935, as amended (16 U.S.C. 715s(d)) (relating to refuge revenue sharing), is amended by adding at the end thereof:

''Beginning in fiscal year 2002 and each year thereafter, such amount shall be made available to the Secretary, out of any other funds in the Treasury not otherwise appropriated and without further appropriation, for obligation or expenditure in accordance with this section.''.

By Ms. COLLINS (for herself, Mr. CLELAND, Mr. BREAUX, Mr. ALLARD, Mr. CHAFEE, Mr. LIEBERMAN, Ms. LANDRIEU, Mr. HATCH, and Mr. HUTCHINSON):

S. 455. A bill to amend the Internal Revenue Code of 1986 to increase and modify the exclusion relating to qualified small business stock and for other purposes; to the Committee on Finance.

Ms. COLLINS. Mr. President, the concerns and needs of small businesses have always been a priority for me. When I talk to small business owners throughout the State of Maine, I hear over and over again that they have two major problems: One is the high cost of health insurance. I will be introducing legislation shortly to try to help small businesses cope with that issue. The second issue is the need for more capital to finance their enterprises.

Today, I rise to introduce the Encouraging Investment in Small Business Act, a bill intended to stimulate private investment in the entrepreneurs who drive our economy. I am pleased to be joined today by my good friends and staunch supporters of small business, Senators CLELAND, BREAUX, LANDRIEU, ALLARD, CHAFEE, LIEBERMAN, HUTCHINSON, and HATCH.

The bill we introduce today will encourage long-term investment in small and emerging businesses by providing incentives to individuals who risk investment in such firms. According to the Small Business Administration, small firms account for three-quarters of our Nation's employment growth and almost all of our net new jobs. At the same time, small businesses face unique financing challenges. Simply put, entrepreneurs need access to more capital to start and to expand their businesses. As the SBA noted last year, ''Adequate financing for rapidly growing firms will be America's greatest economic policy challenge of the new century.''

Just a few months ago, it would have been difficult for us to imagine that a capital gap could exist in an economy that had experienced such an unprecedented run of prosperity. Venture capital investments in emerging firms reached a record $103 billion last year, up 74 percent from the year before. Yet, there are signs that the rush of funds is subsiding. Venture capital investment activity decreased by 31 percent in the fourth quarter of last year, and much of the funds that have been raised remains uninvested.

More important, venture capital funds tend to gravitate towards certain types of businesses and geographic regions, and tend to be invested in increasingly larger amounts, leaving many small business entrepreneurs frozen out of the capital markets. Internet-related companies attracted 76 percent of the venture capital invested in the first three quarters of 2000. And more than two-thirds of all the venture capital invested in the United States in 1999 went to just five States. Moreover, the average amount of venture capital invested in small businesses increased from $6.6 million in 1998 to $13.3 million in 1999, prompting the SBA to conclude that the needs of many small businesses for equity financing remain unmet.

The data paint a troubling picture. It is, unfortunately, a familiar one. Take the example of Vladimir Koulchin, a Russian by birth but a Mainer in heart and spirit. Vladimir holds a doctorate in biochemistry and has 25 years of research experience in the field. Six years ago, Mr. Koulchin moved to Portland, ME, to work for a biotechnology firm where he became vice president for research and development. This past fall, with no funding other than his own, he founded Chemogen with the goal of developing products to diagnose, treat, and prevent tuberculosis and other dangerous infectious diseases in humans and animals. Mr. Koulchin told me how difficult it has been to find the seed and early stage capital he needs to get his promising business off the ground. He spoke of the relative lack of seed capital in small markets and the welcome assistance that strong Federal tax incentives could provide.

Vladimir's experiences are all-too-common. A recent report by the National Commission on Entrepreneurship presented findings of 18 focus groups with more than 250 entrepreneurs across the country. According to the report, the focus groups were ''nearly unanimous in identifying difficulties in obtaining seed capital investments.''

And although the capital gap is pervasive, it disproportionately harms women- and minority-owned businesses. The Milken Institute, an independent economic think tank, concluded in a research report issued last year that, ''While minority businesses are growing faster than majority firms in number and revenue, they remain severely constrained by a lack of access to capital.'' Moreover, women receive only 12 percent of all credit provided to small businesses in the U.S. despite owning nearly 40 percent of the businesses.

If we want to remain the world's most entrepreneurial country, where small businesses generate the ideas and create the jobs that fuel our economy, we must continue to create an environment that nurtures and supports entrepreneurs.

The legislation we are introducing helps to create a supportive environment, not by establishing an expensive,

new Federal program, or adding a complicated new section to our Tax Code, but rather by simplifying and improving a provision that is already there. The provision, known as section 1202, was added to the Internal Revenue Code in 1993 with strong bipartisan support.

Section 1202 allows investors to exclude from taxable income 50 percent of the gain from the sale of qualified small business stock when the stock is held for at least 5 years. Now, that concept is a sound one, but unfortunately, section 1202 prescribes a complicated set of requirements, and its attractiveness has been diminished due to the fact that when capital gains rates were lowered in 1997, the section 1202 rate remained the same. In addition, the increasing application of the alternative minimum tax has reduced its value. Indeed, early data on the use of section 1202 suggests that the alternative minimum tax has sharply limited its effectiveness.

Our bill restores section 1202 to its original role as a potent engine of small business capital formation. Our legislation simplifies section 1202, enhances its incentives, and eliminates the threat that gains on small business stock will be subject to the alternative minimum tax. In short, our bill makes a number of commonsense changes designed to encourage investment in small business.

