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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable EVAN BAYH, a Senator from the State of Indiana.

The PRESIDING OFFICER. Today's prayer will be offered by guest Chaplain, Canon Pastor Lawson Anderson, of Trinity Cathedral, Little Rock, AR.

It is my privilege to notify all those present that Reverend Anderson is the uncle of our colleague, Senator BLANCHE LINCOLN of Arkansas.

PRAYER

The guest Chaplain offered the following prayer:

Gracious God, as we prepare in the week ahead to celebrate the anniversary of the founding of this Republic, we commend this Nation to Your merciful care, and we pray that being guided by Your providence, we may live securely in Your peace.

Grant to the President of the United States, to the Members of this Congress, and to all in authority wisdom and strength to know and to do Your will. Fill them with the love of truth and righteousness and make them ever mindful of their calling to serve this country in Your fear. Guide them as they shape the laws for maintaining a just and effective plan for our Government.

Give to all of us open minds and caring hearts and a firm commitment to the principles of freedom and tolerance established by our Nation's founders and defended by countless patriots throughout our history.

Help us to stamp out hatred and bigotry and to embrace the love and concern for others that You have clearly shown to be Your will for all mankind.

Bring peace in our time, O Lord, and give us the courage to help You do it.

We ask this in Your holy name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable EVAN BAYH led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 26, 2001.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable EVAN BAYH, a Senator from the State of Indiana, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

The ACTING PRESIDENT pro tempore. The Senator from Arkansas.

I shall take the privilege of the Chair and say that was an especially moving invocation this morning.

Mrs. LINCOLN. I thank the Chair.

I thank the Senator from Nevada and all of my colleagues for the opportunity to share with you all this morning a very special individual in my life. I have been very blessed to grow up in a very close-knit family of supportive and encouraging people. My uncle, the Reverend Lawson Anderson, is just one of those wonderful people. I grew up within walking distance of both sets of my grandparents, and on hot summer days I would walk over to his mother's home and in the cool of his house play the organ that she practiced as she was the organist for our church.

One of the most wonderful stories and I think lessons I have learned from my Uncle Lawson I would like to share with my colleagues. He did not get started in ministry. His degree is in forestry. He began as a forester. He then went into banking and figured out, in order to really make it through life, he needed the wisdom and the courage that came from the ministry, which he joined later in life. He did say, however, that one of the best lessons he learned was not necessarily from the ministry but from his time in the forest industry.

He talked about dealing with problems in life, and he said one of the best lessons he learned as a forester was when he was very young and was presented with a forest fire, a difficult problem. He was beating at that fire with a shovel, and one of the older members of the forestry team came up to him and said: What are you doing? He said: I am putting this fire out; I'm putting it out. And the wise forester, who was beyond I guess his years in wisdom, looked at Uncle Lawson and said: That is not how you conquer a problem. The way you conquer a problem and, more importantly, a forest fire is you walk around it; you approach it from the front; you evaluate the circumstances: Which way is the wind blowing? What kind of moisture is there in the area? And then you dig a hole all the way around so that you encircle your problem and you actually take care of the whole thing. You do not just beat at it, but you make sure you get in front of your problems, you assess the situation, and you face them head on.

I am honored and privileged to serve the people of our great State of Arkansas. It has been something that has certainly been incredible in my life. But when I am able to bring to the Senate and share with these individuals, these incredible individuals with whom I serve in this great body, someone who has been a major part of shaping my life and molding me into the person that I am, it is, indeed, my

honor and privilege to do that and to have him with us today.

I thank the Chair.

RESERVATION OF LEADER TIME

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

BIPARTISAN PATIENTS PROTECTION ACT

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

The senior assistant bill clerk read as follows:

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

Pending:

Frist (for Grassley) motion to commit to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions with instructions to report back not later than that date that is 14 days after the date on which this motion is adopted.

Gramm amendment No. 810, to exempt employers from certain causes of action.

Edwards (for McCain/Edwards) amendment No. 812, to express the sense of the Senate with regard to the selection of independent review organizations.

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 2 hours of debate in relation to the Grassley motion to commit and the Gramm amendment No. 810, the time to be equally divided in the usual form.

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

SCHEDULE

Mr. REID. Mr. President, I just want to make a brief statement on behalf of Majority Leader DASCHLE. As has been indicated, the resumption of the Patients' Bill of Rights will be the order at hand today. As has been announced, there will be approximately 2 hours of closing debate in relation to the Grassley motion to commit—and I understand he wants to modify his motion.

I ask Senator GRASSLEY, it is my understanding the Senator wants to modify his motion to commit; is that right?

Mr. GRASSLEY. Yes.

Mr. REID. We would not object—and with respect to the Gramm amendment regarding employers. That debate will be ended shortly. There will be two rollcall votes at 11:30 a.m.

I met with Senator DASCHLE early this morning, and he has indicated that without any question we are going to finish the Patients' Bill of Rights before the Fourth of July break.

Now, I would say to everyone within the sound of my voice, I believe we have been on this bill a week. I think we have fairly well defined what the issues are, and I think it would be in everyone's best interests if today we would decide what those issues are and have amendments offered. If people want time agreements, fine. If they do not, debate them, complete what they want to say, and move on. Everyone has many things to do during the Fourth of July break. But this is important. This bill has been around for 5 years, and we are going to complete consideration of this legislation.

There is also a need to complete the supplemental appropriations bill. As I have indicated before, I think Senator BYRD and Senator STEVENS have done an excellent job in moving that bill along and I think we can do that very quickly. But there are going to be late nights tonight, tomorrow, and Thursday. We are going to do our best to make sure everyone is heard, but also in consideration of other people's schedules, we will do our best to complete action on this legislation as quickly as possible.

I see Senator GREGG, the ranking manager of the bill, is here. I did not see him earlier.

Mr. GREGG. Mr. President, I would like to ask unanimous consent that Senator ENZI be added as a cosponsor of the Gramm amendment which is pending.

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

Mr. GREGG. I thank the Senator.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I hope you will call on the Senator from Texas.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. GRAMM. Mr. President, I ask unanimous consent that following the vote on the Grassley amendment, each side have a total of 3 minutes to summarize the arguments on the amendment excluding employers from liability.

Mr. REID. No objection.

The ACTING PRESIDENT pro tempore. Is there objection?

The Chair hears none, and it is so ordered.

The Senator from Iowa.

MOTION TO COMMIT, AS MODIFIED

Mr. GRASSLEY. Mr. President, before I speak on my motion, I ask unanimous consent that the pending motion to commit be modified to reflect the referral of the bill jointly to the Committee on the Judiciary and the same 14-day timeframe that affects the Finance Committee and the HELP Committee also apply to the Judiciary Committee.

The ACTING PRESIDENT pro tempore. Is there objection?

The Chair hears none, and it is so ordered.

The motion to commit, as modified, is as follows:

MOTION TO COMMIT

Mr. Grassley moves to commit the bill S. 1052, as amended, to the Committee on Finance, the Committee on Health, Education, Labor, and Pensions, and the Committee on the Judiciary with instructions to report the same back to the Senate not later than that date that is 14 (fourteen) days after the date on which this motion is adopted.

Mr. GRASSLEY. Mr. President, I thank the majority for permission to modify my motion.

Mr. President, I rise to speak in favor of my motion to commit the Kennedy-McCain bill to the Health, Education, Labor, and Pensions, Judiciary, and Finance Committees with instructions that these committees report the bill out in 14 days.

On a preliminary note, I thank the good counsel of Senators THOMPSON and HATCH. Yesterday, they reminded me that the Kennedy-McCain bill also includes a series of provisions on liability that fall under Judiciary's jurisdiction and have never been reviewed by that committee either. Thus, I have modified my motion to include the Judiciary Committee along with the HELP and Finance Committees.

I am deeply troubled that the Kennedy-McCain bill has bypassed the relevant committees and has been brought directly to the floor—without one hearing, without one markup, and without public input into this particular bill.

As I made very clear on the floor yesterday, I strongly believe that patient protections are critical to every hard-working American who relies on the managed care system. We need a strong and reliable patients' rights bill and I'm supportive of this effort 100 percent. What we do not need is a bill, like Kennedy-McCain, that exposes employers to unlimited liability, drives up the cost of health insurance, and ultimately increases the number of Americans without health coverage.

Instead, I believe we should protect patients by ensuring access to needed treatments and specialists, by making sure each patient gets a review of any claim that may be denied, and above all by ensuring that Americans' who rely on their employers for health care can still get this coverage. I'm confident these goals can be reached.

However, the very fact that our new leadership brought the Kennedy-McCain legislation directly to the floor without proper committee action, violates the core of the Senate process.

I know my colleagues on the other side will waste no time accusing me of delaying this bill, but the truth is, had the relevant committees been given the opportunity to consider the Kennedy-McCain legislation in the first place, I would not be raising these objections.

By bringing this bill directly to the floor, the message seems to me to be loud and clear: that the new chairmen under the new Democratic leadership are merely speedbumps on the road to the floor.

I guess, as a former chairman who hopes to be chairman again in the near future, I do not particularly enjoy being a speedbump. But there's something much more important at stake—

process. A flawed process, more often than not, will lead to a flawed legislative product. We are seeing that point in spades on this legislation.

Does anyone really think that if we had followed regular order and gone through the committee process that the bill before us would be in worse shape? Would we still be sitting around wondering where this bill is going? Or would it be necessary to define the employer liability exception with Senator GRAMM's amendment?

I guess I have more confidence in the committees of jurisdiction than the new leadership and sponsors of this bill do. The HELP, Judiciary, and Finance Committees have the experience and expertise to deal with the important issues this bill presents. My motion simply provides these fine committees with an opportunity to do their jobs.

Now let me turn for a moment to my committee, the Finance Committee. The Kennedy-McCain legislation treads on the Finance Committee's jurisdiction in three ways that are by no means trivial—on trade, Medicare, and tax issues.

In fact, approximately one-third of the nearly $23 billion in revenue loss caused by this bill, is offset by changes in programs within the jurisdiction of the Finance Committee.

First, section 502 extends customs user fees, generating $7 billion in revenue over eight years. These fees were authorized by Congress to help finance the costs of Customs commercial operations.

Most of my colleagues know first hand the financial pressures put on the Customs Service. From Montana, to Delaware, Massachusetts, Texas, and California, there is a dire need for funds to modernize the Customs service. Yet, the Kennedy-McCain legislation diverts money intended for Customs and uses it to pay for this bill. This is not what Congress intended.

If these fees are to be extended—and I emphasize ''if''—they should be done so in the context of a Customs reauthorization bill in the Finance Committee. This gives the Finance Committee the opportunity to carefully review, analyze and debate the implications of any Customs changes on the future of the Customs service and Customs modernization.

Second, section 503 of the Kennedy-McCain bill delays payments to Medicare providers, which generates $235 million to help offset the losses in the bill.

It is ironic that while many of us are spending significant amounts of our time working to improve Medicare's effectiveness and efficiency—this bill actually takes steps to exacerbate the frustrations so many providers already experience today with delayed payments in Medicare.

Any changes to Medicare need thorough evaluation and consideration in the Finance Committee—where the expertise exists to determine the implications of any changes to the program. For those who think we can just tinker with this program, they're wrong. It is much too important to our Nation's 40 million seniors and disabled that rely on it. Any change, large or small, can have a sweeping impact on seniors, providers, and taxpayers.

Finally, let me turn to the third Finance Committee policy area implicated in this legislation. I'm talking about health care-related tax incentives.

Now I know there are no tax code changes in this particular bill. However, in years past, tax incentives have been an important part of this legislation. There's good reason for this. As Senator MCCAIN recognized, tax incentives provide balance to patients' rights legislation by making health care more affordable and therefore more accessible.

I am a strong believer in health tax policy and have proposed a number of changes in the tax treatment of health care—including ways to reduce long-term care insurance and expenses, promote better use of medical savings accounts, and improve the affordability of health insurance through refundable tax credits.

But while I might agree with these policies on a substantive level, I will continue to oppose health tax amendments to the Kennedy-McCain legislation simply because the Finance Committee has never been given the opportunity to analyze, review, or discuss the implications of these provisions on the internal revenue code—a code that is the responsibility of the Finance Committee.

My motion provides the Finance Committee with its rightful opportunity to add health tax cut provisions to this legislation. There is no doubt that the Hutchinson-Bond amendment, along with a number of other good health care-related tax cuts, would be included in a package before the Finance Committee.

On that point, I want to make clear that at my urging, Chairman BAUCUS has already agreed to consider a package of health care-related tax cuts in an upcoming Finance Committee markup. So I look forward to working through these very important issues in the committee.

It is my responsibility to Iowans, my Finance Committee members, and all Senators to be vigilant on committee business. I cannot let these things just slip by. That would be easy to do, but it would also be irresponsible.

During my tenure as Finance chairman, Senator after Senator urged that the committee process be upheld regarding tax legislation. I listened and I acted.

I resisted strong pressures to bypass the Finance Committee as we considered the greatest tax relief bill in a generation. I forged a bipartisan coalition and consensus which I believe made it a better bill. Ultimately we were able to craft a bill that benefited from the support of a dozen members from the other side.

So I stand before you as someone who has seen the importance of the committee process as well the success of this process.

The new leadership and this bill's sponsors have simply tossed aside the committees of jurisdiction. As justification for these actions, the new leadership says Republicans did the same thing on their patients' rights bill in 1999, but this is simply not the case.

In 1999, the patients' rights legislation underwent a series of hearings in the HELP committee, and ultimately there were 3 days of markup—let me repeat 3 days of markup—in that committee. And only after the bill was reported out of the committee was it then brought up for consideration by the full Senate.

So let us hear no more discussion on this point. There is no justification for the conduct on this bill. It is a fact that the Kennedy-McCain bill before us today has never undergone the committee processes that the 1999 patients' rights legislation did.

What our new leadership has done is violated the rights of the members of three important Senate committees from utilizing their expertise and experience to fully evaluate the Kennedy-McCain legislation—a job these committees were designed to do.

Any members of the three committees that support this faulty process should beware. Supporting this process means that they support disenfranchising their own rights as committee members.

What my motion does is correct this faulty process, a process that has ensnared a bill that could have otherwise moved through floor debate smoothly, if the committee process had been upheld.

A vote for my motion to commit puts this bill on the right track. It lets members of the HELP, Judiciary, and Finance Committees do the jobs they were sent here to do.

These committees have good track records in this Congress. They will continue to produce legislation that is important to our Nation. Taking this bill through the relevant committees will only improve this legislation and ultimately make it better law. That's what is in the best interests of the patients were trying to protect.

I believe we are at a critical juncture in history. Through a very close election, the American people have instructed those of us who represent them in this town of Washington, DC, to get serious about legislative business.

What the Iowans have told me, and Americans have told all of us, is to work together to produce results. They want less partisanship, more action, and more thoughtful debate.

People in Iowa expect Republicans and Democrats to work together, with President Bush, to get things done. They expect us to refrain from playing partisan politics and to be serious legislators.

We have a responsibility to our constituents who have given us the opportunity to represent them. That responsibility is to legislate in a thorough, fair, and constructive fashion. That is not the way the Kennedy-McCain bill has been handled thus far.

If we are to carry out the people's business in the manner the Senate set forth—through the committee process—then we must utilize this process to produce legislation that will help improve the lives of every American.

After all, is that not what the people really want? A good law that is produced in the proper way.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield such time as the Senator from Montana desires.

Mr. BAUCUS. Mr. President, I commend my good friend from Iowa, Senator GRASSLEY, and particularly applaud his continued effort to work in cooperation and in a bipartisan and frank manner to get results. It is an approach he has taken when he was at the helm of the Finance Committee and an approach he knows works. I commend him for it.

I take this opportunity to address one of the amendments presently pending, the amendment offered by my colleague from Texas, Senator GRAMM.

While I will not vote for this amendment, I believe it is critical that we protect employers from unwarranted liability claims. But the Gramm amendment I believe goes too far. It protects employers from liability even when they are responsible for making medical decisions that result in injury or death.

Let me be clear. I do not believe employers should be held liable for medical decisions made by others, nor do I believe they should be exempt from responsibility if they are making medical decisions themselves.

This issue is very important to businesses in my State. It is very important to the people in my State. I must say it is very important to me. For that reason, I am working with my colleagues on a compromise. I have recently spoken with Senator EDWARDS. We are working together on a bipartisan compromise that will shield employers from liability when they are not involved in making decisions about medical care. It is a bipartisan compromise that will also protect patients. I believe there is a middle ground. I will be working with my colleagues to find it.

I yield the floor.

The PRESIDING OFFICER (Mr. CLELAND). The Senator from Massachusetts is recognized.

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

The PRESIDING OFFICER. The Senator from Massachusetts controls 51 minutes on the motion and the amendment.

Mr. KENNEDY. Mr. President, I yield myself 15 minutes.

Mr. President, the Senate recently completed major education reform after six weeks of debate focused on accountability. We agreed that in order to persuade schools to live up to high standards, serious consequences were needed for schools that failed to improve. Republicans in particular emphasized the need for tough financial sanctions. The risk of losing funds, they argued, is an appropriate and necessary incentive to achieve high performance.

This emphasis on accountability is not new. It was also the hallmark of welfare reform, and the Senate has applied the same principle to many other programs as well. Over and over, our Republican friends have argued that increased accountability is the way to produce responsible behavior.

It is ironic that some of those who have called for accountability most vigorously in these other debates now oppose accountability for HMOs and health insurance companies when their misconduct seriously injures patients. It is irresponsible to suggest that HMOs and insurance companies should not face serious financial consequences when their misconduct causes serious injury or death. If ever there was a need for accountability, it is by those responsible for providing medical care.

The consequences can be extremely serious when an HMO or an insurer denies or indefinitely delays access to essential medical treatment. It can literally be a matter of life and death. Yet there is overwhelming evidence that access to care is being denied in many cases for financial, not medical, reasons.

And after five years of debating this issue, we've finally reached the point where very few Senators will come to the floor and openly claim that HMOs and health insurers should not be held accountable in court when they hurt people. These corporations desperately want to keep the immunity that they currently have, immunity that no other business in America enjoys. But the HMOs and insurers have behaved so irresponsibly and hurt so many people that they are finally in danger of losing it. Too many children have died, too many families have suffered, for even the HMOs' closest allies to stand here and say that they do not need to be held accountable.