The Encouraging Investment in Small Business Act is supported by the National Federation of Independent Business, the National Women's Business Council, the National Commission On Entrepreneurship, the Biotechnology Industry Organization, and the Biotechnology Association Of Maine.

Our legislation would implement changes recommended by a recent Securities and Exchange Commission forum on small business capital formation. In sum, our legislation would accommodate the capital-raising needs of small business, the foundation of our economy.

Mr. President, I ask unanimous consent that a section-by-section summary of the Encouraging Investment in Small Business Act be printed in the RECORD.

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

ENCOURAGING INVESTMENT IN SMALL BUSINESS ACT

Section-by-Section Summary

I. INTRODUCTION

The Encouraging Investment in Small Business Act is intended to stimulate private investment in the entrepreneurs who drive our economy. The Act will encourage long-term investment in small and emerging businesses by providing incentives to investors who risk investment in such firms. According to the Small Business Administration, small firms account for three-quarters of our nation's employment growth and almost all of our net new jobs. Small businesses employ 52 percent of all private workers, provide 51 percent of our private sector output, and are responsible for a disproportionate share of innovations. Moreover, small businesses are avenues of opportunity for women and minorities, young and elderly workers, and those formerly on public assistance. Yet entrepreneurs need access to more capital to start and expand their businesses.

In 1993, Section 1202 was added to the Internal Revenue Code in order to encourage investment in small businesses. In brief, Section 1202 permits non-corporate taxpayers to exclude from gross income 50% of the gain from the sale or exchange of qualified small business (''QSB'') stock held for more than five years. The concept is a sound one. However, in practice, Section 1202 has proven to be cumbersome to use and less advantageous than originally intended. As an article in the December 1998 edition of the Tax Adviser noted, ''Sec. 1202 places numerous and complex requirements on both the QSB and the shareholder,'' and that the provision ''is no longer the deal it seemed to be.''

The Encouraging Investment in Small Business Act would amend Section 1202 to eliminate unnecessary complexity and to make it a more robust engine of capital formation for small businesses. As it now stands, the engine needs work. Given (1) reductions in capital gains rates subsequent to Section 1202's enactment and (2) the fact that more taxpayers are now subject to the Alternative Minimum tax, Section 1202 is no longer a viable option in many circumstances it was originally intended to address. Moreover, Section 1202's impact will continue to be diluted by a scheduled decrease in long-term capital gains rates applicable to stock purchased after 2000 and the probability that still more taxpayers will be subject to the AMT. To understand the changes the Act would make, it is first necessary to understand how 1202 currently works.

As noted, Section 1202 imposes numerous restrictions on a business that seeks to qualify under its provisions. To be a QSB, a business must be a domestic C corporation with aggregate gross assets of no greater than $50 million at any time prior to or immediately after issuing stock. Certain types of businesses are excluded from QSB status, including banking, insurance, investing, consulting, law, accounting, financial services, and farming concerns as well as hotels and restaurants. Any trade or business that relies on the reputation or skill of one or more of its employees as its principal asset also cannot be a QSB.

QSB's must also satisfy an ''active business'' requirement. This means that, during substantially all of the time the taxpayer holds the stock, at least 80 percent of the QSB's gross assets must be used by the corporation in the active conduct of the qualified trade or business. Assets used in certain start-up activities or for research, or which are held as ''reasonably required'' working capital are deemed to be used in the active conduct of a qualified trade or business. Two years after a QSB has come into existence, no more than 50 percent of its assets can qualify as ''active'' by virtue of the Section 1202(e)(6) working capital rule.

As noted, under Section 1202, an individual can exclude from gross income 50% of any gain from the sale or exchange of qualified small business stock originally issued after August 10, 1993 and held for more than five years. Under Section 1045 of the Code, the taxpayer may roll the gain over tax-free provided that the taxpayer (1) has held the QSB stock for more than six months and (2) invests the gain in other QSB stock within 60 days of the sale. Generally, the holding period of the stock purchased will include the holding period of the stock sold.

The maximum amount of a taxpayer's gain eligible for the Section 1202 exclusion is limited to the greater of $10 million and 10 times the aggregate adjusted bases of the stock sold. Gains of Section 1202 stock are taxed at the rate of 28%.

II. SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

The ''Encouraging Investment in Small Business Act.''

Section 2. Increased Exclusion and Other Modifications Applicable to Qualified Small Business Stock.

(a) Increased Exclusion.

This provision increases the amount of QSB stock gain that an individual can exclude from gross income from 50 percent to 75 percent.

(b) Reduction in Holding Period.

This provision reduces from 5 years to 3 years the period of time in which an individual must hold QSB stock in order to qualify for the 75-percent exclusion. Section 1045's rollover provisions will still apply.

(c) Repeal of Minimum Tax Preference.

This provision strikes Section 57(a)(7), which makes 42 percent of the amount excluded pursuant to Section 1202 a preference item under the alternative minimum tax. This change is necessary because the AMT provisions in existing law effectively eviscerate the benefit of Section 1202 in certain situations.