So instead, the HMOs' multi-million dollar lobbyists and their allies in Congress have devised a strategy for killing this legislation without directly questioning the need to hold HMOs accountable. Indeed, some of those who repeatedly called for accountability in other areas are the very same members who are searching for ways to enable these companies to escape accountability when their misconduct seriously injures people.

The pending amendment by Senator GRAMM is a perfect example of this strategy of collateral attack—an attempt to kill this legislation by distorting what it would actually do, and by seeking to turn the focus away from HMO misconduct. Those supporting the Gramm amendment claim that all employers are endangered by this legislation. Such claims are wrong. The vast majority of employers who provide health care merely pay for the benefit. They do not make medical judgments, they do not decide individual requests for medical treatment. Thus, under our legislation, they have no liability. The only employers who would be liable are the very few who step into the shoes of the doctor or the health care provider and make final medical decisions. Our legislation only allows employers to be held liable in court when they assume the role of the HMO or the health insurance company.

By completely exempting employers from all liability no matter how closely tied the employer is to an HMO and no matter how severe the employer's misconduct, Senator GRAMM's proposal aims to break the link of accountability in this bill.

President Bush stated in the ''Principles'' for the Patients' Bill of Rights which he issued on February 7th: ''Only employers who retain responsibility for and make final medical decisions should be subject to suit.'' That is consistent with what our bill does. But Senator GRAMM's amendment is directly at odds with the President's principle. The Gramm amendment would mean that ''employers who retain responsibility for and make final medical decisions'' could not be sued.

I'm surprised that the Senators from Texas would propose such an extreme approach—eliminating all accountability for employers no matter what they do. Under their proposal, employers are never held accountable, period, even if an employer causes the death of a worker's child by interfering in medical decisions that should have been made by doctors.

The Gramm amendment is a poison pill designed to kill this legislation. Not only does it absolve employers of liability regardless of how egregious their conduct, it also creates a loophole so enormous that every health plan in America would look for a way to reorganize in order to qualify for the absolute immunity provided by the Gramm amendment. Senator GRAMM creates a safe harbor so broad that it will attract every boat in the fleet.

We all know what would happen if this amendment became law. HMO lawyers would craft contracts that enable them to be treated as employees of the companies they serve, so HMOs could take advantage of Senator GRAMM's absolute immunity. Other employers would turn to self insurance as an obvious way to avoid accountability for the actions of their health plans.

Health insurance companies would rework their contracts to give employers the final say on benefit determinations in order to take advantage of this shield from accountability.

Today fewer than 5 percent of employers assume direct responsibility for

medical decisions on behalf of their employees. But if the Gramm amendment became law, the share of employers taking on these decisions would grow enormously. By providing absolute immunity from accountability, the Gramm amendment creates a strong incentive for employers to intervene in medical decisions, despite the fact that most employers are not qualified to do so.

Employers and HMOs are free to negotiate any relationship they want, and that relationship can be detailed in writing, or it can be detailed in informal ''understandings'' that workers never get to see. What the Gramm amendment does is leave families completely vulnerable to the most unscrupulous HMOs and employers.

For example, an employer could demand that an HMO call it for approval before allowing any treatment that would cost over a certain amount, compromising the patient's privacy and enabling the employer to make medical decisions based on cost alone. The Gramm amendment would completely shield an employer who causes grave injury or death in this way, and the HMO might also escape liability because it could show that the employer alone made the final decision.

Subtler employers could instruct their HMOs to delay or complicate the treatment approval process for certain kinds of medical care or for certain employees. The Gramm amendment would allow an employer to require its HMO to send it all requests for mammograms, and the employer would not be accountable if it chose to delay or deny a request for a mammogram that would have timely detected breast cancer. The same employer practice can interfere with many diagnostic and treatment decisions.

As Judy Lerner discovered, there is no end to the irresponsible behavior of some unscrupulous employers. Ms. Lerner worked in Boston for over two decades as a consultant in a human resources firm that self insured, and she relied on the health benefits that the company provided. But when she broke her leg in several places and endured emergency surgery, the company simply stopped helping with her medical bills, agreeing only to pay for crutches. Despite her doctors' vigorous arguments for continued home medical care, the company abandoned her. The Gramm amendment would leave all employees like Ms. Lerner vulnerable after they have been told that their medical bills would be covered at the time they accepted employment and begin working hard. The Gramm amendment allows employers to deny necessary medical treatment any time it suddenly becomes too costly or inconvenient, regardless of how much the employee has relied on that coverage.

Most employers, of course, would not find it morally acceptable to intervene in medical decisions against their employees. But if I were a small business owner, I wouldn't want to compete in the environment created by the Gramm amendment because it gives the worst employers an economic incentive to cut corners on employee health care and frees them from all accountability when they do so. It would create an uneven playing field, allowing unscrupulous employers to gain a business advantage over their honorable competitors.

As the President says, ''employers who retain responsibility for and make final medical decisions should be subject to suit.'' That is what President Bush wants, and that is what we want to accomplish. I am confident that the McCain-Edwards language accomplishes this, but I remain open to other ideas for writing President Bush's principle into law.

Under our language, employers have no liability as long as they do not make decisions about whether a specific beneficiary receives necessary medical care. The only employers who can be brought into court are the very few who step into the shoes of the doctor or the health care provider and make final medical decisions.

Our bill does not authorize suit against an employer or other plan sponsor unless ''there was direct participation by the employer or other plan sponsor.'' ''Direct participation'' is defined as the ''actual making of such decision or the actual exercise of control'' over the individual patient's claim for necessary medical treatment.

Our bill directly protects employers from liability by stating: ''Participation . . . in the selection of the group health plan or health insurance coverage involved or the third party administration'' will not give rise to liability; ''Engagement . . . in any cost-benefit analyses undertaken in connection with the selection of, or continued maintenance of, the plan or coverage'' will not give rise to liability; ''Participation . . . in the design of any benefit under the plan, including the amount of co-payment and limits connected with such benefit'' will not give rise to liability. Our language is clear. As long as the employer does not become involved in individual cases it is immunized from suit.

Employers are very well protected by our legislation as it is written. We are pleased to consider other strategies for accomplishing President Bush's principle on this issue, but the loophole that the Texas Senators propose fundamentally contradicts the President's principle and ours.

Senator SNOWE and others are working on language to codify that principle, and I am looking forward to seeing their ideas.

The Gramm amendment is exactly the wrong medicine for America. It deserves to be soundly defeated for the sake of a level playing field for all employers, and for the good health of employees and their families.

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

The PRESIDING OFFICER. Who yields time?

Mr. BUNNING. Mr. President, I will take the time Senator GRAMM has and yield myself as much time as I may consume.

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

Mr. BUNNING. Mr. President, I rise in strong support of the Gramm amendment and ask unanimous consent to be listed as a cosponsor.

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

Mr. BUNNING. Today in the United States we do not mandate that any employer or business provide health insurance. We do not force them to buy it for themselves or their employees. We let the employer make this decision.

And employers all across the United States do provide health care insurance that covers over 160 million people. These employers do not have to provide that health care. They do this voluntarily for a number of reasons. Some actually do it because they care about their employees, but most do it because it is good business—it helps attract employees to come to work for them. But regardless of why these employers offer health benefits, the important factor is that they do this voluntarily.

There is no employer mandate in America. We had that debate in 1994 during the argument about the Clinton health bill, and it was clear that everyone—the American people and American business—wanted to keep our voluntary system. But if the bill before us today becomes law, that could all change.

In spite of what the Senator from Massachusetts said, businesses—big and small—all over America would stop offering health insurance benefits to their employees. And the reason they would stop can be summed up in one word—lawsuits.

The simple fact is that the Kennedy-McCain bill would expose employers who provide health care insurance coverage to their employees to lawsuits. I have heard some supporters of this bill claim that employers are protected from lawsuits in this bill. We just heard the good Senator from Massachusetts say that. They say that this bill protects our current system. They point out that on page 144 of the Kennedy-McCain bill that there is a section in bold headline that reads: ''Exclusion of Employers and Other Plan Sponsors.'' But what they don't tell you is that on the very next page the bill reads, as clear as day: ''. . . A Cause of Action May Rise Against an Employer . . . .'' After that there are four pages explaining when an employer can be sued.

That means that while this bill does exclude suits against doctors and hospitals and other providers, it does not exempt suits against employers who purchase health insurance. In fact, the bill exposes employers who provide health care insurance to both State and Federal lawsuits. It exposes them

to unlimited economic damages, unlimited noneconomic damages, unlimited punitive damages in State court, and $5 million in damages in Federal court.

Ladies and gentlemen, that is an awful lot of lawsuits.

I believe that this exposure to liability in the Kennedy-McCain bill will scare employers away from providing health insurance. Instead of providing coverage, one of two things is going to happen if this bill becomes law. Employers are either going to drop their coverage altogether or they will give their employees cash or some sort of voucher and wish them well in searching for the best deal for themselves and their families they can find in health care. This would turn our entire health system on its head and would lead to serious problems.

I don't believe anybody in this Chamber really wants that. Instead, I urge support for the Gramm amendment. This amendment would apply language from the current Texas State law to specifically protect employers that provide health benefits from facing lawsuits for doing so. It is clear cut. It is a simple solution, but it is very clear in its intent.

For weeks some of my colleagues have been eager to point out that Texas has a Patients' Bill of Rights, and some of them even talk about this is a model for the Federal legislation. Now we have the opportunity to do just this and to ensure that employers cannot be sued for doing the right thing—for helping their employees. It is simple.

We know the bill before us as written will not become law, and the expanded employer liability is one of the very tough sticking points. Now we have a chance to fix it, to improve the bill, and to make it signable.

I want to vote for a Patients' Bill of Rights, a bill of rights that is going to become law. A vote today for the Gramm amendment is a critical step in that direction. A vote against the amendment means that we will probably just talk about these problems without doing anything to change them. I urge my colleagues to vote to protect employers and employees alike and support the Gramm amendment.

We do not want single-payer health insurance in the United States. It was proposed in 1994 and soundly defeated. Even though the opponents of the Gramm amendment would like to think that this is the reason they are opposing it, that it prevents liability, the basic fact is that they may want no health care benefit at all and then force the United States to have a single-payer plan at the end. We will do anything in our power to defeat that.

I urge a vote on the Gramm amendment and yield back my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I would like to speak on the Gramm amendment. I see that neither Senators GRAMM nor GRASSLEY are present. I understand there is time remaining for Senators GRASSLEY and GRAMM. I suppose the appropriate thing to do would be to ask for 10 minutes of the time on the Gramm amendment.

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

Mr. THOMPSON. Mr. President, we are proceeding to clear the air on this issue, and that is important. It is a very important issue. One of the things Senator GRASSLEY pointed out was that this did not go through the regular committee process. It is a very complicated bill, and we are just now seeing the complications of it; one of those being the extent to which employers are liable, employers can be sued.

Unfortunately, we didn't have a chance to work all that out in committee. So now we are here in this Chamber arguing about the exposure of employers.

We are making progress because, when we first started this debate, the supporters of the McCain-Kennedy-Edwards bill basically said: We were not attempting to go after employers. That is not what this is about. Then in the fine print, yes, well, under certain limited circumstances.

I think we know now that there is, indeed, extreme exposure as far as employers are concerned and that it constitutes a significant part of the effect of this bill. We are making progress. Now we can talk about the extent to which employers should or should not have exposure and liability.

We have heard statements today that there are a lot of employers out there that will do the wrong thing; that even though they are not required to have health insurance for their employees, apparently there are employers out there that will set up health care plans and then do everything they can to disadvantage their own employees, and that that consideration is driving this provision of the bill. So we are, indeed, refining the issue; the lines are being drawn.

The response to the issue of suing employers has always been: Don't worry about that. The main thing is we are going after the big bad HMOs. You don't have to worry about anything else. When times get really tough, we bring out another picture of some poor individual who is used to demonstrate the evilness of managed care.

Our hearts go out to these people. These are people in need. But the average observer in America must be watching this and asking themselves: Why doesn't the Government just require these people to be covered for anything all the time in unlimited amounts? Why doesn't the Federal Government just take care of it? Or if the Government doesn't want to do it, why don't we make some insurance company pay somebody for any claim they make, if it is a real need, at any time for any amount? In fact, why didn't we pass the Clinton health care bill a few years ago? The average person must be asking: If that is the only issue, taking care of sick folks, then why don't we nationalize this health care system of ours? That is the logical conclusion of all that we have been hearing.

The answer, of course, is that in public policy matters, there are tradeoffs to be considered. There is never just one side of the coin.

We know, for example, that we set up managed care in this country because health care prices were rising up to the point of almost 20 percent a year. We knew that couldn't be sustained so we put in a managed care system. Some HMOs abused that and did some bad things. States passed laws. Thirty some States passed laws addressing some of these problems. The State of Tennessee has broader coverage than the bill we are considering today. It is not as though the States have been standing still. They are covered. Health care costs are going back up.

So here we come and we are going to lay on another plan that, if passed in the current form, without question, will drive up health care costs again.

My heart goes out to these poor people who are being used in this debate to demonstrate the necessity for the passage of this legislation. But I want to refer to a group of individuals myself. In fact, I want to refer to 1.2 million individuals. I don't have the space or the time or the resources to bring in pictures of the 1.2 million people who, the most conservative estimates say, will be thrown off of insurance altogether if this bill passes.

The Congressional Budget Office says that at a minimum—and there are other estimates, but that is the lowest one I have seen—1.2 million people will lose insurance altogether. Who is going to bring their pictures in here to demonstrate to the American people that they are disadvantaged by the bill we might pass that will drive health care costs up so great that these small employers that some would like to demonize or large ones, for that matter, that some would like to demonize don't have to provide health care at all?

What is going to keep them from just saying, as has been pointed out this morning, that the costs are too great, the liability is too great? We want to do the best we can. We are not perfect. We might make mistakes. But instead of setting up a system to rectify those mistakes, we will be opened up to unlimited lawsuits at any time, anywhere in the country, in any amount. Why should we have that aggravation? Why not just give the employees X number of dollars and say, you take care of it—and they may or may not take care of it with that money—or if you are a small employer, to drop insurance coverage altogether. Who is going to speak for that 1.2 million people who they say will wind up without any insurance at all?

There won't be any arguments with any HMOs because there won't be any insurance at all.

So the lines have been drawn in this debate. We have people over here needing help, needing assistance. We have set up a review process to get independent people to look to determine whether or not these employers are taking advantage of people. So far so good.

Then the proponents of this bill want to lay in a system of lawsuits on top of that. We draw the line in there and say that, yes, let's have an administrative process to see whether or not employers are taking advantage of folks. Let's have an independent doctor look at it. After that, let's not lay on unlimited lawsuits against employers who do not provide the health care and expose them to liability, when we say that what we are going after is the big bad HMOs. Why expose these people who are providing health insurance? They are not providing health care, so why expose them to liability?

The question remains, Do we want to sue employers? Do we want to have the right to sue employers or not? The proponents of this bill say yes, but only with regard to when they directly participate in decisionmaking. This gets a little technical, but it is very important. There is a certain resonance of the proposition that if somebody does something wrong, they ought to be held accountable. I have tried a few cases myself, and I believe in that principle. I think that is right. But the problem in the context of this health care debate, which we nationalize to a certain extent with ERISA for a portion of the population, and now we are going to nationalize the rest of it with this bill, the problem is we are setting it up so that, by definition, a large group of employers are going to be considered to be directly participating because they are self-insured and they have employees who are on the front end of these claims processes. They tell me that these self-insured plans are some of the best plans that we have. They don't go out and hire an HMO. They try to do it themselves, in-house, with their own people, looking out for their own employees, who they don't have to insure if they don't want to, but they do. I am told that they provide more benefits than the other plans. They are some of our better plans. But by cutting out the middleman, so to speak, and doing it themselves, they are going to be subject to liability under this bill.

The second point of exposure has to do simply with the fact that employers have settlement value. What lawyer worth his salt, if he is going to sue anybody along the line here in this process, would not include an employer as a part of this lawsuit? An employer has a chance of deciding whether or not to go to court and stand on principle because he is not liable and spend several thousand dollars defending himself or settle up front and pay the other side in order to get out of the lawsuit.

The other side says they don't want to sue employers unless they have control. I mentioned direct participation. The other key words are ''or control''—to exercise control of the health care plan. The only problem with that is under ERISA law, by definition, employers are supposed to have control over these plans. So if you just look at the definitional sections of the applicable law, on day 1 you have a large number of employers that are subject to this lawsuit. So let's not kid ourselves about that.

The first part of this debate was that most employers are not covered. Most employers are not covered. Now, we know that is not true. The issue now is whether or not they should be. You say, well, what if they do something wrong? That is a good point. Why should they be any different? Why should they have immunity? We could ask the same thing about treating doctors and about treating hospitals and about any number of entities around America, including U.S. Senators. Why do we have protection for anything we say in this Chamber under the speech and debate clause? Is it because we are better than anybody else or because we don't ever go over the line and do something wrong or maybe even outrageous? No. It is because of the tradeoffs of public policy because there are other considerations, just as there are other considerations when we lash out and follow our natural instinct to sue an employer.

You are going to drive costs up; you are going to drive people out of the system; and you are going to cause more uninsured. Besides, there is accountability. There is a sense of the Senate pending today that talks about the importance of the independent evaluation that this bill creates. The employer doesn't get to make a decision to cut somebody off under this bill, and that is the end of it. It goes through an independent evaluation process. It goes through an external review process. Then, if it is a medical decision, it goes to an independent medical reviewer.

This bill spends pages on pages in setting up these individual entities, protecting them, qualifying them, having the Federal Government look over their shoulders. They are the final word. If the employer is wrong, they are the final word, and they don't have anything to do with the employer. There might be some hypothetical cases where some evil employer might sneak through the cracks somewhere. All I am saying is it is our obligation to consider both sides of this coin. If in trying to do that, if in trying to reach that hypothetical extreme case we drive up health care costs and we drive small employers out of the health care business and we do wind up with over a million more people uninsured, we are making a bad bargain.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. How much time remains?

The PRESIDING OFFICER. The Senator controls 37½ minutes.

Mr. KENNEDY. I will yield myself 2 minutes. I want to remind my good friend from Tennessee when he talks about the issues of cost, that we have heard this issue raised before by the Chamber of Commerce regarding family and medical leave. They estimated that its cost would be $27 billion a year. It has been a fraction of that. I don't hear Members wanting to repeal it. We heard about the issue of cost when we passed Kassebaum-Kennedy, which permits insurance portability, and is used particularly by the disabled. We heard that Kassebaum-Kennedy was estimated to cost tens of billions of dollars. That cost has not developed. Nobody is trying to repeal it.

We heard about costs when we passed an increase in the minimum wage. We heard that it would lead to inflation and lost wages. We have responded to that. The cost issue has always been brought up.

I will remind the Senator that we have put in the RECORD the pay for William McGuire and United Health Group, the largest HMO in the country. The total compensation is $54 million and $357 million in stock options for a total compensation of $411 million per year. That is $4.25 per premium holder. The best estimate of ours is $1.19, and you get the protections. We can go down the list of the top HMOs they are making well over $10 million a year and are averaging $64 million in stock options. We could encourage some of those who want to do something in terms of the cost, to work on this issue, Mr. President.

In the 1970s, we welcomed, as the principal author of the HMO legislation, the opportunity to try to change the financial incentives for decapitation, to keep people healthy. There would be greater profits for HMOs. It is a good concept. To treat people and families holistically is a valid concept and works in the best HMOs.

What happened is that HMOs, and in many instances, employers, started to make decisions that failed to live up to the commitment they made to the patient when the patient signed on and started paying the premiums. That is what this is about. The patient signs on and says: I am going to have coverage if I am in a serious accident. Then we have the illustration of the person who broke their leg and the employer said: Absolutely not. We are cutting off all assistance. That person was left out in the cold.

There is no reason to do that. The only people who have to fear these provisions are those employers that make adverse decisions with regard to an employee's health. It seems to me they should not be held free from accountability any more than anyone else should be.

How much time remains? I yield 12 minutes to the Senator from North Carolina and that will leave me how much?

The PRESIDING OFFICER. Twenty-two minutes.

Mr. KENNEDY. I yield the Senator from North Carolina 15 minutes.

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

Mrs. HUTCHISON. Mr. President, I ask unanimous consent to speak after the Senator from North Carolina.

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

Mr. EDWARDS. Mr. President, I want to speak to some of the concerns and comments that have been made by my friend and colleague from Tennessee with whom I have been working over the course of the last few days on this issue. There are a couple of issues he raised that deserve a response.

First is the general notion that an appeals process, before going to court, is adequate in and of itself. There are two fundamental problems with that logic. Remember, the way the system works under both pieces of legislation is if an HMO denies care to a patient, they can go through an internal appeal. If that is unsuccessful, they can go to an external appeal. If that does not resolve the issue and they are hurt, they can then go to court.

There are two reasons the appeal by itself does not resolve the issue.

An HMO says to a family: We are not going to allow your child to have this treatment. The child then suffers an injury as a result, and a week later, or however long it takes to complete the appeals process, the HMO's decision is reversed by an appeals board.

An independent review board says: Wait a minute, HMO, you were wrong to start with. Unfortunately, the only thing that independent review board can do is give that child the test they should have had to start with, but the child has already suffered a serious permanent injury as a result. The treatment no longer helps.

The problem is if the HMO decides on the front end they are not going to pay for some care that should be paid for, and the child is hurt as a result, and then 1 week or 2 weeks later the appeals board reverses that decision and says, yes, they are going to order the treatment, this child has nowhere to go and their family has nowhere to go.

That is the point at which—and I think the Senator and I may agree on this—we believe the HMO should be held accountable. The independent review board cannot fix the problem where the child has been injured for life. The HMO that made the decision, just as every entity in this country, should be held responsible and accountable for what they did. That is what we believe. We believe in personal responsibility.

The second reason the appeals process by itself does not solve the problem: If there is nothing beyond the appeal, it creates an incentive for the HMO, which is what I am talking about, to have a policy of when in doubt, deny the claim because the worst that is ever going to happen is they are going to finish this appeals process and some appeals board is going to order them to pay what they should have paid to start with. If they take 1,000 patients for a particular kind of treatment and deny care to those 1,000 patients, the majority of them are never going to go through an appeal, so they save money. Then they go through the appeal and the worst that can ever happen to them is with 30 or 40 of them, an appeals board orders them to go back and pay what they should have paid.

The problem is fundamental. The appeals process alone does not create an incentive for the HMO to do the right thing.

On the other hand, if the HMO knows if they make an arbitrary wrongful decision and somebody is hurt as a result, injured as a result—if that child suffers a permanent injury as a result—they can be held responsible for that as everybody else who is held responsible, then it creates an enormous incentive for the HMO to do the right thing.

That is what this legislation is about. Senator MCCAIN, Senator KENNEDY, and I structured this legislation to avoid cases having to go to court, to create incentives for the HMO to do the right thing, something they are not doing in many cases around the country now.

The problem is, without both the appeals and the possibility of being held responsible down the road, we do not create the incentive for the HMO to do the right thing. We know that today around the country many families are being denied care they ought to be provided by an HMO.

There are fundamental reasons the system is set up the way it is. It is all designed not to get people to court and not even to get people into an appeals process but to get the patient the correct care, to get them the care for which they have been paying premiums.

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

Mr. EDWARDS. Yes.

Mr. THOMPSON. I thank the Senator for addressing the issues I raised, and I ask this as a legitimate point of inquiry and not just a debating point.

Mr. President, it occurs to me with regard to the Senator's first point, and that is coverage might be denied initially but later overruled, and in the interim—I think he used the example of a small child again—a child might be suffering damage, does not ERISA currently provide injunctive relief? It allows a person under those circumstances to go into Federal court for mandatory injunctive relief, and would that not address the concern the Senator has?

Mr. EDWARDS. I thank the Senator for his question. It is a perfectly fair question. The problem, of course, is that many times it could be a situation where it would take entirely too long to go to court and get injunctive relief. When there is a situation where they have to make a decision about a family member, whether it be a child or an adult, and the HMO says they are not paying for the care, and they are in the hospital, the last thing they are going to be talking about is: I need to hire a lawyer, go to court, and get injunctive relief. What they need is care at that moment, and in many cases, as the Senator knows from his personal experience before coming to the Senate, during the interim, during that short period of time, that window of opportunity to provide the care to that patient who may be hospitalized or may not be hospitalized is the critical time.

Mr. THOMPSON. If the Senator will——

Mr. EDWARDS. Excuse me. It is impossible during that period of time to get injunctive relief against an HMO, and I might add, the last thing in the world a family is thinking about when they have a member of their family who is in trouble and needs health care is going to court to get an injunction. Now I yield.

Mr. THOMPSON. I thank the Senator. I could not agree more with that last point. However, my experience has been that injunctive relief is designed by nature for very rapid consideration. You can get very rapid consideration, but you do have to go to court to get it.

My question is, If we are not going to avail ourselves or require claimants to avail themselves of the processes if they believe they have been wronged, does that not necessarily lead to the conclusion that we must grant all claims?

How does a person considering a claim know which one—let's assume they are dealing in good faith. In every case where there is an injury or potential injury going to occur, is the logical conclusion that we should see to it that all claims are granted regardless of whether or not the person considering the claim thinks it is clearly not covered under the agreement?

If we do not go through the processes that are in law for people to avail themselves and to show to an independent arbiter or judge that their claim is meritorious, if we say we do not have time for that, then doesn't that mean we have to grant all of them?

Mr. EDWARDS. Reclaiming my time, my response to the Senator's question is simple and common sense. For a family in a bad situation needing medical care immediately, the last thing in the world they are thinking of is hiring a lawyer, going to court and trying to get an injunction. The Senator well knows that process by itself can take enough time for something serious to happen in the interim.

As to the second issue the Senator raises, all we are saying in our legislation, in the structure of our system—internal appeal/external appeal—if that is unsuccessful and there has been a serious injury, they can be treated and taken to court the same as everyone

else. We expect the HMO, which, by the way, is in the business of making these health care decisions, although of course not to cover absolutely everything, to make reasonable, thoughtful judgments about what is covered and what should not be covered.

Now back to the issue of employer liability. First of all, the answer to the Gramm amendment is that it is inconsistent with what the Republican President of the United States has said regarding our bill and the President's principle: ''Only employers who retain responsibility for and make final medical decisions should be subject to suit.'' This is the President's written principle. That is the way our bill is designed, that only employers engaged in the business of making individual medical decisions can have any liability or any responsibility.

With that said, we are working, as I speak, with colleagues, Republicans and Democrats across the aisle, to fashion language that accomplishes the goal of protecting employers while at the same time keeping in mind the interests of the patient.

There are other legitimate issues raised. For example, one argument that has been made is that employers may be subjected to lawsuits they do not belong in, and there is a cost associated with being in those cases for too long. We are working as we speak to create better language, better protection for employers so there is no question that employers, No. 1, can be protected from liability, and No. 2, if they are named in a lawsuit improperly, they don't belong in the lawsuit and shouldn't be named, they have a procedural mechanism for getting out quickly.

The truth is, the Gramm amendment is way outside the mainstream. All the work that has been done on this issue, including the work we are doing with our colleagues, both Republicans and Democrats, is a way to fashion a reasonable, middle of the road approach that provides real and meaningful protection to employers without completely eliminating the rights of patients. That is what we have been working on. We are working on it now and are optimistic we can resolve that issue.

Mr. KENNEDY. Will the Senator yield?

Mr. EDWARDS. Yes.

Mr. KENNEDY. I yield another 2 minutes. Does not the Senator agree that the majority of employers now are doing a good job and are not interfering with these medical decisions?

Mr. EDWARDS. Absolutely.

Mr. KENNEDY. At the present time, a small number of employers are interfering with medical decisions. If the Gramm amendment is accepted, this will put the good employers at a serious disadvantage in competition with others, does he not agree? Would not the others be able to formulate a structure so they could effectively cut back on excessive costs for the health care system for their employees, while the good ones who are playing by the rules would be put at a rather important competitive disadvantage? Does the Senator not agree that for the employers working within the system and playing by the rules, this is an invitation to change their whole structure and to be tempted to shortchange the coverage and protection for their employees?

Mr. EDWARDS. In response to the question, the answer is, of course we believe employers, the vast majority of employers, care about their employees and want to do the right thing. Our legislation is specifically designed to protect those employers, just as the President of the United States has suggested needs to be done.

What we have done in this legislation, what the President has suggested, and in the work that continues as we speak on additional compromise language, all is aimed at the same principle and the same goal.

This amendment is outside that mainstream—different from our legislation, different from the principle established by the President of the United States, and different from the compromise that is being worked on at this moment.

I remain optimistic we will be able to reach a compromise that provides real and meaningful protection to the employers of this country we want to protect. We have said that from the outset. We stand by it. We want to protect them.

If I may say a couple of things about the issue of costs which was raised a few moments ago, the CBO has not said anybody will become uninsured as a result of this legislation. What the CBO has said is there will be a 4.2-percent increase in premiums over 5 years because of our legislation and a 2.9-percent increase if the competing legislation passes, roughly 4 percent versus roughly 3 percent. The difference between these two pieces of legislation on cost is a very minuscule part related to litigation. I think the difference is less than half of 1 percent related to litigation. Rather, the differences are related to quality of care. If people get better access to clinical trials, better access to specialists, better emergency room care, a more enforceable and meaningful independent review process, if those things occur, there is a marginal cost associated with it.

We have real models. We don't have to guess about what will happen. Those models are Texas, California, and Georgia. In those States, the number of uninsured, while the patient protection laws have been in place, has gone down, not up. We have some real, although short term, empirical evidence about what happens when this patient protection is enacted.

We have to be careful. A lot of arguments being made are the same arguments that have been made by HMOs for years to avoid any kind of reform, to avoid any kind of patient protection. We are working in this legislation to give real protection to somewhere between 170 and 180 million Americans who are having problems with their HMO. We want to put the law on the side of patients and doctors instead of having health care decisions made by insurance company bureaucrats.

The PRESIDING OFFICER. The time yielded has expired.

Mr. EDWARDS. I ask to be yielded another 5 minutes.

Mr. KENNEDY. How much time remains?

The PRESIDING OFFICER. The Senator from Massachusetts controls 17 minutes.

Mr. KENNEDY. I yield 5 minutes to the Senator from North Carolina and the Senator from Arizona the remaining time.

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

Mr. EDWARDS. Mr. President, in summary, let me speak to the two amendments we will next be addressing. First, the Gramm amendment is outside the mainstream, outside what the President of the United States has suggested, outside of what we have in our legislation, and outside of what we are working on with Senators from across the aisle.

Second, as to the Grassley motion to commit, the problem is it sends it back to a number of committees and slows down the process. We need to do something about this issue and quit talking about it. The American people expect us to do something about it. Thousands of Americans each day are losing access to the care they have, in fact, paid for while this process goes on. We need to get this legislation passed and do what we have a responsibility to do for the American people. This is an issue on which the Senate, the House, and the American people have reached a consensus. It is time to act. As to these two vehicles, I urge my colleagues to reject them.

Finally, I will talk about the story of a young woman in North Carolina. Her name is Shoirdae Henderson, from Apex, NC. At the age of 12 she was diagnosed with a rare hip condition. It made it difficult for her to walk. The Henderson family's HMO sent Shoirdae to a hospital to see specialists about her problem. The specialist in this HMO-approved hospital said she needed surgery to keep her hip from fusing and having to walk with a limp. Even though the family had taken Shoirdae to the HMO specialist, the HMO refused to listen to her doctors. They came in with excuse after excuse to keep her from getting surgery. Every one of the HMO excuses proved over time to be groundless. It looked as if she would finally get the operation her doctors had recommended to begin with. Just 2 days before she was supposed to have surgery, the HMO told her family they wouldn't pay for it. They wanted her to try physical therapy instead. Shoirdae's father spent hours dealing with the HMO, as so many families

have, trying to get his daughter the care the doctors said she needed. He made call after call and faxed them. He requested an appeal. He never got an answer. The hospital finally had to cancel her surgery as a result.

After several sessions of physical therapy, another HMO doctor took one look at Shoirdae's x rays and sent her back to the hospital. She still needed the surgery. The therapy had not worked. In fact, Shoirdae's hip had gotten worse—so much worse during all of this time that now the doctors told her the surgery wouldn't work. If she had gotten the operation her doctors said she needed when they recommended it, her hip would not have fused. She might today be able to walk, run, and play without a limp. Instead, she walks with a severe limp today and she has to wear special shoes because the HMO refused to pay for what was obviously needed—the surgery. The HMO refused to do what the doctors recommended. In fact, they overruled what the doctors recommended.

Her father wrote to me and said: This has been the most horrible experience of my life. Imagine what it has done to my daughter.

This is what this debate is about. This debate is about the 170 million to 180 million Americans who have health insurance—HMO coverage—but have no control over their health care.

The HMOs have had the law on their side for too long. It is time for us to finally do something to put the law on the side of patients and doctors so that the Shoirdaes all over this country, when their doctor recommends that they have surgery, can have the surgery they need; when the doctor recommends a test, they can have the test they need.

I yield the floor.

The PRESIDING OFFICER (Mrs. CARNAHAN). Under the previous order, the Senator from Texas is recognized.

Mrs. HUTCHISON. Madam President, how much time is remaining on the side of Senator GRASSLEY and on the Gramm-Hutchison amendment?

The PRESIDING OFFICER. The Senator from Texas has 9 minutes. Senator GRAMM has 7½.

Mrs. HUTCHISON. Thank you, Madam President.

I ask unanimous consent that I have 6 minutes allocated—4 minutes from Senator GRASSLEY's time and 2 minutes from Senator GRAMM's time. It is my intention to yield 4 minutes to Senator NICKLES of my 6 minutes.

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

Mrs. HUTCHISON. Will the Chair notify me at the end of 2 minutes?

Madam President, I want to speak on behalf of the Grassley motion which would send this bill to committee so that it could be marked up and fully debated because while we have had great debate, bypassing the committee process I think has caused us to have to write the bill in this Chamber. I don't think that is a good way to pass legislation.

I think we all want to have a Patients' Bill of Rights that is well vented and well debated and that we know will have the intended consequences because the last thing we want to do is have unintended consequences when we are talking about the health care of most Americans.

I hope we can commit the bill to bring it back in a better form.

Second, I hope people will support the Gramm-Hutchison amendment because this is the Texas law. Senator HARKIN, on a news program this weekend, said: I would love to have just the Texas law for the entire Nation. The Gramm-Hutchison amendment is the Texas law verbatim when it applies to suing a person's employer because what we don't want to do is put the employer in the position of standing for the insurance company. The employer wants to be able to offer insurance coverage to their employees. But if they are going to be liable for a decision made by the insurance company and the doctors, then they are put in a position that is untenable. What we want is health care coverage where the decisions are made by the doctors and the patients.

The Senator from North Carolina had a picture of a lovely young woman. He said: This is what the debate is about. It is what the debate is about.

The Breaux-Frist plan would definitely address her concerns because it would give her the care she needs rather than going directly for a lawsuit and possibly delaying the health care she needs—and for other patients.

Madam President, I ask my colleagues to support the Gramm-Hutchison amendment and support the Grassley motion. Let's get a good bill that will have the effect of increasing coverage in our country and not decreasing it.

Thank you, Madam President. I yield 4 minutes to Senator NICKLES.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Madam President, I thank my friend and colleague from Texas, Senator HUTCHISON, for her comments. I also wish to thank the Senator from Texas, Mr. GRAMM, for his leadership on the amendment, as well as Senator THOMPSON.

I hope employers around the country have been watching this debate. I have heard some of the proponents of the underlying McCain-Kennedy-Edwards measure say: It is not our intention to sue employers. We don't want to do that. No. We will try to fix it. I have even heard on national shows that: We don't go after employers under our bill. On the ''Today Show,'' a nationally televised show, Senator EDWARDS on June 19 said: Employers cannot be sued under our bill. That was made on June 19. Senator HARKIN yesterday said: I would love to have the Texas law for the entire Nation.

The Texas law that Senators GRAMM and HUTCHISON have quoted says: This chapter does not create any liability on the part of an employer or an employer group purchasing organization. There is no liability under Texas law. Senator EDWARDS said: We don't sue employers. But if you read the bill, employers beware; you are going to be sued.

The only way to make sure employers aren't sued is to pass the Gramm amendment. To say we are not going to sue employers, but, wait a minute, if they had direct participation, and you take several pages to define direct participation, what you really find is that if any employer meets their fiduciary responsibilities, they will have direct participation. In other words, employers can be sued for unlimited amounts, with no limit on economic damages and no limit on noneconomic damages. That means no limit on pain and suffering. That is where you get the large jury awards. You can be sued for that amount in Federal court. You can be sued for that amount in State court with no limits—with unlimited economic and noneconomic damages.