Example. Jane buys Section 1202 stock for $2,000. After five years, she sells the stock for $12,000. Under current law, she excludes half of her gain and is taxed at 28% on the other half [.28 × $5,000 = $1,400]. Hence, her tax on the gain is $1,400. However, if Jane is subject to the AMT, she must pay additional taxes of $588, or 28% of 42% of the excluded half of the gain. Jane's total tax bill of $1,988 amounts to an effective rate of 19.9%, or nearly the same as the current maximum tax rate on long-term capital gains of 20%. Under the Encouraging Investment in Small Business Act, Jane would be able to exclude 75% of her gain, would be subject to the 20% rate that applies to most capital gains, and would not have to recognize any of the gain as a preference item for AMT purposes. Hence, her tax bill would be 20% of $2,500, or $500. Absent the change, Jame would have little incentive to invest in a qualified small business over any other business, particularly if she is subject to the AMT. Under the Encouraging Investment in Small Business Act, Section 1202's original potent incentives to investors in small businesses are restored.

(d)(1) Working Capital Limitations.

This provision eases Section 1202(e)'s working capital restrictions on qualified small businesses. The provision increases from 2 years to 5 years the time in which assets that are held for investment by a business can be expected to be used to finance research or an increase in working capital needs. In other words, a corporation will be able to hold assets longer, before eventually using them for research or to satisfy increased working capital needs, and still meet the active business requirements of section 1202.

(d)(2) Exception from Redemption Rules Where Business Purpose.

Currently, the Section 1202 exclusion does not apply to stock issued by a corporation if the corporation purchases more than 5 percent of its own stock during the 2-year period beginning on the date one year before the issuance of its stock. Under the Encouraging Investment in Small Business Act, this provision would be waived if the issuing corporation could establish that the purchase was made for a business purpose, and not to avoid the provision described above.

(e) Excluded Qualified Trade or Business.

This provision tightens the language of Section 1202(e)(3), which excludes certain

businesses from QSB status. It does so in two ways. First, it provides that a coproration can be a QSB even if its principal asset, for a temporary period, is the reputation or skill of one or more of its employees. Hence, in the case of a small start-up computer software company, for example, if its employees engage in consulting work, say, in order to generate some cash flow while the software is under development, the company will not be disqualified from QSB status.

Second, the provision makes it clear that biotechnology and aquaculture companies are not disqualified from QSB status.

(f) Increase in Cap on Eligible Gain for Joint Returns.

The Encouraging Investment in Small Business Act fixes a marriage tax penalty provision in Section 1202 by doubling (to $20,000,000) the maximum amount of eligible gain for taxpayers filing joint returns.

(g) Decrease in Capital Gains Rate

Section 1202 gains are currently taxed at a rate of 28 percent, which, prior to May 7, 1997, had been the maximum marginal rate for net capital gains. The Taxpayer Relief Act of 1997 reduced the maximum capital gain rate for individuals from 28 percent to 20 percent, but left section 1202 gain subject to the 28 percent rate. The Encouraging Investment in Small Business Act would make section 1202 gains subject to the generally-applicable 20 percent rate.

(h) Increase in Rollover Period for QSB Stock

Currently, a taxpayer can roll over, tax free, gain from the sale or exchange of QSB stock where the taxpayer uses the proceeds to purchase other QSB stock within 60 days of the sale of the original stock. The Encouraging Investment in Small Business Act would increase the roll over period to 180 days, thus increasing the liquidity of QSB stock. A 180-day roll over period is also employed in section 1031 of the Internal Revenue Code for like-kind exchanges.

By Ms. SNOWE:

S. 456. A bill to amend title 38, United States Code, to enhance the assurance of efficiency, quality, and patient satisfaction in the furnishing of health care to veterans by the Department of Veterans Affairs, and for other purposes; to the Committee on Veterans' Affairs.

Ms. SNOWE. Mr. President, I rise today to introduce the Veterans Health Care Quality Assurance Act of 2001.

This legislation contains a number of proposals designed to ensure that access to high quality medical services for our veterans is not compromised as the Department of Veterans Affairs, the VA, strives to increase efficiency in its nationwide network of veterans hospitals.

The VA administers the largest health care network in the U.S., including 172 hospitals, 73 home care programs, over 800 community-based outpatient clinics, and numerous other specialized care facilities.

Moreover, there are approximately 25 million veterans in the U.S., including approximately 19.3 million wartime veterans, and the number of veterans seeking medical care in VA hospitals is increasing.

The FY2000 VA medical caseload was projected to total approximately 3.8 million, an increase of 185,000 over FY1999. This level is expected to increase to 3.9 million during FY2001. Furthermore, in FY2001, outpatient visits to VA facilities are expected to increase by 2.6 million to 40.4 million.

The average age of veterans is increasing as well, and this is expected to result in additional demands for health care services, including more frequent and long-term health needs.

The VA is attempting to meet this unprecedented demand for health care services without substantial increases in funding, largely through efforts to increase efficiency. Not surprisingly, these seemingly competing objectives are generating serious concerns about the possibility that quality of care and/or patient satisfaction are being sacrificed.

Many VA regional networks and medical center directors report that timely access to high quality health care is being jeopardized, and that is why I am introducing the Veterans Health Care Quality Assurance Act, legislation which seeks to ensure that no veterans' hospital is targeted unfairly for cuts, and that efforts to ''streamline'' and increase efficiency are not followed by the unintended consequence of undermining quality of care or patient satisfaction.

I believe that all veterans hospitals should be held to the same equitable VA-wide standards, and that quality and satisfaction must be guaranteed. Toward that end, the Veterans Health Care Quality Assurance Act calls for audits of every VA hospital every three years. This will ensure that each facility is subject to an outside, independent review of its operations on a regular basis, and each audit will include findings on how to improve services to our veterans.

The legislation will also establish an Office of Quality Assurance within the VA to ensure that steps taken to increase efficiency in VA medical programs do not undermine quality or patient satisfaction. This office will collect and disseminate information on efforts that have proven to successfully increase efficiency and resource utilization without undermining quality or patient satisfaction. The director of this new Office of Quality Assurance should be an advocate for veterans and would be placed in the appropriate position in the VA command structure to ensure that he or she is consulted by the VA Secretary and Under Secretary for Veterans Health on matters that impact quality or satisfaction.

The bill would require an initial report to Congress within six months of enactment, which would include a survey of each VA regional network and a report on each network's efforts to increase efficiency, as well as an assessment of the extent to which each network and VA hospital is or is not implementing the same uniform, VA-wide policies to increase efficiency.

Under the bill's reporting requirement, the VA would also be required to publish, annually, an overview of VA-wide efficiency goals and quality/satisfaction standards that each veterans facility should be held to. Further, the VA would be required to report to Congress on each hospital's standing in relation to efficiency, quality, and satisfaction criteria, and how each facility compares to the VA-wide average.

In an effort to encourage innovation in efforts to increase efficiency within the agency, the bill would encourage the dissemination and sharing of information throughout the VA in order to facilitate implementation of uniform, equitable efficiency standards.

Finally the bill includes provisions calling for sharing of information on efforts to maximize resources and increase efficiency without compromising quality of care and patient satisfaction; exchange and mentoring initiatives among and between networks in order to facilitate sharing of such information; incentives for networks to increase efficiency and meet uniform quality/patient satisfaction targets; and formal oversight by the VA to ensure that all networks are meeting uniform efficiency criteria and that efforts to increase efficiency are equitable between networks and medical facilities.

Keeping our promise to our veterans is also an on-going duty. The debt of gratitude we owe to our veterans can never be fully repaid. What we can and must do for our veterans is repay the financial debt we owe to them. Central to that solemn duty is ensuring that the benefits we promised our veterans when they enlisted are there for them when they need them.

I consider it a great honor to represent veterans. So many of them continue to make contributions in our communities upon their transition from military to civilian life, through youth activities and scholarships programs, homeless assistance initiatives, efforts to reach out to fellow veterans in need, and national leadership on issues of importance to veterans and all Americans. The least we can do is make good on our promises, such as the promise of access to high quality health care.

I have nothing but the utmost respect for those who have served their country, and this legislation is but a small tribute to the men and women and their families who have served this country with courage, honor and distinction. They answered the call to duty when their country needed them, and this is a component of my on-going effort to ensure that we, as elected officials, answer their call when they need us.

I urge my colleagues to join me in supporting this legislation.

By Ms. SNOWE:

S. 457. A bill to amend title 38, United States Code, to establish a presumption of service-connection for certain veterans with Hepatitis C, and for other purposes; to the Committee on Veterans' Affairs.

Ms. SNOWE. Mr. President, I rise today to reintroduce legislation I first

introduced in the 105th Congress to address a serious health concern for veterans specifically the health threat posed by the Hepatitis C virus.

The legislation I am introducing today would make Hepatitis C a service-connected condition so that veterans suffering from this virus can be treated by the VA. The bill will establish a presumption of service connection for veterans with Hepatitis C, meaning that the Department of Veterans Affairs will assume that this condition was incurred or aggravated in military service, provided that certain conditions are met.

Under this legislation, veterans who received a transfusion of blood during a period of service before December 31, 1992; veterans who were exposed to blood during a period of service; veterans who underwent hemodyalisis during a period of service; veterans diagnosed with unexplained liver disease during a period of service; veterans with an unexplained liver dysfunction value or test; or veterans working in a health care occupation during service, will be eligible for treatment for this condition at VA facilities.

I have reviewed medical research that suggests many veterans were exposed to Hepatitis C in service and are now suffering from liver and other diseases caused by exposure to the virus. I am troubled that many ''Hepatitis C veterans'' are not being treated by the VA because they can't prove the virus was service connected, despite the fact that hepatitis C was little known and could not be tested for until recently.

We are learning that those who served in Vietnam and other conflicts, tend to have higher than average rates of Hepatitis C. In fact, VA data shows that about 20 percent of its inpatient population is infected with the Hepatitis C virus, and some studies have found that 10 percent of otherwise healthy Vietnam, Veterans are Hepatitis C positive.

Hepatitis C was not isolated until 1989, and the test for the virus has only been available since 1990. Hepatitis C is a hidden infection with few symptoms. However, most of those infected with the virus will develop serious liver disease 10 to 30 years after contracting it. For many of those infected, Hepatitis C can lead to liver failure, transplants, liver cancer, and death.

And yet, most people who have Hepatitis C don't even know it—and often do not get treatment until it's too late. Only five percent of the estimated four million Americans with hepatitis C know they have it; yet with new treatments, some estimates indicate that 50 percent may have the virus eradicated.

Vietnam Veterans in particular are just now starting to learn that they have liver disease likely caused by Hepatitis C. Early detection and treatment may help head off serious liver disease for many of them. However, many veterans with Hepatitis C will not be treated by the VA because they must meet a standard that is virtually impossible to meet in order to establish a service connection for their condition—this in spite of the fact that we now know that many Vietnam-era and other veterans got this disease serving their country.