Employers beware. If you want to protect employers, vote for the Gramm amendment.

You always hear people say: Oh, we want to go after the HMOs; they are exempt from liability, and so on. But it is not our intention to go after employers.

Employers are mentioned in this bill, and they are liable under this bill.

There was action taken in the bill to protect physicians. There is a section exempting physicians. There is a section exempting hospitals and medical providers. We are exempting them but not employers.

Senator HARKIN said, We want to copy the Texas law nationwide. Texas exempted employers. We can do that today. You can avoid going back to your State and having your employer saying, Why did you pass a bill that makes me liable for unlimited damages? You can vote for this amendment and protect employers. You can vote for this amendment and not only protect employers but employees because when employers find out they are liable for unlimited pain and suffering and economic and noneconomic damages, the net result is, unfortunately, a lot of employees—not employers—will lose their coverage.

I urge our colleagues to support the Gramm amendment.

Mr. HATCH. Mr. President, I rise in favor of the Grassley motion to commit this legislation to the Finance Committee, the HELP Committee and the Judiciary Committee.

The legislation before this body is one which will have an enormous impact on medical providers, the health insurance industry, employers and, most important, the patients. As the ranking Republican of the Senate Judiciary Committee, I have serious concerns with the liability provisions of this bill and how they will be impact employers, medical providers and patients. The McCain-Kennedy bill creates new causes of action, changes the

careful balance of ERISA's uniformity rules, and has potential new adverse implications on our judicial system. Moreover, the liability provisions have been crafted without the benefit of appropriate and necessary review of the appropriate committees of jurisdiction. My colleagues, this is not the way to legislate. At the very least, the Judiciary Committee should be afforded the opportunity to review the liability provisions that will clearly have a major impact on our legal system.

Just a few months ago, when the bankruptcy reform legislation was brought to the Senate floor under rule 14, the legislation had been considered by the Judiciary Committee, the entire Senate and a bipartisan conference committee over the last 6 years. However, Democrats raised objections then that the bill needed to be reviewed by the Judiciary Committee before consideration on the Senate floor. As a result, we followed regular order and the committee reviewed the bill after which it was sent to the Senate floor for consideration.

Now the tactics of my friends on the other side is to bypass the committees altogether which is exactly what they vocally opposed on bankruptcy reform legislation just a few months ago. Moreover, we now have the third iteration of the liability provisions which is less than a week old. Clearly, the legal ramifications of these provisions are not well known, and I think it would be in the best interest of this legislation to craft language that is truly going to help patients which we all have been saying is our No. 1 priority.

The provisions in the McCain-Kennedy legislation make sweeping changes that will affect our judicial system. This bill changes Federal law and permits various causes of action in both State and Federal courts. It also changes the rules governing class action lawsuits, as well as impacting punitive damages all the while exposing new classes of individuals to open-ended liability.

I want to emphasize that these are all critical important, legal issues that must be considered carefully. The regular process of the Senate should not be circumvented for the political expediencies of my friends on the other side. Why rush this important bill through the Senate? According to the Congressional Budget Office, this legislation will cause premiums to increase by at least 4.2 percent. As a result, it is estimated that 1.3 million Americans will lose their health insurance because health premiums will become too expensive. Even worse, employers benefits altogether for fear of more expanded liability exposure under so-called bipartisan Democrat proposal.

Shouldn't we hear from experts and other legal scholars in an open forum before passing such a monumental bill that impacts so many Americans? It is very apparent to everyone in this Chamber that the trial lawyers have been principally involved in drafting these liability provisions and they have done so with their own interest in mind. And believe me, as a former medical malpractice attorney, I know what their tricks are, and I know what they are trying to do. This provisions are simply not in the best interest of the American people.

Accordingly, I urge my colleagues to support his motion to commit. It is incumbent upon us to do this right and to do this in the best interest of patients, not trial attorneys. I am confident that with a little extra time, we can make these provisions legally sound. We have spent far too many years on this issue not to do it right. We have a real opportunity to pass meaningful patients' rights legislation. Let us not squander this opportunity by acting expeditiously without the benefit of more careful and thoughtful review.

The PRESIDING OFFICER. Who yields time?

The Senator from Texas.

Mr. GRAMM. Madam President, could you tell me how much time the two sides have?

The PRESIDING OFFICER. You have 4 minutes and a half. The Senator from Massachusetts has almost 12 minutes.

Mr. GRAMM. Madam President, I would like my amendment to close out the debate.

Does Senator GRASSLEY have time?

The PRESIDING OFFICER. He has 5 minutes. You have 9 minutes. The Senator from Massachusetts has 12 minutes.

Mr. GRAMM. Let me just allow the majority to go ahead.

Mr. MCCAIN. I say to the Senator from Texas, I think it is perfectly reasonable for you to have the last 5 minutes.

I ask the Presiding Officer that one of us be recognized so that the Senator from Texas has the final 5 minutes.

The Senator from Iowa wants——

Mr. GRASSLEY. Two minutes.

The PRESIDING OFFICER (Mr. REID). Did the Senator from Arizona propose a unanimous consent request that the Senator from Texas have the final 5 minutes?

Mr. KENNEDY. And that the Senator from Iowa have 2 minutes.

Mr. GRASSLEY. I thank my colleagues.

The PRESIDING OFFICER. Without objection, it is so ordered. That will be the order.

Mr. GRASSLEY. Mr. President, I have spoken twice on the issue of committing this legislation to the committees to express the point of view that there is a lot of turmoil in working out compromises on the floor of the Senate. That is not a very good way to draft a piece of legislation.

If the leadership had not immediately brought this bill to the Senate Chamber, and the committees had done their work, this bill would have been handled in a much more expeditious way, but, more importantly, it would have been in a way in which we would have had a lot of confidence in the substance of the legislation, with a lot fewer questions asked. I think when people see a product from the Senate, they want to make sure that product is done right.

So I offer to my colleagues the motion and hope that they will vote yes on the motion to commit the legislation to the respective committees—Health, Education, Labor; Judiciary; and Finance—for the fair consideration of this legislation and a final, good product that we know serves the best interests of the people, which obviously is to make sure that everybody is protected with a Patients' Bill of Rights.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Arizona is now recognized.

Mr. MCCAIN. Mr. President, I think it is important, because of the issue of what is happening or not happening in the State of Texas and Texas State law, that I take a few minutes to quote from a letter I just received from the President of the Texas Medical Association, Dr. Tom Hancher, who also was a key player in the formulation of the language and the legislation that passed the State of Texas in 1997.

I would like to quote from the letter that Mr. Hancher sent me:

I have been watching the debate over the Patients' Bill of Rights and can understand the confusion over many of the issues. We, in Texas, debated managed care reforms for over two years culminating in the passage of a package of managed care reforms in Texas in 1997. Because Texas' laws have become the basis for evaluating certain aspects of proposed federal reforms, I hope I can help to clarify some areas for you. As Texas Medical Association worked closely with the sponsors of these reforms, including the managed care accountability statute, I would like to offer our experiences on this issue. . . . I will focus on the three areas of primary disagreement—employer exemption, medical necessity standards for independent review, and remedies under Texas' managed care accountability law.

Much as you are seeing in Washington, our lawmakers were deluged with concerns about employers being legally accountable for the actions of the managed care plan. We believed that this was impossible given the construction of our legislation. Both the definition of a managed care plan and the action of that plan—making medical treatment decisions—prevented such lawsuits from being brought. Nevertheless, the insurers and employers continued to express their concerns that our bill would cost hundreds of citizens their medical coverage because of the fear of litigation.

We agree with your approach that any entity making medical treatment decisions should be held accountable for those decisions. Texas took a different approach in 1997, however, because we knew that no state law could achieve that goal. ERISA law in 1997 was such that no state law could hold employers of large self-funded plans accountable for actions related to their benefit plans. . . .

We were certain that small to medium sized employers in our state were providing health benefits through fully insured, state licensed products. Clearly, those employers

were not making medical treatment decisions. While it was the intent of the Texas Legislature to hold accountable any entity making medical treatment decisions, it was our belief that because of ERISA, a blanket exemption for employers in a state law would have no practical impact on the large, self-funded employers. Therefore, we provided a broad employer exemption primarily to allay the fears of small and medium-sized, fully-insured businesses over exposure to legal liability for medical decisions.

The reason why I quote this is because that is basically the language we are using in this legislation.

The Senate co-sponsor of the managed care accountability bill said it best on the floor of the Texas Senate: ''If an HMO stands in the shoes of the doctor in the treatment room, and stands in the shoes of the doctor in the operating room or the emergency room, then it should stand in the shoes of the doctor in the courtroom.'' It is hard to argue why this philosophy should not apply to anyone making those direct medical decisions, HMOs or the very few employers who do this. Any employer who decides not to make these decisions very clearly is not subject to a lawsuit.

Our goal in constructing the independent review (IRO) provision of our bill was a simple one: use independent physicians to evaluate disputes over proposed medical treatment. We require these physicians to utilize the best available science and clinical information, generally accepted standards of medical care, and consideration for any unique circumstances of the patient to determine whether proposed care was medically necessary and appropriate. Our standards are virtually identical with the independent review provisions in the McCain/Edwards compromise currently pending before the Senate.

I repeat, the Texas Medical Association President says: Our standards are virtually identical with the independent review provisions in the McCain/Edwards compromise currently pending before the Senate.

Review decisions were to be made without regard for any definition of medical necessity in plan documents. The Texas Department of Insurance reviews the plan contract for specific exclusions or limitations (i.e., number of days or treatments). If there is no specific contract provision to exclude the eligibility for review, the case is submitted to the independent review organization. Medical necessity is often a judgment call. We wanted those judgments made without any conflict of interest. Medical necessity definitions created by plans will likely err in favor of the plan. An IRO's decision should be a neutral one. Using a plan definition would prevent that. Additionally, we do not define ''medical necessity,'' but rather set forth broad standards for reviewers to make an informed decision based upon all available information. . . .

Finally, there has been a great deal of confusion over damages in personal injury or wrongful death cases in our state. Currently, Texas has no caps on economic or non-economic damages. Punitive damages are calculated using the following formula: two times the amount of economic damages, plus an amount not to exceed $750,000 of any non-economic damage award. We chose to treat managed care plans as any other business. Therefore, they are accountable under general tort law and not subject to the cap on damages in wrongful death cases. The limitation on recovery in wrongful death cases applies only to health care entities and is part of a separate section of our law.

The debate in Texas over patient protections was long, sometimes contentious, and ultimately successful. With over 1300 independent reviews (48% upheld the plans' determination and 52% overturned the plans' decision) and only 17 lawsuits—

I want to emphasize: Only 17 lawsuits—

I am proud of how our laws are working for the people of Texas enrolled in managed care plans. On behalf of my colleagues and our patients, I ask that you not take any action that would undermine what we have done in our state. Best wishes in your deliberations.

It is signed: Tom Hancher, MD, President of the Texas Medical Association.

I urge all of my colleagues to read this letter from Dr. Hancher. I think it lays out the issues surrounding this particular amendment and remaining areas of dispute that we might have.

Mr. President, I cannot support the pending amendment because I believe that employers should be held accountable for medical decisions they have made if those decisions resulted in a patient's injury or death.

I do not believe employers should be held liable for the decisions made by insurers or doctors. Nor do I believe this legislation would subject employers throughout the country to a tidal wave of litigation as our opponents claim.

But if an employer acts like an insurance company and retains direct responsibility for making medical decisions about their employee's health care then they should be held accountable if their decisions harm or even kill someone.

If an employer is not making medical decisions, and very few employers do, then they will not be held liable under our legislation.

Let me repeat—employers will not be held liable or exposed to lawsuits if they do not retain responsibility for directly participating in medical decisions.

I keep hearing from opponents of our bipartisan bill that our language is vague and would subject employers to frequent litigation in state and Federal court. I don't believe this is true.

Our legislation specifically states that direct participation is defined as ''the actual making of [the] decision or the actual exercise of control in making [the] decision or in the [wrongful] conduct.'' This language clearly exempts businesses from liability for every type of action except specific actions that are the direct cause of harm to a patient.

The sponsors of this legislation are willing, however, indeed we would welcome an amendment that helps further clarify the employer exemptions provided for in the bill. I know that Senators SNOWE, DEWINE and others are working on such an amendment.

But we cannot, in the interest of greater clarity, give employers a kind of blanket immunity when they assume the role of insurers and doctors by making life and death decisions for their employees. That is what the pending amendment would do.

Let's just step back for a moment and reflect on how the employer based health care system is structured and works. An employer contracts with an insurer to provide health care coverage for their employees. The insurer is then responsible for making the medical decisions that go with managing health insurance. That is how the system typically works and how employers want it to work.

Most businesses simply do not make medical decisions. Hank who runs a local plumbing company does not tell the HMO his company has contracted with, ''We have clogged drains and need Joe Smith back at work. We can't afford for him to be laid up waiting for surgery.'' And Hank would not be held liable under our bill because he is not practicing medicine—he is repairing plumbing.

Now, I admit there are a small group, of mostly very large companies that have chosen to provide insurance to their employees themselves.

In these small number of cases, employers have made the decision to sell plumbing and act as an insurer that makes medical decisions.

And if the decisions they make harms or kills someone then why should they have a blanket exemption from liability as this pending amendment would provide them, a blanket exemption that we do not provide doctors or nurses or hospitals?

Mr. President, I yield the floor.

The PRESIDING OFFICER. Senator MCCAIN and Senator KENNEDY have 3½ minutes.

Mr. KENNEDY. Mr. President, let me yield myself the time. As I understand, the Senator from Texas is going to close.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, this legislation is very simple. The point of the overall Patients' Bill of Rights is to permit doctors to make the final, ultimate decision on what is in the best interest of the patient. Doctors, nurses, trained personnel, and the family should be making that judgment. However, we find that the HMOs are overriding them.

Now we have put this into the legislation. If it is demonstrated with internal and external appeals that a HMO has overridden the doctors, they are going to have a responsibility towards the patient. They are going to have to give that person, who might have been irreparably hurt, or the patient's family, if the patient died, the opportunity to have some satisfaction.

What the Gramm amendment says is, if that same judgment is made by the employers, they are somehow going to be free and clear. He can distort, misrepresent and misstate what is in this legislation, but we know what is in the legislation. What it does is hold the employer that is acting in the place of the HMO accountable. If the employer is making a medical decision that may harm an individual or patient, or may cause that patient's life or serious illness, they should bear responsibility.

Under the Gramm amendment, they can be free and clear of any kind of responsibility no matter how badly hurt that patient is.

That is absolutely wrong. I can see the case where the HMO is sued. The HMO says: Don't speak to me; it was the employer that did it. And then the employer says: Look, the Gramm amendment was passed. We are not responsible at all. This amendment is another loophole. It is a poison pill. It is a way to basically undermine the whole purpose of the legislation.

Doctors and nurses should be making medical decisions and not the HMO bean counters who are looking out for the profits of the HMOs. Employers should not be making these medical decisions either. They may say, every time my employee has some medical procedure that is over $50,000, call me, HMO. I don't want to pay more than $50,000. Then the HMO calls them up and the employer says, no way, don't give that kind of medical treatment to my employee. The HMO listens to the employer, the patient does not get that treatment, and dies. Under the Gramm amendment, there will be no accountability.

I hope his amendment is defeated.

The PRESIDING OFFICER (Mrs. CARNAHAN). Under the previous order, the Senator from Iowa has 2 minutes, followed by the Senator from Texas.

Mr. GRAMM. The Senator from Iowa has spoken. I assume if we add up the time, I have 7 minutes. I would like to take it.

The PRESIDING OFFICER. The Senator is correct.

Mr. GRAMM. Madam President, nothing in this amendment has anything to do with HMOs. Nothing in the amendment that I have offered would in any way exempt any HMO from any liability. Both Senator KENNEDY and Senator MCCAIN talked about HMO liability. Senator MCCAIN talked about HMOs standing in the shoes of doctors. This amendment I have offered is not about HMOs.

Senator KENNEDY talks about HMOs escaping liability by blaming it on the employer. Nothing in the amendment I have offered in any way would allow that to happen.

The amendment I have offered has to do with employers. Why is this an issue? It is an issue because, in America, employers are not required to provide health insurance. Employers, large and small, all over America provide health insurance because they care about their employees and because they want to attract and hold good employees. But every employer in America has the right under Federal law to drop their health insurance.

I am concerned, and many are concerned, that employers would be forced to drop their health insurance given the liability provisions in the bill.

I have here a number of letters from business organizations endorsing my amendment. I send to the desk and ask unanimous consent that these letters be printed in the RECORD: an NFIB letter designating this a small business vote; a letter from Advancing Business Technology representing the AEA; the National Association of Manufacturers; the National Council of Chain Restaurants; the National Restaurant Association; and the National Association of Wholesalers and Distributors, all letters endorsing the Gramm amendment; and finally, a wonderful letter from the Printing Industry of America talking about the dilemma they would face if this amendment did not pass.

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

NATIONAL ASSOCIATION
OF WHOLESALER-DISTRIBUTORS,
Washington, DC, June 22, 2001.

Hon. PHIL GRAMM,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR GRAMM: Thank you for offering an amendment to S. 1052, the McCain-Kennedy ''Bipartisan Patient Protection Act,'' to shield employers from liability lawsuits authorized by the bill. We write on behalf of the 40,000 employers affiliated with the National Association of Wholesaler-Distributors (NAW) to express our strong support for this critically important amendment.

The vast majority of NAW-affiliated employers voluntarily offer health insurance as an employee benefit. Those employer sponsors of group health insurance benefits are already alarmed by repeated annual increases in health insurance premiums and the growing pressure health insurance costs are placing on their bottom lines. These employers are deeply concerned about the additional premium cost increases with which they will be confronted if the McCain-Kennedy bill becomes law. It is quite clear that many will manage these cost increases by terminating or, at a minimum scaling back, their plans.

NAW members are further concerned about the exposure to costly lawsuits and liability they will face if the McCain-Kennedy bill becomes law and they continue to voluntarily offer health insurance as an employee benefit. Many will manage the newly-acquired risk by terminating their plans altogether.