Many of my colleagues may be interested to know how veterans were likely exposed to this virus. Many veterans received blood transfusions while in Vietnam. This is one of the most common ways Hepatitis C is transmitted. Medical transmission of the virus through needles and other medical equipment is also possible in combat. Medical care providers in the services were likely at increased risk as well, and may have, in turn, posed a risk to the service members they treated.

Researchers have discovered that Hepatitis C was widespread in Southeast Asia during the Vietnam war, and that some blood sent from the U.S. was also infected with the virus. Researchers and veterans organizations, including the Vietnam Veterans of America, with whom I worked closely to prepare this legislation, believe that many veterans were infected after being injured in combat and getting a transfusion or from working as a medic around combat injuries.

I believe we will actually save money in the long run by testing and treating this infection early on. The alternative is much more costly treatment of end-stage liver disease and the associated complications, or other disorders.

Some will argue that further epidemiologic data is needed to resolve or prove the issue of service connection. I agree that we have our work cut out for us, and further study should be done. However, there is already a substantial body of research on the relationship between Hepatitis C and military service. While further research is being conducted, we should not ask those who have already sacrificed so much for this country to wait—perhaps for years—for the treatment they deserve.

Former Surgeon General C. Everett Koop, well respected both within and outside of the medical profession, has said, ''In some studies of veterans entering the Department of Veterans Affairs health facilities, half of the veterans have tested positive for HCV. Some of these veterans may have left the military with HCV infection, while others may have developed it after their military service. In any event, we need to detect the treat HCV infection if we are to head off very high rates of liver disease and liver transplant in VA facilities over the next decade. I believe this effort should include HCV testing as part of the discharge physical in the military, and entrance screening for veterans entering the VA health system.''

Veterans have already fought their share of battles—these men and women who sacrificed in war so that others could live in peace shouldn't have to fight again for the benefits and respect they have earned.

We still have a long way to go before we know how best to confront this deadly virus. A comprehensive policy to confront such a monumental challenge can not be established overnight. It will require the long-term commitment of Congress and the Administration to a serious effort to address their health concern.

I hope this legislation will be a constructive step in this effort, and I look forward to working with the Veterans Affairs Committee, the VA–HUD appropriators, Vietnam Veterans of America and other veterans groups to meet this emerging challenge.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 42—AUTHORIZING EXPENDITURES BY THE COMMITTEE ON SMALL BUSINESS

Mr. BOND submitted the following resolution; from the Committee on Small Business; which was referred to the Committee on Rules and Administration, as follows:

S. RES. 42

Resolved, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Small Business is authorized from March 1, 2001, through September 30, 2001, and October 1, 2001, through September 30, 2002 and October 1, 2002 through February 28, 2003, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or nonreimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee for the period March 1, 2001, through September 30, 2001, under this resolution shall not exceed $1,119,973, of which amount (1) not to exceed $20,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $20,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(b) For the period of October 1, 2001, through September 30, 2002, expenses of the committee under this resolution shall not exceed $1,985,266, of which amount (1) not to exceed $20,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $20,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(c) For the period of October 1, 2002, through February 28, 2003, expenses of the

committee under this resolution shall not exceed $848,624, of which amount (1) not to exceed $20,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $20,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

SEC. 3. The committee may report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practical date, but not later than February 28, 2003.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required (1) for the disbursement of salaries of employees paid at an annual rate, or (2) for the payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (3) for the payment of stationery supplies purchased through the Keeper of the Stationery, United States Senate, or (4) for payments to the Postmaster, United States Senate, or (5) for the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (6) for the payment of Senate Recording and Photographic Services or (7) for payment of franked mail costs by the Sergeant at Arms and Doorkeeper, United States Senate.

SEC. 5. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee from March 1, 2001, through September 30, 2001, and October 1, 2001, through September 30, 2002 and October 1, 2002 through February 28, 2003, to be paid from the Appropriations account for ''Expenses of Inquiries and Investigations.''

SENATE RESOLUTION 43—EXPRESSING THE SENSE OF THE SENATE THAT THE PRESIDENT SHOULD DESIGNATE THE WEEK OF MARCH 18 THROUGH MARCH 24, 2001, AS ''NATIONAL INHALANTS AND POISONS AWARENESS WEEK''

Mr. MURKOWSKI (for himself, Mr. DASCHLE, and Mr. DEWINE) submitted the following resolution; which was referred to the Committee on the Judiciary, as follows:

S. RES. 43

Whereas the National Inhalant Prevention Coalition has declared the week of March 18 through March 24, 2001, ''National Inhalants and Poisons Awareness Week'';

Whereas inhalant abuse is nearing epidemic proportions, with almost 20 percent of young people admitting to experimenting with inhalants before graduating from high school;

Whereas only 4 percent of parents suspect that their children use inhalants;

Whereas inhalants are the third most popular substance used by youths through the eighth grade, behind only alcohol and tobacco;

Whereas 1,000 products can be inhaled to get high and those products are legal, inexpensive, and found in nearly every home and every corner market;

Whereas using inhalants only once can lead to kidney failure, brain damage, and even death;

Whereas inhalants are considered a gateway drug, leading to the use of harder, more deadly drugs;

Whereas inhalant use is difficult to detect, the products used are accessible and affordable, and abuse is common; and

Whereas increased education of young people and parents regarding the dangers of inhalants is an important step in the battle against drug abuse: Now, therefore, be it

Resolved,

SECTION. 1. NATIONAL RESPONSE TO INHALANT USE.

(a) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the President should designate the week of March 18 through March 24, 2001, as ''National Inhalants and Poisons Awareness Week''; and

(2) parents should learn about the dangers of inhalant abuse and discuss those dangers with their children.

(b) PROCLAMATION.—The Senate requests that the President issue a proclamation—

(1) designating the week of March 18 through March 24, 2001, as ''National Inhalants and Poisons Awareness Week''; and

(2) calling upon the people of the United States to observe ''National Inhalants and Poisons Awareness Week'' with appropriate ceremonies and activities.

Mr. MURKOWSKI. Mr. President, today Senators DASCHLE, DEWINE and I rise to introduce a resolution that will help fight a silent epidemic among America's youth. This epidemic can leave young people permanently brain damaged or, worse, dead. It is called inhalant abuse.

This resolution will designate the week of March 18 through March 24, 2001, as ''National Inhalants and Poisons Awareness Week.''

What exactly are inhalants? Inhalants are the intentional breathing of gas or vapors for the purpose of reaching a high. Over 1,400 common products can be abused, such as lighter fluid, pressurized whipped cream, hair spray, and gasoline, the abused product of choice in rural Alaska. These products are inexpensive, easily obtained and legal.

An inhalant abuse counselor told me, ''If it smells like a chemical, it can be abused.''

It's a ''silent epidemic'' because few adults really appreciate the severity of the problem: One in five students has tried inhalants by the time they reach the eighth grade; use of inhalants by children has nearly doubled in the last 10 years; and inhalants are the third most abused substances among teenagers, behind alcohol and tobacco.

Inhalants are deadly. Inhalant vapors react with fatty tissues in the brain, literally dissolving them. One time use of inhalants can cause instant and permanent brain, heart, kidney, liver or other organ damage. The user can also suffer from instant heart failure known as ''Sudden Sniffing Death Syndrome,'' this means an abuser can die the first, tenth or hundredth time he or she uses an inhalant.

In fact, according to a recent study by the Alaska Native Health Consortium, inhaling has a higher risk of ''instant death'' than any other abused substance.

That's what happened to Theresa, an 18-year old who lived in rural Western Alaska. Theresa was inhaling gasoline; shortly thereafter, her heart stopped. She was found alone and outside in near zero temperatures. Theresa, who was the youngest of five children and just a month shy of graduation, was flown to Fairbanks Memorial Hospital where she was pronounced dead on arrival.

Two years ago in Pennsylvania, a teenage driver, with four teenage passengers, lost control of her car in broad daylight. The car hit a tree with such impact that all passengers were killed. High levels of a chemical, found in computer keyboard cleaners, were found in the young driver's body. A medical examiner's report cited ''impairment due to inhalant abuse'' as the cause of the crash.

Mr. Haviland, the principal of the high school where the five girls attended, said neither teachers nor school administrators ever suspected that students were involved with inhalants.

Inhalants are considered a ''gateway'' to other illicit drug abuse. Because these products are legal, affordable and their abuse is hard to detect, awareness must be promoted among young people, parents and educators. We hope that a national week of awareness will encourage programs throughout the country, alerting parents and children to the dangers of inhalants.

I ask my colleagues to support and cosponsor this resolution. This national tragedy can be prevented through education and awareness. Hopefully, this week of awareness will save a child's life, and end one of our nation's silent epidemics.

I ask unanimous consent that the text of the bill be printed in the RECORD.

SENATE CONCURRENT RESOLUTION 20—SETTING FORTH THE CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2002

Mr. HOLLINGS submitted the following concurrent resolution; which was referred to the Committee on the Budget, as follows:

S. CON. RES. 20

Resolved by the Senate (the House of Representatives concurring),

SECTION 1. CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2002.

(a) DECLARATION.—Congress determines and declares that this resolution is the concurrent resolution on the budget for fiscal year 2002.

(b) TABLE OF CONTENTS.—The table of contents for this concurrent resolution is as follows:

TITLE I—LEVELS AND AMOUNTS

SEC. 101. RECOMMENDED LEVELS AND AMOUNTS.

The following budgetary levels are the appropriate levels for the fiscal year 2002:

(1) FEDERAL REVENUES.—For purposes of the enforcement of this resolution—

(A) The recommended level of Federal revenues pursuant to CBO estimates is $1,703,488,000,000.

(B) The amount by which the aggregate level of Federal revenues should be changed is $0.

(2) NEW BUDGET AUTHORITY.—For purposes of the enforcement of this resolution, the appropriate level of total new budget authority is $1,600,781,000,000.

(3) BUDGET OUTLAYS.—For purposes of the enforcement of this resolution, the appropriate level of total budget outlays is $1,561,391,000,000

(4) DEFICITS.—For purposes of the enforcement of this resolution, according to CBO the amount of the deficit is plus $142,097,000,000.

(5) PUBLIC DEBT.—The appropriate level of the public is $5,564,449,000,000.

(6) DEBT HELD BY THE PUBLIC.—The appropriate level of the debt held by the public is $2,848,489,000,000.

SEC. 102. SOCIAL SECURITY.

(a) SOCIAL SECURITY REVENUES.—For purposes of Senate enforcement under section 311 of the Congressional Budget Act of 1974, the amount of revenues of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund is $532,308,000,000.

(b) SOCIAL SECURITY OUTLAYS.—For purposes of Senate enforcement under section 311 of the Congressional Budget Act of 1974, the amount of outlays of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund is $360,171,000,000.