The proponents of the McCain-Kennedy bill have repeatedly claimed that S. 1052 shields employers from liability. As you have so clearly demonstrated, it does not, and should S. 1052 become law in its current form, the consequence of its failure in this regard will leave many Americans who today benefit from employer-provided medical coverage, without health insurance coverage in the future. This dramatic undermining of our employer-based health insurance system is clearly adverse to the interests of employers, their employees and their employees' families.

There are other serious weaknesses in the McCain-Kennedy bill with which NAW members are concerned; however, adoption of your amendment will at least mitigate one of the worst excesses of the McCain-Kennedy bill. Therefore, NAW is pleased to support your amendment, and we thank you for your leadership.

Sincerely,

DIRK VAN DONGEN,
President.
JAMES A. ANDERSON, Jr.,
Vice President-Government Relations.

NATIONAL RESTAURANT ASSOCIATION,
Washington, DC, June 22, 2001.

Hon. PHIL GRAMM,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRAMM: As debate continues on S. 1052, the McCain-Kennedy-Edwards patients' rights bill, the National Restaurant Association sincerely appreciates your amendment to clarify the Senate's intent that employers will not be subject to liability for voluntarily providing health benefits to their employees. A vote in support of the Gramm employer liability amendment will be considered a key vote by the National Restaurant Association.

The majority of America's 844,000 restaurants are small businesses with average unit sales of $580,000. Rather than risk frivolous lawsuits and unlimited damages authorized under S. 1052, many businesses will be forced to stop offering health benefits to their employees. Even without the effect of litigation risk economists predict at least 4–6 million Americans could lose their employer-sponsored health coverage as a result of the increased costs of S. 1052. We urge you to avert this harmful situation.

By taking language from the Texas patients' rights bill, your amendment will clearly define that employers would not be subject to liability. This amendment is critical given that S. 1052 currently exposes employer sponsors of health plans to liability and limitless damages in the following ways:

Lawsuits are authorized against any employer that has ''actual exercise of control in making such decision.'' [p. 146] This broad phrase would generate lawsuits by allowing an alleged action by the employer to constitute ''control'' over how a claims decision was made. ERISA's fiduciary responsibility obligates employers to exercise authority over benefit determinations.

Lawsuits are authorized for any alleged failure to ''exercise ordinary care in the performance of a duty under the terms and conditions of the plan.'' [p. 141]. Under ''ordinary care,'' simple administrative errors could become the basis of a lawsuit alleging harm. Because all provisions of S. 1052 would be incorporated as new ''terms and conditions'' of the plan upon enactment, these new statutory requirements would further expand employer liability.

Nothing in S. 1052 precludes a lawsuit against employers who will be forced to defend themselves in state and federal courts against allegations of ''direct participation'' in decision making. [p. 145]

Thank you for your effort to protect employees' health benefits by correcting the vague and contradictory language in S. 1052. We urge the Senate to support your amendment to ensure that employers will not be sued for voluntarily providing health coverage to 172 million workers. The Gramm employer liability amendment will be a key vote for the Association. Thank you for your leadership.

Sincerely,

STEVEN C. ANDERSON,
President and Chief Executive Officer.
LEE CULPEPPER,
Senior Vice President, Government Affairs and Public Policy.

NATIONAL ASSOCIATION
OF MANUFACTURERS,
Washington, DC, June 25, 2001.

Hon. PHIL GRAMM,
U.S. Senate, Senate Russell Office building, Washington, DC.

DEAR SENATOR GRAMM: I write in strong support of the amendment you have offered with your colleague from Texas, Senator Kay Bailey Hutchison, to the McCain-Kennedy ''Bipartisan Patient Protection Act.''

We hope that all Senators who agree that employers who voluntarily sponsor health-coverage should be protected from liability will support your amendment.

There should no longer be any dispute that the McCain-Kennedy bill exposes employers to direct and indirect liability costs for adverse benefit determinations. Whether or not employers actively intervene into a given benefit determination, they are charged with responsibility for all aspects of plan administration under ERISA's fiduciary responsibility standard (including benefit determinations). Thus, an employer can either actively or passively meet the McCain-Kennedy bill's standard of ''direct participation'' (the act of denying benefits or the actual exercise of authority over the act).

The Gramm-Hutchison Amendment is the Texas Health Care Liability Act's unambiguous exemption of employers as adapted to ERISA. We certainly hope a majority of senators will agree on the need to protect employers from health care liability.

The National Association of Manufacturers will continue to oppose the underlying McCain-Kennedy bill as adding too much additional cost to the existing double-digit (13 percent on average) health-care inflation. The rising cost of health-coverage, together with the high cost of energy, is exerting a significant drag on the economy. The Senate, however, should be heard on the specific question of health-care liability for employers.

Again, we urgently ask your support for the Gramm-Hutchison Amendment (Senate Amendment 810) which will be considered for designation as a key manufacturing vote in the NAM Voting Record for the 107th Congress.

Sincerely,

MICHAEL ELIAS BARODY,
Executive Vice President.

NATIONAL RETAIL FEDERATION,
June 25, 2001.

To the Members of the U.S. Senate:

Tomorrow morning, you will have the opportunity to vote on a critically important amendment offered by Senator Gramm to the Kennedy-McCain ''Patient Protection Act of 2001'' that will exempt employers from new lawsuits authorized by the legislation. On behalf of the National Retail Federation (NRF), I strongly urge you to support this amendment. The vote on the Gramm amendment will be a key vote for NRF.

At a time when retailers are struggling to deal with annual double-digit increases in health costs, subjecting employers to liability would be the breaking point for many businesses. Many employers would be forced to terminate or significantly scale back their health benefits programs rather than face a lawsuit that could bankrupt their business—leaving many working Americans without access to affordable insurance. The Gramm amendment will unquestionably help to preserve the ability of employers to provide valuable health benefits to their employees and their families.

Although passage of the Gramm amendment would address one of the most serious flaws in S. 1052, it is important to note that we remain concerned and strongly opposed to the broader liability provisions in the bill. Although NRF supports the goals of the legislation to ensure that individuals have the ability to address their disputes through an independent appeals process, allowing broad new causes of action in state and federal court for virtually uncapped damages would have dire consequences on the employer-based health care system. The costs of open-ended liability on health plans will ultimately be borne by employers and employees alike.

As background, the National Retail Federation (NRF) is the world's largest retail trade association with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalog, Internet and independent stores. NRF members represent an industry that encompasses more than 1.4 million U.S. retail establishments, employs more than 20 million people—about 1 in 5 American workers—and registered 2000 sales of $3.1 trillion. NRF's international members operate stores in more than 50 nations. In its role as the retail industry's umbrella group, NRF also represents 32 national and 50 state associations in the U.S. as well as 36 international associations representing retailers abroad.

Again, we urge you to support the Gramm amendment, and to support future efforts to remedy the onerous liability provisions in S. 1052.

Sincerely,

Senior Vice President, Government Relations.

NATIONAL COUNCIL OF CHAIN RESTAURANTS OF THE NATIONAL RETAIL FEDERATION,
Washington, DC, June 25, 2001.

Hon. PHIL GRAMM,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR GRAMM: On behalf of the National Council of Chain Restaurants, I am writing to thank you for introducing your amendment to protect employers from liability lawsuits authorized by the Kennedy-McCain ''Patients' Bill of Rights'' currently being debated by the Senate.

The National Council of Chain Restaurants (''NCCR'') is a national trade association representing forty of the nation's largest multi-unit, multi-state chain restaurant companies. These forty companies own and operate in excess of 50,000 restaurant facilities. Additionally, through franchise and licensing agreements, another 70,000 facilities are operated under their trademarks. In the aggregate, NCCR's member companies and their franchises employ in excess of 2.8 million individuals.

Although most of the nation's chain restaurant company employers offer health care benefits to their employees, these employers have become increasingly concerned with the skyrocketing costs of providing such coverage. In fact, many employers are already being forced to reevaluate whether they can continue to afford providing health care insurance to their employees. The Kennedy-McCain bill's imposition of liability on health plans will exacerbate this problem even further, as health insurers will simply pass on the costs to employers in the form of higher premiums. As costs are driven ever upward, many employers will assuredly be forced out of the market, pushing even more working families into the ranks of the 43 million uninsured.

But the Kennedy-McCain bill not only renders health plans liable to suit, it also imposes liability on employers, despite claims by bill proponents that employers are shielded. The very notion that an employer could be sued for generously and voluntarily providing health insurance to his or her employees is outrageous. Indeed, if employers are exposed to liability for their voluntary provision of health insurance to their employees, in addition to the increased premium costs resulting from health plan liability under the Kennedy-McCain bill, many employers will have no choice but to discontinue this important employee benefit.

The Kennedy-McCain bill threatens to undermine the nation's employer-sponsored health care system at a time when the economy is softening and millions of Americans are currently without coverage. Although serious problems with S. 1052 remain, your amendment would correct one of the numerous excesses of this extreme legislation.

Sincerely,

M. SCOTT VINSON,
Director, Government Relations.

ADVANCING THE BUSINESS OF TECHNOLOGY,
Washington, DC, June 25, 2001.

Hon. PHIL GRAMM,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR GRAMM: I am writing on behalf of AeA (American Electronics Association), the nation's largest high-tech trade association representing more than 3,500 of the nation's leading U.S.-based technology companies, including 235 high-tech companies in Texas, to thank you for offering your amendment to exempt employers from the liability provisions contained in S. 1052, the Bipartisan Patient Protection Act.

An overwhelming majority of AeA member companies provide their employees, their dependents, and retirees with quality health care options. AeA and its member companies are concerned that the liability provisions in S. 1052 would threaten our member companies' ability to continue to offer health insurance benefits. It only makes sense that exposing employers who provide health insurance to their employees to unlimited legal damages will result in fewer employers offering their employees' health insurance. Unlimited damage awards against insurance companies and employers will create a powerful incentive for lawsuits against both. At a minimum, companies that offer health insurance will see their litigation costs increase. Health insurance premiums will also increase, as litigation costs are passed through to both employers and employees.

Higher health insurance premiums will mean fewer health insurance options for employees, and in some cases, the loss of insurance coverage for employees as companies drop health insurance. The liability provisions in S. 1052 will also put pressure on companies to drop their health insurance benefits, primarily from individuals and institutions that own stock in these companies. Shareholders will be reluctant to permit companies to assume liability for employer-provided health insurance and they may pressure companies to drop their health insurance in order to protect the value of their stock.

AeA and its members share Congress' concern about improving the accessibility, affordability and quality of health care services for all Americans. But AeA and its members believe that S. 1052, especially the liability provisions in the bill, will undermine that worthy objective, and ultimately lead to more uninsured workers. AeA supports your amendment to S. 1052, as the first in many needed steps to improve this legislation.

Sincerely,

WILLIAM T. ARCHEY,
President and CEO.

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington, DC, June 25, 2001.

DEAR SENATOR: On behalf of the 600,000 members of the National Federation of Independent Business (NFIB), I urge you to support Sen. Phil Gramm's amendment exempting all employers from liability who voluntarily offer health care to their employees.

The Kennedy/McCain version of the ''Patients' Bill of Rights'' exposes small business owners to liability for unlimited punitive and compensatory damages that will force many small businesses to drop coverage. For

most small business owners, it only takes one lawsuit to force them to close their doors. In fact, 57 percent of small businesses said in a recent poll that they would drop coverage rather than risk a lawsuit.

Expanding liability in claims disputes could also increase health care premiums by as much as 8.6 percent at a time when small businesses are already experiencing annual cost increases in excess of 15 percent. Such increases will only force small businesses to drop coverage, adding many to the ranks of the uninsured.

Both Republicans and Democrats have said that the Texas law works. Now is the time to put those words into action. Support Senator Gramm's amendment to exempt employers from unlimited lawsuits! This will be an NFIB Key Small Business Vote for the 107th Congress.

Sincerely,

DAN DANNER,
Senior Vice President,
Federal Public Policy.

PRINTING INDUSTRIES
OF AMERICA, INC.,
Alexandria, VA, June 22, 2001.

Senator PHIL GRAMM,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR GRAMM: We are aware that the battle lines in the Patients' Bill of Rights may be so sharply drawn that there is little that can be done at this point to overcome the political issues; however, I want to outline the real world impact of passage of the Kennedy-McCain bill.

Our association is 114 years old. For a good portion of our recent history we have provided health benefits to our employees through a self-funded trust. We chose this option because we are a safe workplace and we have very good claims experience as well as a solid balance sheet. We purchase stop-loss insurance for protection of the assets of the organization above a specified limit. We provide benefits to 70 active employees, their dependents, and 14 retirees. Until 1974, we provided a retiree medical program for all our employees but rising costs forced us to drop that program, grand-fathering the employees who were hired prior to that time. We require only $50 contribution per month for our employees to include their dependents in our health care plan. We cover medical, dental and eye care through a PPO network or, at the option of the employee, a fee for service arrangement. Our prescription drug program requires an employee to pay $3.00 per generic prescription and $5.00 for brand name prescriptions. This is about the best plan available to any employee in the Washington area.

We are the ultimate decision maker in our plan. One of the benefits to self-funding is that we can and do make decisions affecting the health care of our employees. We have never made a negative decision. We have made several very significant positive decisions to help employees in very difficult health situations.

If the Kennedy-McCain bill is passed, we likely will be forced to terminate our plan and move to a fully insured plan. We currently pay almost $600,000 per year for our plan. We cannot pay any more. Moving to a fully insured plan will almost certainly reduce the benefits for our employees as we will lose the advantage of not having to pay overhead for an insurance company. We anticipate losing 25% of our benefits. Here are some of the things we will lose:

Our retiree program. When we renegotiated our plan this past year, we received proposals from insurance companies for our retiree program. We could not find one in the area who would pick up the plan.

Our prescription drug benefit. While we would not lose it, we would have to more than triple the price to $10/$20. This also is based on the proposals we received last year.

Our ability to make decisions for our employees and their dependents. We would have to be concerned that the ability to make good decisions has the other side—turning down the next employee. In other words, we could be sued for failing to make a decision. Our organization cannot expose the assets of the organization to that liability potential.

Our very small employee contribution. Employees share of the benefits will go up. The $50 per month family coverage will likely be increased to $200 per month. Co-pays and deductibles will also rise. Some coverage may have to be dropped altogether.

We have discussed this issue and other Patients' Bill of Rights issues with our employees and member firms. Many people do not understand the issues. They do not believe Congress would do something like this. Our concern is that you may not knowingly do something like this. But this is real.

We would be pleased to discuss this and other matters related to this legislation with you. We are not alone in the impact this bill would have on our employees. I am aware that we have many self-insured, jointly trusteed union plans in our industry that would also be affected in this manner but they do not understand the legislation.

Please feel free to contact me if you wish to discuss our concerns.

Sincerely,

BENJAMIN Y. COOPER,
Senior Vice President.

Mr. GRAMM. Let me review very quickly where we are. Our colleagues who support the pending bill say that the bill does not allow employers to be sued. If you look at the language of their bill, it clearly says it on line 7 on page 144, ''Causes of action against employers and plan sponsors precluded.'' Then it says:

Subject to subparagraph (B), paragraph (1)(A) does not authorize a cause of action against an employer. . . .

That has been pointed to over and over again to say that employers cannot be sued. The problem is that on line 15, the bill goes on and says:

CERTAIN CAUSES OF ACTION PERMITTED.—Notwithstanding subparagraph (A), a cause of action may arise against an employer or other plan sponsor. . . .

Then the bill goes on for 7½ pages of ifs, ands, and buts about when employers can be sued. They can be sued if they have ''a connection with;'' they can be sued if they ''exercise control,'' which is very interesting because under ERISA, which is the Federal statute that governs employee benefits provided by the employer, every employer is deemed to exercise control over every employee benefit.

The bottom line is, despite all the arguments to the contrary, in the bill before us, employers can be sued.

The Texas Legislature faced exactly this same dilemma, and they concluded that they wanted an absolute carve-out of employers. Why? Not that they believed employers were perfect; not that they believed every employer was responsible, but because they couldn't figure out a way to get at potential employer misbehavior without creating massive loopholes which would produce a situation where employers, large and small, could be dragged into a courtroom and sued because they cared enough about their employees to help them buy health insurance.

The Texas Legislature decided you ought not be able to sue an employer.

Senator MCCAIN read a letter from the Texas Medical Association president, but he did not read the one paragraph in the letter that I was going to read. It is a very important paragraph. Let me explain why. Opponents of this amendment say: You ought to be able to sue employers if employers are making medical decisions. The point is, this bill—and the Texas law and every Patients' Bill of Rights proposal made by Democrats and Republicans—has an external appeal process that a panel of physicians and specialists, totally independent of the health care plan and totally independent of the employer, that will exercise the final decisionmaking authority.

How could an employer call up this professional panel, independent of the health insurance company or the HMO, and in any way intervene? They couldn't.

The line from the letter from the Texas Medical Association addresses exactly this point. It points out that the State couldn't reach into ERISA. But another reason that it wasn't necessary or advisable to try to sue employers was, from the letter:

Additionally, we believed that utilization review—

And this is the review process—

agents were making the decisions regarding appropriate medical treatment for employees of these self-funded plans. We contended that these state-licensed utilization review agents would be subject to the managed care accountability statute—

Which is the Texas law.

The same would be true under this bill. Under this bill, no employer can make a final decision. The final decision is made by this independent medical review.

So what is this all about? It all boils down to the following facts: If we leave this provision in the bill, which says employers can be sued and has 7½ pages of ifs, ands, and buts about suing them, and then interestingly enough says you can't sue doctors, you can't sue hospitals, but you can sue employers in its conclusion, then what is going to happen is all over America businesses are going to call in their employees.

The example I used yesterday, and I will close with it today—am I out of time?

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

Mr. GRAMM. Let me wrap up by saying, all over America, small businesses are going to call in their employees and say: I want to provide these benefits, but I cannot put my business at risk, which my father, my mother, my family have invested their hearts and souls in; therefore, I am going to have to cancel your health insurance.

I urge my colleagues to vote for this amendment.

I yield the floor.

Mr. KENNEDY. Madam President, I am prepared to yield back the minute on the Grassley motion. As I understand it, Senator GRASSLEY is going to yield back his time.

I ask for the yeas and nays on both the Grassley motion and the Gramm amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The senior assistant bill clerk called the roll.

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

The result was announced—yeas 39, nays 61, as follows:

[Rollcall Vote No. 196 Leg.]