(c) SOCIAL SECURITY ADMINISTRATIVE EXPENSES.—For purposes of Senate enforcement under section 311 of the Congressional Budget Act of 1974, the amounts of new budget authority and budget outlays of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund for administrative expenses are $3,579,000,000 for new budget authority, and $3,525,000,000 for outlays.

SEC. 103. MAJOR FUNCTIONAL CATEGORIES.

Congress determines and declares that the appropriate levels of new budget authority, budget outlays, new direct loan obligations, and new primary loan guarantee commitments for fiscal year 2002 for each major functional category are:

(1) National Defense (050):
(A) New budget authority, $321,022,000,000.
(B) Outlays, $313,400,000,000.
(2) International Affairs (150):
(A) New budget authority, $23,214,000,000.
(B) Outlays, $18,838,000,000.
(3) General Science, Space, and Technology (250):
(A) New budget authority, $21,583,000,000.
(B) Outlays, $20,725,000,000.
(4) Energy (270):
(A) New budget authority, $1,360,000,000.
(B) Outlays, $−19,000,000.
(5) Natural Resources and Environment (300):
(A) New budget authority, $30,031,000,000.
(B) Outlays, $28,305,000,000.
(6) Agriculture (350):
(A) New budget authority, $19,265,000,000.
(B) Outlays, $17,593,000,000.
(7) Commerce and Housing Credit (370):
(A) New budget authority, $10,174,000,000.
(B) Outlays, $6,587,000,000.
(8) Transportation (400):
(A) New budget authority, $64,444,000,000.
(B) Outlays, $56,167,000,000.
(9) Community and Regional Development (450):
(A) New budget authority, $11,892,000,000.
(B) Outlays, $11,730,000,000.
(10) Education, Training, Employment, and Social Services (500):
(A) New budget authority, $80,924,000,000.
(B) Outlays, $76,658,000,000.
(11) Health (550):
(A) New budget authority, $191,280,000,000.
(B) Outlays, $189,220,000,000.
(12) Medicare (570):
(A) New budget authority, $229,179,000,000.
(B) Outlays, $229,121,000,000.
(13) Income Security (600):
(A) New budget authority, $273,138,000,000.
(B) Outlays, $271,655,000,000.
(14) Social Security (650):
(A) New budget authority, $11,004,000,000.
(B) Outlays, $11,003,000,000.
(15) Veterans Benefits and Services (700):
(A) New budget authority, $51,248,000,000.
(B) Outlays, $50,657,000,000.
(16) Administration of Justice (750):
(A) New budget authority, $32,431,000,000.
(B) Outlays, $31,436,000,000.
(17) General Government (800):
(A) New budget authority, $16,496,000,000.
(B) Outlays, $16,193,000,000.
(18) Net Interest (900):
(A) New budget authority, $254,882,000,000.
(B) Outlays, $254,882,000,000.
(19) Allowances (920):
(A) New budget authority, $0.
(B) Outlays, $0.
(20) Undistributed Offsetting Receipts (950):
(A) New budget authority, $−42,303,000,000.
(B) Outlays, $−42,303,000,000.
(21) Multiple functions (990):
(A) New budget authority, $−483,000,000.
(B) Outlays, $−457,000,000.

TITLE II—BUDGETARY RESTRAINTS AND RULEMAKING

SEC. 201. RESERVE FUND FOR TAX CUTS IN THE EVENT OF A RECESSION.

(a) REPORTING A RECESSION.—If the budget and economic outlook update report provided pursuant to section 202(e)(2) of the Congressional Budget Act of 1974 estimates that there will be 2 consecutive quarters of negative economic growth in the current quarter and the next 2 quarters, the chairman of the Committees on the Budget of the Senate or the House of Representatives, as applicable, may make the adjustments provided in subsection (b).

(b) ADJUSTMENTS.—The chairman of the Committee on the Budget of the Senate or House of Representatives, as applicable, may—

(1) reduce the on-budget revenue aggregate by $100,000,000,000; and

(2) direct the chairman of the Committee on Finance or the Committee on Ways and Means, as applicable, to report by a date certain a reconciliation bill reducing revenues by $100,000,000,000.

SEC. 202. RESERVE FUND FOR TAX CUTS IN THE EVENT OF A SURPLUS.

(a) REPORTING A SURPLUS.—If the budget and economic outlook update report provided pursuant to section 202(e)(2) of the Congressional Budget Act of 1974 estimates that the gross Federal debt for the budget year will be reduced, the chairman of the Committees on the Budget of the Senate or the House of Representatives, as applicable, may make the adjustments provided in subsection (b).

(b) ADJUSTMENTS.—The chairman of the Committee on the Budget of the Senate or House of Representatives, as applicable, may—

(1) reduce the on-budget revenue aggregate by an amount equal to the amount of the reduction determined as provided in subsection (a); and

(2) direct the chairman of the Committee on Finance or the Committee on Ways and Means, as applicable, to report by a date certain a reconciliation bill reducing revenues by the amount of that reduction.

SEC. 203. EXERCISE OF RULEMAKING POWERS.

Congress adopts the provisions of this title—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change those rules (so far as they relate to 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.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that an article I wrote entitled ''Reaganomics II'' be printed in the RECORD. This article provides an honest budgetary assessment and thereby makes the argument for why a one year budget is needed.