YEAS—39

Allard	Enzi	McConnell
Allen	Frist	Murkowski
Baucus	Gramm	Nickles
Bennett	Grassley	Roberts
Bond	Gregg	Santorum
Breaux	Hagel	Shelby
Brownback	Hatch	Smith (NH)
Bunning	Helms	Stevens
Burns	Hutchison	Thomas
Campbell	Inhofe	Thompson
Cochran	Kyl	Thurmond
Craig	Lott	Voinovich
Crapo	Lugar	Warner

NAYS—61

Akaka	Durbin	McCain
Bayh	Edwards	Mikulski
Biden	Ensign	Miller
Bingaman	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Byrd	Fitzgerald	Nelson (NE)
Cantwell	Graham	Reed
Carnahan	Harkin	Reid
Carper	Hollings	Rockefeller
Chafee	Hutchinson	Sarbanes
Cleland	Inouye	Schumer
Clinton	Jeffords	Sessions
Collins	Johnson	Smith (OR)
Conrad	Kennedy	Snowe
Corzine	Kerry	Specter
Daschle	Kohl	Stabenow
Dayton	Landrieu	Torricelli
DeWine	Leahy	Wellstone
Dodd	Levin	Wyden
Domenici	Lieberman	
Dorgan	Lincoln	

The motion was rejected.

Mr. KENNEDY. I move to reconsider the vote.

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

The motion was agreed to.

AMENDMENT NO. 810

The PRESIDING OFFICER. Under the previous order, there will now be 6 minutes for closing debate, divided in the usual form, prior to a vote on or in relation to the Gramm amendment No. 810.

Who yields time?

Mr. KENNEDY. I understand there are 3 minutes to a side.

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. I yield myself a minute and a half and a minute and a half to the Senator from North Carolina.

Madam President, we have just finished the education legislation. In this legislation, we held students accountable, school districts accountable, teachers accountable, and children accountable. Now we are trying to hold the HMOs accountable if they override doctors, nurses and trained professionals regarding the care for injuries of individuals. That is the objective of this legislation.

However, if employers interfere with medical judgments, they ought to be held accountable as well. The Gramm amendment says: No way; even if an employer makes a judgment and decision that seriously harms or injures the patient, there is no way that employer could be held accountable.

We may not have the language right, but at least we are consistent with what the President of the United States has said. We may have differences with the President of the United States and we do on some provisions. However, the Gramm amendment is an extreme amendment that fails to protect the patients in this country and fails to provide that needed protection.

Mr. GRAMM. Madam President, I make a point of order that the Senate is not in order. Senator EDWARDS deserves to be heard.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from North Carolina is recognized.

Mr. EDWARDS. Madam President, this is an issue on which we have consensus. The President of the United States said, ''Only employers who retain responsibility for and make vital medical decisions should be subject to suit.''

Our bill provides exactly as the President describes. As Senator KENNEDY has indicated, we have consensus not only with the President of the United States but in this body and in the House of Representatives based on the Norwood-Dingell bill which was voted on before. This is an issue about which there is consensus.

We are continuing to work. Senator SNOWE and others are leading that effort. We are working across party lines to get stronger and more appropriate language so that employers know that they are protected without completely leaving out the rights of the patients.

I urge my colleagues to vote against the Gramm amendment, which is outside the mainstream, outside our bill, outside our position, outside Norwood-Dingell, and outside what the President of the United States has said.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Madam President, throughout this debate, those who are in favor of this bill have said our bill is just like the Texas bill. Look at Texas. No employers have been sued, and there have been a minimum number of lawsuits. Yet when you look at this bill, it says employers can't be sued. Then it says they can be sued. And it has 7½ pages of ifs, ands and buts.

Are employers connected with the decision? Do they exercise control? ERISA says that in any employee benefit the employer is deemed to exercise control, which would mean that every employer in America is covered. The Texas legislature did not assume that every employer was perfect. They were worried about unintended consequences.

They also concluded that no employer can be the final decisionmaker because this bill, as in our bill, has an external review process that is run by independent physicians that are selected independently of the plan. They make the final decision, not an employer.

The Texas legislature decided what we should decide here; that is, if you get into ifs, ands, and buts, what is going to happen all over America is businesses are going to drop their insurance.

If we should pass the bill without this amendment in it, it is easy to envision that we could have a small business where the business owner calls in his employees and says, Look, we worked hard to provide good health benefits, but my father and my mother worked to build their business. I have worked. My wife has worked. We have invested our whole future in this business, and I cannot continue to provide benefits when I might be sued.

Think about the unintended consequences. That is what the Texas legislature did. They concluded that employers should not be liable. They cannot make the final decision under this bill. They cannot make the final decision under Texas law because it is made by an external group of physicians. But when you make it possible to sue them, they are going to drop their health insurance, and you are going to have fancy reviews and stiff penalties, but people aren't going to have health insurance.

I urge my colleagues to look at Texas. If you want to take all the claims of the benefits of Texas, do it the way they did it. They thought you created unintended consequences by letting employers be sued. They knew that employers could not make the final decision because they had external review, just as this bill and every other bill has. By doing an employer carve-out, they guaranteed that every small and large business in the State would know they cannot be sued.

The PRESIDING OFFICER (Mr. CORZINE). The question is on agreeing to amendment No. 810. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

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

The result was announced—yeas 43, nays 57, as follows:

[Rollcall Vote No. 197 Leg.]

YEAS—43

Allard	Frist	Nickles
Allen	Gramm	Roberts
Bennett	Grassley	Santorum
Bond	Gregg	Sessions
Brownback	Hagel	Shelby
Bunning	Hatch	Smith (NH)
Burns	Helms	Smith (OR)
Campbell	Hutchinson	Stevens
Cochran	Hutchison	Thomas
Collins	Inhofe	Thompson
Craig	Kyl	Thurmond
Crapo	Lott	Voinovich
Domenici	Lugar	Warner
Ensign	McConnell	
Enzi	Murkowski	

NAYS—57

Akaka	Dodd	Lieberman
Baucus	Dorgan	Lincoln
Bayh	Durbin	McCain
Biden	Edwards	Mikulski
Bingaman	Feingold	Miller
Boxer	Feinstein	Murray
Breaux	Fitzgerald	Nelson (FL)
Byrd	Graham	Nelson (NE)
Cantwell	Harkin	Reed
Carnahan	Hollings	Reid
Carper	Inouye	Rockefeller
Chafee	Jeffords	Sarbanes
Cleland	Johnson	Schumer
Clinton	Kennedy	Snowe
Conrad	Kerry	Specter
Corzine	Kohl	Stabenow
Daschle	Landrieu	Torricelli
Dayton	Leahy	Wellstone
DeWine	Levin	Wyden

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

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, we were in the process of trying to propound a unanimous consent request, but all the parties are not here. We will do that at 2:15.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business for not to exceed 30 minutes with Senators permitted to speak therein for up to 5 minutes each.

Under the previous order, the Senator from Wisconsin is recognized to speak for up to 15 minutes.

COLORADO REPUBLICAN CASE

Mr. FEINGOLD. Mr. President, on April 2 of this year, the Senate voted overwhelmingly to pass the McCain-Feingold bill and ban soft money. Even before the roll was called on final passage and 59 Senators voted ''aye,'' the Senate's foremost opponent of reform declared that he relished the opportunity to bring a constitutional challenge to the bill. ''You're looking at the plaintiff,'' the Senator from Kentucky announced.

Opponents of reform have consistently expressed confidence that the courts will strike down our efforts to clean up the campaign finance system. They regularly opine that the McCain-Feingold bill is unconstitutional, and, despite clear signs to the contrary in the Court's opinion last term in Nixon v. Shrink Missouri Government PAC, express great certainty that the Supreme Court will never allow our bill to take effect.

Well, in its decision yesterday morning in FEC v. Colorado Republican Federal Campaign Committee, the Court again dumped cold water on that certainty. The court held that the coordinated party spending limits now in the law—the so-called ''441a(d) limits''—are constitutional. It ruled that the coordinated spending limits are justified as a way to prevent circumvention of the $1,000 per election limits on contributions to candidates that the Court upheld in the landmark Buckley v. Valeo decision in 1976. In my view, the decision makes it even more clear that the soft money ban in the McCain-Feingold bill will withstand a constitutional challenge.

The first thing to note about the Court's ruling is that it reaffirms the distinction the Court has drawn between contributions and expenditures and the greater latitude that the Court has given Congress in the case of restraints on contributions. The Court noted that the law treats expenditures that are coordinated with candidates as contributions, and the Court has upheld contribution limits in previous cases with that understanding. It agreed with the FEC that spending by a party coordinated with a candidate is functionally equivalent to a contribution to the candidate, and that the right to make unlimited coordinated expenditures would open the door for donors to use contributions to the party to avoid the limits that apply to contributions to candidates.

The Court rejected the Colorado Republican Party's argument that party spending is due special constitutional protection. Instead, the Court found that the parties are in the same position as other political actors who are subject to contribution limits. Those actors cannot coordinate their spending with candidates. The Court noted that under current law and the Court's previous decision in the first Colorado case, the parties are better off than other political actors in that they can make independent expenditures and also make significant, but limited, coordinated expenditures. The limits on coordinated expenditures have not prevented the parties from organizing to elect candidates and generating large sums of money to efficiently get out their message, the Court noted.

After determining that limits on party coordinated spending should be analyzed under the same standard as contribution limits on other political actors, the Court had little trouble in deciding that there was ample justification for those limits based on the need to avoid circumvention of the contribution limits in the federal election laws. It pointed to substantial evidence of circumvention already in the current system, and the near certainty that removing the 441a(d) limits would lead to additional circumvention. The Court held:

> [T]here is good reason to expect that a party's right of unlimited coordinated spending would attract increased contributions to parties to finance exactly that kind of spending. Coordinated expenditures of money donated to a party are tailor-made to undermine contribution limits. Therefore, the choice here is not, as in Buckley and Colorado I, between a limit on pure contributions and pure expenditures. The choice is between limiting contributions and limiting expenditures whose special value as expenditures is also the source of their power to corrupt. Congress is entitled to its choice.

So, Mr. President, I am pleased that the Court upheld Congress's right to limit the coordinated spending of the parties. But even more than that, I am pleased at the way that the Court looked at the constitutional issues in the case and the arguments of the parties. The Court's analysis demonstrates an understanding of the real world of money and politics that gives me great confidence that it will uphold the soft money ban in the McCain-Feingold bill against an inevitable constitutional challenge.

As my partner and colleague, Senator MCCAIN, pointed out to me prior to my taking the floor, of course this decision was about hard money; but if you really read it, it isn't so much about hard money or soft money, it is just about money and the corrupting influence it has on our political process.

For example, the Court noted that ''the money the parties spend comes from contributors with their own interests.'' And the Court recognized that those contributors give money to parties in an attempt to influence the actions of candidates. The Court said:

> Parties are thus necessarily the instruments of some contributors whose object is not to support the party's message to elect party candidates across the board, but rather to support a specific candidate for the sake of a position on one, narrow issue, or even to support any candidate who will be obliged to the contributors.

This is precisely the point that we who have fought so hard to ban soft money have been making for years. These contributions are designed to influence the federal officeholders who raise them for the parties, and ultimately, to influence legislation or executive policy. The Court shows that it understands this use of contributions to political parties when it states:

> Parties thus perform functions more complex than simply electing candidates; whether they like it or not, they act as agents for spending on behalf of those who seek to produce obligated officeholders.

The Court also recognized that the party fundraising, even of limited hard money, provides opportunities for large donors to get special access to lawmakers. The Court states:

Even under present law substantial donations turn the parties into matchmakers whose special meetings and receptions give the donors the chance to get their points across to the candidates.

In a footnote, the Court notes evidence in the record of the Democratic Senatorial Campaign Committee establishing exclusive clubs for the most generous donors.

These special clubs and receptions are even more prevalent in the world of soft money fundraising. Both parties sell access to their elected officials for high dollar soft money contributions. This week a Republican fundraiser featuring the President and the Vice President is expected to raise over $20 million.

The corrupting influence of soft money, or at least the appearance of corruption created by the extraordinary sums raised by party leaders and federal officeholders and candidates, is an argument for the constitutionality of a ban on soft money that those who support the McCain-Feingold bill would have made even if the Colorado II case had come out the other way. But the Court's decision itself is solid support for another independent reason that the soft money ban is constitutional.

Corporations and unions are prohibited from contributing money in connection with federal elections. And individuals are subject to strict limits on their contributions to candidates and parties. The soft money loophole allows those limits to be evaded. This is not just a theoretical possibility, as in the Colorado case. There is a massive avoidance of the federal election laws going on today, as there has been for over a decade. The evidence of this is overwhelming. Soft money is being raised by candidates for the parties, and it is being spent in a whole variety of ways to influence federal elections. In recent years, the parties have used soft money to run ads that are virtually indistinguishable from campaign ads run by the candidates. That is what is going on in the real world.

A soft money ban will end the circumvention of these crucial limits in the law, limits that date back to 1907 in the case of corporations, 1947 in the case of unions, and 1974 in the case of individuals. The Supreme Court's decision yesterday tells us that Congress can constitutionally act to end that evasion.

The remaining question, of course, is whether we will do it. Our vote in this body on April 2 was the first step. When the House returns from the July 4th recess it will take up campaign finance reform, and I am hopeful that it will act decisively to pass a bill that is largely similar to the McCain-Feingold bill. Then it will be up to the Senate to act quickly and send the bill to President Bush for his signature. We are getting close, Mr. President, to finally cleaning up the corrupt soft money decision. The Supreme Court's decision yesterday, unexpected as it was to many in the Senate and in the legal community, is a major boost for our efforts. The Court has spoken. Now Congress must act.

I yield the remainder of the time under my control to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. I thank the Chair. Mr. President, I add my thanks and gratitude to my good friend from Wisconsin. He has been a leader on this whole issue of campaign finance reform for so many years. He started as a young boy, and it has taken most of his life. I think progress is being made from a most unlikely source. I applaud the continued perseverance and commitment of the Senator.

HIV/AIDS EPIDEMIC

Mrs. CLINTON. Mr. President, we are in the midst of this very important debate about a Patients' Bill of Rights. I am hoping that before we break for the Fourth of July recess, the doctors, nurses, patients, and families of America will have the relief for which we have all waited for a very long time: making it clear doctors should be making our health care decisions; that nurses, not bookkeepers, should be at our bedsides; and that the Patients' Bill of Rights will be a reality.

I rise today because we have to consider our broad needs for health care not only in our country but around the world. Today as we meet and debate a Patients' Bill of Rights to make sure that Americans have access to the best health care in the entire world, there are millions of people around the world who do not have that opportunity or that right. I speak specifically of those who are suffering from HIV/AIDS.

We should be supporting vigorously the United Nations General Assembly on Meeting the Global HIV/AIDS Challenge and urging them to consider creative tools, such as debt relief, in efforts to combat HIV/AIDS.

As the general assembly is meeting in special session in New York to try to come up with a strategic blueprint for fighting HIV/AIDS worldwide, it is imperative that we in America appreciate that this worldwide epidemic has nowhere near crested. Africa is ravaged. It has just begun to affect India, China, and Russia. This is an epidemic of historic proportions, and it needs a response that is historically appropriate.

Almost 60 million people worldwide have been affected by HIV/AIDS, and over 20 million men, women, and children have died. If current trends continue, 50 percent or more of all 15-year-olds in the most severely affected countries will die of AIDS or AIDS-related illnesses.

We are in the middle of summer vacation. We have many families and young people visiting our Capitol. We are always so happy to have them here and for them to take a few minutes to see their Government in action, but it is just chilling to imagine American 15-year-olds facing bleak futures as orphans or victims because they were born to infected mothers.

Every American should be concerned with what is going on beyond our borders. We should also be concerned because when it comes to disease today, there are no borders. People get on jet planes, people travel all over the world. There is no disease that is confined to any geographic area any longer. We have to recognize that for us to worry about the HIV/AIDS epidemic in Africa and Asia is not only the right thing to do, it is the smart thing to protect ourselves and to protect our children.

It is also important to recognize that the groundbreaking drug treatments that are keeping people with HIV/AIDS alive today are not available to those who suffer elsewhere. Less than 1 percent of HIV-infected Africans, for example, have access to life-extending antiretroviral medications. The challenges facing us are great, and we should work together to combat this global emergency.

I strongly support the formation of a global fund for infectious diseases such as AIDS, but also including tuberculosis and malaria. We are seeing tuberculosis and malaria in our own country. We are seeing the spread of malaria, which used to be confined to a tropical belt, beginning to move northwards, in part, I believe, because of global warming and desertification, so the mosquitos can travel further north and find hosts who traditionally have not suffered from malaria.

Tuberculosis is becoming epidemic in many parts of the world. In Russia, drug-resistant tuberculosis is a major killer.

I believe we should have a global fund to combat these infectious diseases, and I am very pleased the United States, private donors, and some other nations have taken steps to address the need for money as articulated by Secretary General Kofi Annan. We need between $7 billion to $10 billion annually. It is my hope that through a public-private partnership we are able to continue to invest in promoting prevention, treatment, and eventually a vaccine to prevent this devastating disease.

I am old enough to remember polio as a scourge that affected my life. I can remember my mother not letting me go swimming in the local swimming pool because of polio. I remember as though it were yesterday when the announcement of a vaccine was made. What a sense of relief that spread through my house and all of our neighbors, and we all lined up to get that shot we thought would protect us from what had been, up until then, such a serious, overhanging cloud in the lives of young people, as well as older people.

HIV/AIDS extracts a severe economic toll on nations worldwide. The disease spreads so rapidly. No one is immune from it. It has grave consequences for societies, and it threatens the interest

of peace and prosperity around the world.

HIV/AIDS alone will reduce the gross domestic product of South Africa by $22 billion, or 17 percent, over the next decade. That is why I believe debt relief must also be part of any conversation about a broader global HIV/AIDS strategy.

While most African countries spend less than $10 per capita on health care, they spend up to five times that amount in debt service to foreign creditors. In fact, the burdens of debt repayment have come into direct conflict with public health efforts in some instances. For example, structural adjustment programs have sometimes required governments to charge user fees for visits to medical clinics, a practice that stands in the way of effective prevention and treatment programs. As discussions of global HIV/AIDS prevention proceeds, consideration should be given to the role of international debt relief in the overall plan to combat HIV/AIDS.

I have written to the U.N. General Assembly President Harri Holkeri to express my support for his efforts and to urge inclusion of debt relief strategies in any effort that comes out of the general assembly.