Reaganomics II, a tax cut of $1.6 trillion, is steamrolling through the Congress. Reaganomics I, the tax cut of $750 billion, gave us the biggest waste in history! The debt soared from less than $1 trillion to $4 trillion, now $5.7 trillion, with interest costs of $365 billion annually. In the last ten years we have wasted $3.4 trillion on interest costs and we continue to spend each day, every day, $1 billion for nothing. But President Bush and the Republican Congress charge on wailing about trillions of dollars in surplus, joined by the free press with USA Today's headline of February 22, ''Government Remains Awash In Money''. Awash in money? Surplus? Nowhere to be found. Ever since President Lyndon Johnson balanced the budget in 1969 we have ended each year with a deficit. Fiscal year 2000 ended in deficit, and the Secretary of the Treasury has just reported the debt has already increased this fiscal year another $52 billion. President Bush's budget, just submitted, shows the debt increasing in the next 10 years from $5.637 trillion to $7.159 trillion. No surplus.

The U.S. economy is hemorrhaging with a current account deficit of $439 billion and the government is awash in red ink. The Social Security account at this moment is in the red $1 trillion. The Medicare account is in the red $238 billion. We owe Military Retirement $156 billion. We owe Civil Service Retirement $544 billion. The Unemployment Compensation fund is $92 billion in the red. Yet the Chairman of the Federal Reserve, Alan Greenspan, appears before Congress stating, ''We are running out of debt to retire.'' Ridiculous.

Greenspan justifies talk of ''surplus'' by dividing the national debt in two: debt borrowed from government accounts such as Social Security, Medicare, Military Retirement, etc.; and

debt owed the public by borrowing in the open market. The term ''public debt'' infers that is all the government owes. The government owes both public and government debt. Ignoring the overall national debt, Greenspan testifies only about public debt. He fears the public debt will be paid off and the investment of ''surpluses'' will become a political football. Last year when Greenspan called for paying down the debt, the public debt was $3.4 trillion. Now it has only been paid down $13 billion and he calls for a tax cut. And the reduction of $13 billion is achieved by transferring $13 billion of public debt to the government debt. It is like paying off your Visa with your MasterCard. You still owe the money. The national debt continues to increase, not be ''paid down''. No surplus.

Dividing the national debt is a fraud. Worse, ten-year economic projections, or budgets, give President Bush running room for a $1.6 trillion tax cut and a $25 billion increase in spending—Reaganomics II! The President's plan is contingent upon spending cuts that he knows Congress will reject, and the Democratic alternative of a $900 billion tax cut is no more than Reaganomics Lite. Under each plan, deficits, on the decline for the past eight years, will increase. The national debt and interest costs will soar, the dollar weakened. To meet the demand for higher yields to offset the decline in the dollar, Greenspan will have to raise interest rates which will guarantee a hard landing.

There is no education in the second kick of a mule. The way to stop Reaganomics II is with a one-year budget. We survived 200 years with one year budgets. First, start with this year's budget for next year. Freeze it. Debate and vote on any proposed cuts and require that amendments for prescription drugs and health care be accompanied by an offset. Depending on the economy, delay all tax cut proposals until later this year or this time next year when we learn whether it's a soft landing or a hard landing. Then we can act responsibly.

DIRECTING DISCHARGE OF S.J. RES. 6

We, the undersigned Senators, in accordance with chapter 8 of title 5, United States Code, hereby direct that the Senate Committee on Health, Education, Labor, and Pensions be discharged of further consideration of S.J. Res. 6, a resolution on providing for congressional disapproval of the rule submitted by the Department of Labor relating to ergonomics, and, further, that the resolution be immediately placed upon the Legislative Calendar under General Orders.

Don Nickles, Jon Kyl, Phil Gramm, Kay Bailey Hutchison, Larry E. Craig, Chuck Grassley, Craig Thomas, Bill Frist, Michael B. Enzi, Judd Gregg, Jeff Sessions, Orrin G. Hatch, Pete V. Domenici, Mitch McConnell, Pat Roberts, Fred Thompson.

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Christopher S. Bond, John E. Ensign, Conrad Burns, Ted Stevens, George Allen, Olympia J. Snowe, Mike Crapo, Pete Fitzgerald, R.F. Bennett, Jim Jeffords, Tim Hutchinson, Wayne Allard, Jesse Helms, Trent Lott, Rick Santorum, Jim Inhofe, John Warner, Frank H. Murkowski.

PRIVILEGE OF THE FLOOR

Mr. CARPER. Mr. President, I ask unanimous consent that Luis Rivera, of the Finance Committee staff, be accorded floor privileges for the duration of the debate on the bankruptcy bill.

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

ORDERS FOR TUESDAY, MARCH 6, 2001

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 10 a.m. on Tuesday, March 6. I further ask consent that on Tuesday, immediately following the prayer, the Journal of proceedings be approved to date, the morning hour be deemed expired, and the time for the two leaders be reserved for their use later in the day.

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

Mr. FRIST. Further, I ask unanimous consent that the Senate stand in recess from the hours of 12:30 p.m. to 2:15 p.m. for the weekly policy conferences to meet.

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

PROGRAM

Mr. FRIST. For the information of all Senators, the majority leader will be recognized at 10 a.m. to begin consideration of Senate Joint Resolution 6, the ergonomics disapproval resolution. Under the Congressional Review Act, there will be up to 10 hours of debate, with a vote on disapproval of the ergonomics rules to occur at the use or yielding back of that time. The Senate may also resume consideration of the bankruptcy bill. Therefore, Senators can expect votes during tomorrow's session.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:39 p.m., adjourned until Tuesday, March 6, 2001, at 10 a.m.