I also urge our own Government to look more closely at what we can do. In the last administration, we forgave a lot of our bilateral debt for the poorest of the nations, but we should look at expanding beyond the circle of the poorest of the poor to the next poorest of the poor, and we should also look at our multilateral debt.

I am hoping I will find support on both sides of the aisle for a sense-of-the-Senate resolution I will be submitting to express the policy view that debt relief can and should be an important tool.

I have visited African countries. I have visited Asian countries. I have visited HIV/AIDS programs. I have been in places where 12-year-old girls who were sold into prostitution by their families have come home to die in northern Thailand.

I have been in programs in Uganda which have done probably the best job I know of in Africa certainly to spread the message about how to prevent HIV/AIDS. I have listened to the songs that were taken out into villages to tell villagers about this new disease that nobody really knows where it came from or how it arrived, but to warn people about its deadly consequences.

I was fortunate and privileged last year to participate in the United Nations discussion about AIDS, and I sat with AIDS orphans: A young boy from Uganda whose father and then mother died of AIDS, leaving him responsible for his younger brothers and sisters; a young boy from Harlem whose mother died of AIDS; a young boy from Thailand who was also orphaned by this terrible disease.

In some parts of Africa now, one will only find children, and most of them are orphans. The rate of infection ranges from 15 to 35 percent, and I am deeply concerned we are still in some parts of the world in a state of denial about HIV/AIDS.

Certainly, both India and China face tremendous challenges to educate their population about this disease and to avoid practices that might spread it. It is commonplace in some parts of China for very poor villagers to sell their blood to make a little money. In so doing, they are subjecting themselves to the possible transmission of this terrible disease.

In other parts of Africa and Asia, even the best intentions to immunize children against measles or other communicable diseases lead to tragedy because the sterilization is not up to par and needles are reused, leading to the infection of people with HIV/AIDS.

I have long maintained there is a deep, profound connection between the economic health of a nation and the physical health of that nation's people. That is why we have to act now to address the HIV/AIDS pandemic.

There is so much the United States can and should do. We have the finest health care system in the world. We are the richest nation that has ever existed in the history of the world. We not only should care about people in other parts of the world because of this disease, but we should act in our own self-interest because there will be many parts of the world where it will be difficult, potentially even dangerous, to travel if the entire social structure and economy collapses because of the strain of HIV/AIDS, where tourists and business people from America will be told they should not go to do business. Suppose they are in an accident or suffer injury and might need medical care and that medical care might not be deliverable because the health care system has collapsed under the weight of HIV/AIDS.

I look forward to working with my colleagues in the Senate and in our United States delegation to the United Nations General Assembly special session on these and other desperately needed proposals to halt and reverse the social and economic damage caused by HIV/AIDS and the direct and immediate threat this pandemic poses to America and Americans. I urge my colleagues and I urge our Government and the United Nations to look deeply into the concept of forgiving debt in return for nations doing what we know works to prevent, treat, and eventually find a vaccine for this terrible disease.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:52 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer [Mrs. CLINTON].

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

BIPARTISAN PATIENTS PROTECTION ACT—Continued

Mr. REID. Madam President, I ask unanimous consent that there be 45 minutes for debate with respect to the McCain amendment No. 812, which is pending, with the time equally divided and controlled in the usual form with no second-degree amendments in order thereto; that upon the use or yielding back of time the amendment be temporarily laid aside, and Senator GREGG or his designee be recognized to offer the next amendment as under a previous order.

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

Who yields time?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Madam President, I ask unanimous consent that the time during the quorum call be equally divided.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. KENNEDY. I yield myself 7 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. KENNEDY. Madam President, the cornerstone of an effective patient protection program is the right to timely, fair and independent review of disputed medical decisions. This amendment reaffirms a critical element of that right—the right to an independent appeal process that is not stacked against patients by giving the HMO the right to select the judge and jury.

This is a critical difference between our approach to that issue and the approach of the alternative legislation before the Senate. Under their bill, the HMO gets to select the so-called independent appeals organization. Under our bill, neither the HMO nor the patient selects the appeals organization. Instead, it must be selected by a neutral and fair appeals process. This amendment puts the Senate on record as supporting that fair and impartial appeal process.

The approach of allowing one party to a dispute—in this case the HMO—to select the judge and jury to a dispute is so inherently unfair that it has been rejected out of hand by virtually every expert who has considered the issue. It flies in the face of every principle and precedent founded on fair play.

We don't allow it in our civil court procedures. We don't allow it in our criminal procedures. Doesn't a child with cancer whose HMO has overruled her doctor deserve at least the same basic fairness we provide for rapists and murderers?

The unfair approach of allowing one party to the dispute is not only alien to our court system, it is prohibited under the Federal Arbitration Act. It is unacceptable under the standards of the American Arbitration Association. It is rejected by the standards of the American Bar Association. Of the 39 States that have created independent review organizations, 33 do not allow it; neither should the Senate.

Do we understand, in the 39 States that have created independent review organizations, 33 do not allow the HMO to select and pay the independent reviewer; and neither should the Senate.

Under the fair external review approach we have in Medicare and in most States, the reviewer decides the plan is right about half the time and decides the patient is right about half the time. In the financial services industry, the industry gets to select the reviewer in disputes, and the industry wins 99.6 percent of the time. No wonder HMOs want that system: it makes a mockery of the whole idea of independent review. A vote for this amendment is a vote against making this bill a mockery of everything that a true Patients' Bill of Rights should stand for.

And how ironic it is that the sponsors of the competing proposal are vociferous supporters of the President's principle that we should preserve good State laws. But under this amendment, the 39 State external appeals systems currently in place would be wiped out. Do we understand? There is one provision in the two major pieces of legislation before us; that is, the McCain-Edwards bill and the Breaux-Frist bill. In the Breaux-Frist bill, their appeals provision effectively preempts all of those 39 States. They have to follow what is in their legislation. As I pointed out, that is the process by which the HMO selects the independent reviewer. They would be null and void, even where they provide greater consumer protections than the Federal standard. In all of these instances, the consumer has greater protection than even under the underlying proposal of the McCain-Edwards bill.

We have heard a lot of tragic examples of HMO abuse during the course of this debate and through the extensive discussions in the press over the last 5 years. We heard of children denied life-saving cancer treatment by their HMO. It is wrong to let that same HMO choose the judge and jury that could decide whether those children live or die. And our amendment says it is wrong.

We have heard of women with terminal breast and cervical cancer denied the opportunity to participate in clinical trials that could save or extend their life. It is wrong to give that same HMO that overruled the treating physician and denied the care the right to chose the judge and jury that could decide whether that woman has a real chance to live to see her children grow up or is guaranteed to be dead within 3 months.

We have heard of a young man whose HMO decided that it was cost-effective to amputate his injured hand instead of providing the surgery that could restore normal functioning. It is wrong to give the HMO that made that heartless decision the right to choose the judge and jury that could decide whether that young man goes through life with one hand or two.

We have head of a policeman with a broken hip, whose HMO decided it was better to give him a wheelchair than to pay for the operation that would have restored his normal functioning. It is wrong to give the HMO that put its profits so far ahead of that patient's interests the right to choose the judge and jury that will decide whether that man ever walks again.

Last week, in discussing the issue of access to specialty care, I mentioned what had happened to Carley Christie, a 9-year-old little girl who was diagnosed with Wilms Tumor, a rare and aggressive form of kidney cancer. Her family was frightened when they received the diagnosis, but they were relieved to learn that a facility close to their home in Woodside, CA, was world-renowned for its expertise and success in treating this type of cancer—the Lucille Packard Children's Hospital at Stanford University.

The Christie family's relief turned to shock when their HMO told them it would not cover Carley's treatment by the children's hospital. Instead, they insisted that the treatment be provided by a doctor in their network—an adult urologist with no experience in treating this rare and dangerous childhood cancer. The Christies managed to scrape together the $50,000 they needed to pay for the operation themselves—and today Carley is a cancer-free, healthy and happy teenager. If the Christies had been less tenacious or had been unable to come up with the $50,000, there is a good chance that Carley would be dead today.

Under our opponents' plan, the HMO that passed a possible death sentence on little Carley Christie would have the right to choose the judge and jury to determine whether that possible death sentence should be upheld. No family should have to go through what the Christie's did.

The PRESIDING OFFICER. The Senator has used 7 minutes.

Mr. KENNEDY. I yield myself 5 more minutes, Madam President.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. No HMO should behave as the Carley's did. And that HMO should certainly not have the right to choose the external review organization to decide whether Carley should get the care she needed.

Another case that I find particularly shocking is that of Melissa Yazman, right here in Washington. In May, 1997, Melissa Yazman was a second year law student at American University, going to school full-time, living in suburban Virginia, working part-time for an attorney in D.C., and taking care of her two kids while her husband traveled with his job.

In the past 4 years, much has changed for Melissa. Her dreams of law school and a career in the working world are gone, and her new career is focused on healing and living every day to enjoy the time she has with her husband and her two sons—Ben who is 11, and Josh who is 8.

In the spring, in 1997, at the age of 36, she was diagnosed with stage IV pancreatic cancer at the age of 36. Pancreatic cancer is a fairly rare cancer, and, for the majority of patients like Melissa, diagnosis is not possible until the cancer is in an advanced stage.

Melissa was told that she had 3 to 6 months to live. There are no curative treatments for pancreatic cancer. For most pancreatic cancer patients clinical trials are their only hope.

Melissa was referred to a clinical trial at Georgetown University. Her insurer refused to cover the treatment. Melissa and her husband were forced to go through lengthy and time consuming negotiations with the insurer—negotiations that took her husband away from their children for 2 to 3 hours a day—negotiations that ultimately ended in failure. She and her husband ended up paying for these costs themselves because they ran out of time waiting for a decision from her insurer.

Because she and her husband had enough money in their savings account, they were able to pay for her routine costs—costs that her insurer should have covered and would cover for a patient not enrolled in a life-saving clinical trial.

Because of the therapy she received in a clinical trial, Melissa has been able to have 4 extra years with her family and with her young boys. Without the clinical trial, she would have

had 3–6 months. Every patient with incurable cancer hopes for enrollment in a clinical trial that can save or extend their life. No patient should have their hopes dashed because their insurer simply says no. And no patient like Melissa should have their right to a fair, impartial appeal voided because the HMO that said ''no'' gets to choose the organization that will decide the case.

For cancer patients, for women, for children—indeed, for every patient whose HMO denies critically needed cars—the right to a speedy, fair, impartial appeal should be a fundamental right. This amendment will put the Senate on record as saying that this appeal should truly be fair and impartial, that it will not load the dice and stack the deck against patients. Every Senator knows that this amendment represents simple justice, and I urge every Senator to vote for what they know to be right.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

RECORDING OF VOTE

Ms. STABENOW. Madam President, I want to indicate that on rollcall vote No. 197, I was present and voted ''no.'' The official record has me listed as absent. Therefore, I ask unanimous consent that the official record be corrected to accurately reflect my vote. This will in no way change the outcome of the vote.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded. How much time is on both sides?

The PRESIDING OFFICER. There is no time remaining on the proponents' side, and there are 14 minutes 44 seconds on the opponents' side.

Mr. REID. I see nobody here of the opponents. If they require more time, I will be happy to give them whatever time I may use here. I ask unanimous consent that I be allowed to speak, and if the opponents of this sense-of-the-Senate amendment desire more time, they can have whatever time I use.

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

Mr. REID. Did the Senator from New Hampshire hear the request?

Mr. GREGG. No.

Mr. REID. We have no more time left. You have 14 minutes. I said I would like to speak. If you want more time, whatever time I use, you can have that in addition to the 14 minutes.

Mr. GREGG. I am not aware of any speakers. We are waiting for people to return from the White House before we get really started.

Mr. REID. I want to direct a question to the Senator from Massachusetts. I say to my friend from Massachusetts, we heard a lot of talk about how this legislation has an adverse effect upon the business community. Has the Senator heard those comments?

Mr. KENNEDY. Yes, I certainly have.

Mr. REID. I received an e-mail from Michael Marcum of Reno, NV. Here is what he said. I would like the Senator to comment on this communication I received from one of my constituents:

DEAR SENATOR REID, as a small business owner, and as a citizen I urge you to support the upcoming bill commonly known as the ''Patients' Bill of Rights.'' I also would like to state that I support your and Senator McCain's version of the bill. If the HMO's can afford to spend millions on lobbyists and advertisements then they can afford to do their job correctly, preventing the lawsuits in the first place . . . .

I am willing to pay to know that what I am purchasing from my HMO will be delivered, not withheld until someone is dead then approved post mortem (AKA a day late and a dollar short). While a believer in the market and freedom, I feel that we need a better national approach to health care. As the richest nation in the world, as the only real super-power, why do so many Americans get third world levels of health care, even when they have insurance.

Thank you for your time—Michael Marcum (Reno, NV).

Will the Senator acknowledge that Michael Marcum is one of the hundreds of thousands of small business people who do not have the money to run these fancy ads; that their only way of communicating with you and me is through e-mails and communicating through the standard means, not through these multimillion-dollar advertising campaigns? In short, will the Senator acknowledge there are a lot of Michael Marcums, small business people, in America who support this legislation?

Mr. KENNEDY. I thank the Senator for bringing two matters to the attention of the membership. One is the example the Senator referred to, and the other point is the fact we have heard so much during the course of the debate that if these protections are put in place, it is going to mean millions of insured individuals as a result of this legislation will become uninsured.

Yet it is apparent, as the Senator has pointed out, that the HMOs have millions of dollars to spend on these advertisements—millions of dollars that ought to be spent on either lowering premiums or giving patients the protections they need. Evidently, it is an open wallet for the HMOs because they have been on the national airways and have been distorting and misrepresenting the legislation, as the Senator has just pointed out, distorting what its impact would be on average families in this country.

I am wondering if the Senator is familiar with the Texas Medical Association letter we just received. It confirms that the Texas law mirrors the letter and spirit of the McCain-Edwards-Kennedy bill. This is from the Texas Medical Association. They point out that the Texas Medical Association and President Bush agree that any entity making medical decisions should be held accountable for those decisions. This is not only the position of the Texas Medical Association but is exactly what President Bush called for in a Patients' Bill of Rights.

We resolved that issue earlier today. The Texas Medical Association believes it is consistent with the intent of the Texas law to hold any entity, whether employer or insurer, accountable if they make a medical decision that harms a patient or results in death. We upheld that today.

The Texas law was never designed to exempt from accountability businesses that made harmful medical decisions. It was suggested earlier, the Senator remembers, that it would be, rather, a clarification that the liability provisions did not apply to small- and medium-sized businesses that purchased traditional insurance.

That is interesting to hear because we heard a great deal earlier about where the Texas Medical Association was. This is a clarification.

The Senator is pointing out we spent a good deal of time trying to catch up with the distortions and misrepresentations, but as the Senator from Nevada knows, what this is really about is doctors and nurses making decisions on health care for their patients and not having them overridden by the HMOs or by employers who put themselves in the place of HMOs.

That is what this legislation is about: letting our doctors and nurses practice their best in medicine. We have so many well-trained medical professionals. They are highly motivated, highly committed, and highly dedicated. What is happening in too many places, as the Senator has pointed out in this debate, too many times those medical decisions are being overrun and overturned by the HMOs, and that is plain wrong. That is what this battle is about. I thank the Senator for his comment.

Mr. REID. I say to my friend from Massachusetts, yes, I am familiar with the letter from the President of the Texas State Medical Association. I believe that is his title.

Mr. KENNEDY. That is correct.

Mr. REID. I heard Senator MCCAIN read the letter word for word. I was so impressed because what has happened the last few years is that doctors, who in the past have been totally nonpolitical, have been driven into the political field because they are losing their practices, they are losing their ability to practice medicine, their ability to take care of patients they were trained to take care of. They have come into the political field and have

joined together with the American Medical Association—all the different specialists and subspecialists—they have joined together saying: We as physicians of America need some help. If you want us to be the people who take care of your sick children, your sick wife, husband, mother, father, neighbor, then we need to have the ability to treat patients and give them the medicine they need.

The Senator from Massachusetts read part of this letter. Senator MCCAIN read the full text of the letter earlier today. It confirms this legislation is not being driven by a small group of fanatics but, rather, by the entire medical community. When I say ''medical community,'' it is more than just doctors. It includes nurses. It includes all the people who help render care to patients.

I say to my friend from Massachusetts, I commend him, Senator MCCAIN, and Senator EDWARDS for their diligence in doing something the American people need. We all have had the experience of having sick people in our families and seeing if care can be rendered. We know how important a physician is. When a loved one of mine is sick, I want the doctor to have unfettered discretion to do whatever that doctor, he or she, believes is best for my loved one. That is what this Patients' Bill of Rights is all about. When a doctor takes care of a patient, let the doctor take care of the patient.

Mr. KENNEDY. I thank the Senator. He has summarized the purpose of this legislation. As the Senator knows now, we are ensuring there will be remedies for those patients if the HMO is going to make a judgment and overturn that medical decision with internal and external appeals.

Now the matter before the Senate is to make sure that appeal is truly independent and not controlled by the HMO, not paid for by the HMO. As I mentioned earlier in my presentation, 33 States at the present time do not permit the HMOs to make the determination and select the independent reviewer. That is our position. That is in the McCain amendment. We do not want to have an appeals provision that is rigged in favor of the HMO that may be making the wrong decision with regard to the patient's health in the first place and then be able to select the judge and jury to get it to reaffirm an earlier decision which is clearly not in the interest of the patient.

Mr. REID. I say to my friend from Massachusetts, the manager of this bill, before I came to Congress, I was a judge in the Nevada State Athletic Commission for prize fights. As the Senator knows, Nevada is the prize fight capital of the world. One thing they would not let the fighters do is pick the judges. They thought it would be best if some independent body selected the judges to determine who was going to sit in judgment of those two fighters.

It is the same thing we have here. We simply do not want the participants picking who is going to make the decision. That should be made by an unbiased group of people who have nothing to gain or lose by the decision they make.

This is very simple. This sense-of-the-Senate resolution says that if there are going to be people making a decision, they should be unbiased; they should be people who have nothing in the outcome of the case. Is that fair?

Mr. KENNEDY. I agree. Senator, as you may know, the language in the alternative legislation not only permits the HMO to select the reviewer and to pay that, but also it preempts all the other States that have set up their own independent review, and 33 of the 39 that have set up their reviews have chosen a different way from this process, a truly independent review. They would effectively be usurped or wiped off the books.

We hear a great deal about State rights and not all wisdom is in Washington. This is a clear preemption of all of the existing State appeals provisions. It is done in a way that permits the HMO to be the judge and jury. That is why the McCain amendment—which says there will be an independent selection of review, and we will not preempt the States—makes a good deal of sense.

Mr. REID. If I could refer a question to the Senator from New Hampshire, our time under the agreement is just about out. Are you arriving at a point where you might offer the other amendment?

Mr. GREGG. I hoped we would be. Some of the Senators involved in that amendment are at the White House, so we are waiting for them to return. When they return, we will be ready to proceed.

Mr. REID. I have been told they probably won't return until about 3:30.

Mr. GREGG. I suggest we divide the time between now and 3:30 between the two sides equally.

Mr. KENNEDY. I don't know at this time of other amendments on this side. We are making good progress dealing with this legislation. We are eager to address these other matters. There are continued conversations on some of the issues. We certainly welcome ideas that can protect the patients. Looking at this realistically, we have several Members who want to address the Senate and have spoken to me several times that they would like to make comments about the legislation. We can use the time productively, but we indicate we are ready to deal with amendments and we look forward to receiving them. We want to continue business.

We thank the Senator from New Hampshire for his cooperation. I will notify my colleagues who might want to speak.

Mr. REID. We have no objection to the request of the Senator from New Hampshire.

Mr. GREGG. I ask that the time between now and 3:30 be equally divided between myself and Senator KENNEDY, and any quorum calls be divided between each side.

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

Mr. REID. Mr. President, I have been reading into the RECORD names of organizations that support this legislation. I will read some of the names into the RECORD. If someone from either side desires to speak, I will cease.

I have been through the A's, B's and C's of organizations supporting this legislation, hundreds of names. I begin with the D's:

Daniel, Inc.; Denver Children's Home; DePelchin Children's Center in TX; Developmental Disabilities; Digestive Disease National Coalition; Dystonia Medical Research Foundation; Easter Seals; Edgar County Children's Home; El Pueblo Boys' and Girls' Ranch; Elon Homes for Children in Elon, College, NC; Epilepsy Foundation; Ettie Lee Youth and Family Services; Excelsior Youth Center in WA; Eye Bank Association of America; Facing Our Risk of Cancer Empowered; Families First, Inc.; Families USA; Family & Children's Center Counsel; Family & Children's Center in WI; Family & Counseling Service of Allentown, PA; Family Advocacy Services of Baltimore; Family and Child Services of Washington; Family and Children's Service in VA; Family and Children Services of San Jose; Family and Children's Services in Tulsa, OK; Family and Children's Agency Inc.; Family and Children's Association of Mineola, NY; Family and Children's Center of Mishawaka; Family and Children's Counseling of Louisville, KY; Family and Children's Counseling of Indianapolis; Family and Children's Service of Minneapolis, MN; Family and Children's Service in TN; Family and Children's Service of Harrisburg, PA; Family and Children's Service of Niagara Falls, NY; Family and Children's Services in Elizabeth, NJ; Family and Children's Services of Central, NJ; Family and Children's Services of Chattanooga, Inc. in TN; Family and Children's Services of Fort Wayne; Family and Children's Services of Indiana; Family and Community Service of Delaware County, PA; Family and Social Service Federation of Hackensack, NJ; Family and Youth Counseling Agency of Lake Charles, LA; Family Centers, Inc.; Family Connections in Orange, NJ; Family Counseling & Shelter Service in Monroe, MI; Family Counseling Agency; Family Counseling and Children's and Children's Services; Family Counseling Center of Central Georgia, Inc.; Family Counseling Center of Sarasota; Family Counseling of Greater New Haven; Family Counseling Service in Texas; Family Counseling Service of Greater Miami; Family Counseling Service of Lexington; Family Counseling Service of Northern Nevada; Family Counseling Service, Inc.; Family Guidance Center in Hickory, NC; Family Guidance Center of Alabama; Family Resources, Inc.; Family Service Agency of Arizona; Family Service Agency of Arkansas; Family Service Agency of Central Coast; Family Service Agency of Clark and Champaign counties in OH; Family Service Agency of Davie in CA; Family Service Agency of Genesse, MI; Family Service Agency of Monterey in CA; Family Service Agency of San Bernardino in CA; Family Service Agency of San Mateo in CA; Family Service Agency of Santa Barbara in CA; Family Service Agency of Santa Cruz in CA; Family Service Agency of Youngstown, OH; Family Service and Children's Alliance of Jackson, MI; Family Service Association Greater Boston; Family Service Association in Egg Harbor, NJ; Family Service Association of Beloit, WA; Family Service Association of Bucks County in

PA; Family Service Association of Central Indiana; Family Service Association of Dayton, OH; Family Service Association of Greater Tampa; Family Service Association of Howard County, Inc. IN; Family Service Association of New Jersey; Family Service Association of San Antonio, TX; Family Service Association of Wabash Valley, IN; Family Service Association of Wyoming Valley in PA; Family Service Aurora, WI; Family Service Center in SC; Family Service Center in TX; Family Service Center of Port Arthur, TX; Family Service Centers of Pinell; Family Service Council of California; Family Service Council of Ohio; Family Service in Lancaster, PA; Family Service in Lincoln, NE; Family Service in Omaha, NE; Family Service in WI; Family Service Inc. in St. Paul, MN; Family Service of Burlington County in Mount Holly, NJ; Family Service of Central Connecticut; Family Service of Chester County in PA; Family Service of El Paso, TX; Family Service of Gaston County in Gastonia, NC; Family Service of Greater Baton Rouge; Family Service of Greater Boston; Family Service of Greater New Orleans; Family Service of Lackawanna County, in PA; Family Service of Morris County in Morristown, NJ; Family Service of Norfolk County; Family Service of Northwest, OH; Family Service of Racine, WI; Family Service of Roanoke Valley in VA; Family Service of the Cincinnati, OH; Family Service of Piedmont in High Point, NC; Family Service of Waukesha County, WI; Family Service of Westchester, NY; Family Service of York in PA; Family Service Spokane in WA; Family Service, Inc. in SD; Family Service, Inc. in TX; Family Service, Inc. of Detroit, MI; Family Service, Inc. of Lawrence, MA; Family Services Association, Inc. in Elkton, MD; Family Services Center; Family Services in Canton, OH; Family Services of Cedar Rapids; Family Service of Central Massachusetts; Family Service of Davidson County in Lexington, NC; Family Service of Delaware Counsil; Family Service of Elkhart County; Family Service of King County in WA; Family Service of Montgomery County, PA; Family Service of Northeast Wisconsin; Family Service of Northwestern in Erie, PA; Family Service of Southeast Texas; Family Service of Summit County in Akron, OH; Family Service of the Lower Cape Fear in NC; Family Service of the Mid-South in TN; Family Service of Tidewater, Inc. in VA; Family Service of Western PA; Family Services Woodfield; Family Services, Inc. in SC; Family Services, Inc. of Layfette; Family Services, Inc. of Winston-Salem, NC; Family Solutions of Cuyahoga Falls, OH; Family Support Services in TX; Family Tree Information, Education & Counseling in LA; Family Violence Prevention Fund; Family Means in Stillwater, MN; Federation of Behavioral, Psychological & Cognitive Sciences; Federation of Families for Children's Mental Health; FEI Behavioral Health in WI; Florida Families First; Florida Sheriffs Youth Ranches; and Friends Committee on National Legislation.

Mr. President, this is a partial list of the hundreds of names of organizations that support this legislation.

This is the fourth day that I have read into the RECORD names of hundreds of organizations supporting this legislation. This list was prepared for me more than a week ago. It has grown since.

When I finish this list, I hope we will have completed this legislation. But if we haven't, I will come back and read the new names.

This is legislation that is supported by virtually every organization in America. It is opposed by one umbrella group—the HMOs. They are the ones paying for these ads. They are the ones that are running the advertisements in newspapers and television and now even radio ads the reason being that they have made untold millions of dollars while we delay this legislation.

Every day that goes by is a lost opportunity for physicians to tell a patient what that patient needs and not have to refer to someone in an office in Baltimore, MD, as to what a patient is going to get in Las Vegas, NV.

When I have my income tax done, every year I have an accountant do that. When myself or a member of my family needs to be taken care of, I don't want an accountant doing that. I want a doctor to do that.

That is what this legislation is all about. I am so happy that we have a bipartisan group that the HMOs are not going to be able to stop.

We are going to pass this legislation, send it over to the House, the conference committee will meet, and we will send a bill to the President that he will sign.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Minnesota is recognized.

Mr. DAYTON. Thank you, Mr. President.

Mr. President, I rise today in support of S. 1052, the McCain-Kennedy-Edwards Patients' Bill of Rights legislation. Minnesota, my home State, has one of the largest concentrations of HMO providers in the country. In fact, 90 percent of Minnesotans who are covered by their employers also receive their health care services through HMOs. Also, historically, the HMO concept originated in Minnesota by a Minnesota physician who has now renounced what HMOs have become.

Originally, HMOs were going to herald in a new age of health care, with greater emphasis on prevention, on primary care, more efficient referrals, coordinated and integrated medical care, all leading to a better quality of medical services for patients at lower overall costs to our health care system.

Integral also to their arguments was their conceit that the private sector always does it better than the public sector, that the large public health systems of Medicare and Medicaid, and other public reimbursement programs, were largely the ones to blame for these skyrocketing health costs, and that private-sector HMOs and insurance companies could manage health care dollars so much better than Government and provide better quality for less quantity of dollars.

However, once they got into the profession, they found that it was not quite that easy, that quality care costs money. There is always some con artist in this country who claims we can have something for nothing, or at least more for less. But the reality is, quality health care costs money. Well-qualified, highly trained, life-saving doctors, nurses, and attendants deserve to be well paid; and that costs money. Advanced lifesaving diagnostic equipment costs money. State-of-the-art, well-staffed hospitals and clinics cost money. And providing enough of all of the above, to take care of all the patients across this Nation, costs money, more money than most of these health care delivery or insurance systems wanted to spend.

So HMOs became what I call them ''HNOs'': The way to save money became to say no; deny care; deny treatments; deny claims. Health care providers became health care deniers. As these HMOs became larger and larger, business operations—whether for-profit or nonprofit—their ''no'' bureaucracies became bigger and more important. Stock prices, executive compensations, retained earnings all became dependent on their ability to grow and to say no, deny patient care to produce profits at cost savings, to grow to produce ever more profits.

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

Under a previous agreement, the time until 3:30 was to be equally divided between the majority and minority. The time of the minority has expired.

Mr. GREGG. Mr. President, how much time does the Senator think he needs to make his statement?

Mr. DAYTON. I say to the Senator from New Hampshire, another 10 minutes. But I will return to speak another time.

Mr. GREGG. No. We have no speakers at this time. I am happy to yield 10 minutes to the Senator from Minnesota. And I ask unanimous consent for 10 minutes to be added to our time.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Reserving the right to object.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. I wonder if I might be able to have the floor to speak.

Mr. GREGG. What amount of time does the Senator from West Virginia need?

Mr. BYRD. Thirty minutes.

Mr. GREGG. I have no problem with that on my side, as long as our side will receive an equal amount of time. So that would be 40 minutes; 10 minutes to Senator from Minnesota, 30 minutes to the Senator from West Virginia; and then 40 additional minutes to be added to our side's time. And the Senator from West Virginia be recognized after the Senator from Minnesota.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Minnesota.

Mr. DAYTON. I would be happy to yield the floor to the Senator from West Virginia.

The PRESIDING OFFICER. Does the Senator from Minnesota wish to conclude his remarks?

Mr. DAYTON. I yield to the Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia is recognized for up to 30 minutes.

Mr. BYRD. Mr. President, I thank both Senators.

(The remarks of Mr. BYRD are located in today's RECORD under ''Morning Business.'')

Mr. DAYTON. Mr. President, I thank the great Senator from West Virginia for his erudite discourse on the trade agreement which gives me remarks as I shall present them to my constituents in Minnesota. I thank the distinguished Senator.

Mr. BYRD. Mr. President, I thank my colleague. I thank him very much.

Mr. DAYTON. Mr. President, to continue where I left off, a great American once said that a house divided against itself cannot stand. Our Nation's health care providers unfortunately are fundamentally divided against themselves. Their avowed purposes are to provide health care to their members, their clients, and their patients. Yet their financial success depends increasingly on not providing health care to their members, their clients, and their patients, and their members, clients, and patients are increasingly the victims of their own health care providers.

Why do we even need a Patients' Bill of Rights to protect us from our own health care providers?

The fact we even need this legislation, the fact we are debating it in the Senate today, says how badly our Nation's health care system has deteriorated. A Patients' Bill of Rights, even if necessary, should consist of two words: Doctors decide. Doctors decide what diagnostic procedures, what treatments, what surgeries, hospitalizations, and rehabilitation therapies are needed. The health care providers provide them, and the insurer pays for them. It is that simple. It is that sensible. It is that lawsuit free.

Our distance from it today is a measure of our social insanity. It is the measure of our health care idiocy. But that is where we are today.

There is a term used in sports these days, trash talking. There is a lot of trash being talked about this legislation: It will explode the costs of health care; it is going to cost employees their health care coverage; it will drive businesses into bankruptcy. Those are the same smears and scare tactics that were used against Social Security, against Medicare, against workers' compensation, against unemployment compensation, and against family leave. Is there anything that is good for the American people that is not bad for American business?

I don't entirely blame them, because those business men and women have been talked trash to, as well, by their partners in these health care enterprises. Many businesses across this country are bedeviled by increasing costs of their health care. They want to do the right thing for their employees, but they are not in the business of administering health plans. I am sympathetic to this. But I say to those big leaders, if you want to get out of the business of providing health care coverage for your employees, then you need to actively support a better alternative, a separate system of true national health care which is devoted to providing care, not to avoiding costs.

Last Saturday in Minnesota, along with my distinguished colleague from Minnesota, Senator WELLSTONE, and our majority leader, Senator DASCHLE, we heard from several families who expressed their support for their legislation and the critical need for it from their life experiences. There was a father who spoke eloquently and powerfully about his 4-year-old daughter named Hope. Hope was born with spina bifida. As part of her treatment, six doctors—six physicians—including one at the Mayo Clinic, prescribed certain physical therapy treatments for her. Yet her HMO was unwilling to provide or pay for those prescribed treatments. It took 8 months of banging their heads against this bureaucratic wall, paying for the treatments that they could afford out of their own pockets, forgoing other treatments that they knew were in the best interests of her young life, until they finally were able to break through and get the care she needed.

A mother spoke of her 21-year-old daughter who died of an eating disorder. As she so powerfully stated last Saturday in St. Paul, MN, young people aren't supposed to die of eating disorders. But her insurance company refused to pay for the necessary evaluation of her daughter's illness, it refused to refer her to a specialist who might have made the correct diagnosis, and that young woman is dead today. Her life has been snuffed out, taken away from her family. Her mother set up a foundation just for this purpose, to advocate for the care that should be provided for anyone else in that situation. What a horrible way for a parent to be pulled into this debate, by losing a daughter unnecessarily to a disease, an illness that should not have been fatal except for the lack of proper medical care, medical care that was available in our country and was not made available to her by her insurer.

Finally, we heard from the wife of a husband and father of five children, a healthy, active, middle-aged man who suddenly, over the course of just a few months, was caught with some debilitating disease and confined to a wheelchair. For 8 months she and her husband tried to get their primary physician at an HMO to make a diagnosis that could lead to successful treatment. For 8 months this primary physician at the HMO was unable to make the diagnosis and refused to refer this man to a specialist elsewhere for that evaluation. He finally said to this patient, father of five, devoted husband: ''Maybe there is something you need to confess.''

Can you believe the absurdity of that? ''Maybe there is something you need to confess''—as though there were some religious curse. This was a primary physician at an HMO. They could not escape the vice, the trap of that bureaucracy.

Finally, on their own initiative, the wife was so desperate, they decided to risk their entire life savings and drove to the Mayo Clinic in Rochester, world renowned clinic, and signed papers saying they would pay personally for the costs of whatever treatments were necessary. The physician there made a diagnosis of a viral disease, an invasive disease, prescribed the necessary treatments, medications, and this man is now at least partially recovered. He tires easily and cannot stand for extended periods of time but is out of a wheelchair and hopefully back to a full recovery. It cost this family $25,000 out of their own pocket to get the medical care they needed. The HMO finally agreed to pay 80 percent of that cost.

This legislation is not about lawsuits, it is about lives. It is not about trial lawyers but people, patients, mothers, fathers, children. I am not interested in lawsuits. I hope there is never a lawsuit as a result of this legislation because that would mean there would never be the need for them. It would mean all Americans were receiving the health care they need, the health care they deserve, the health care for which they paid.

I support this legislation, and I strongly urge my colleagues to support this as well.

I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Mr. President, we encourage and invite colleagues who have amendments to come to the floor. Having talked with Senator GREGG and others, I anticipate we will have an amendment dealing with the issue of medical necessity. That is an issue which is of very considerable importance in the legislation. It was the subject of a good deal of debate the last time we debated this legislation. It was the subject of a good deal of debate when we were in the conference. It was actually one of the few issues that were resolved in the conference.

At this time, we have language in the McCain-Edwards legislation, of which I am a cosponsor, as well as in the Breaux-Frist measure, which is virtually identical. There are some small

differences in there, but they are effectively very much the same. There will be an amendment to alter and change that issue. I will take a few moments now to speak about the importance of what we have done with the underlying legislation, and hopefully the importance of the Senate supporting the construct we have achieved.

It is my anticipation that the amendment will probably be offered at about 5 o'clock this evening. We will have debate through the evening on that measure. Hopefully, we will have a chance to address it. There are several other amendments dealing with the issue of the scope of the legislation, as well as on liability. I understand we may very well have the first amendments on liability a little later this evening as well.

This issue on medical necessity is of very considerable importance. I want to outline where we are and the reasons for it for just a few minutes.

The legislation before the Senate closes the door against one of the most serious abuses of the HMOs and other insurance plans, and the ability of a plan to use an unfair, arbitrary, and biased definition of medical necessity to deny patients the care their doctor recommends.

My concern is that the amendment we are going to see before the Senate is going to open that possibility again. We closed it with McCain-Edwards and also with the Breaux-Frist measure.

The issue before us is as clear as it was when we started the debate 5 years ago; that is, who is going to make the critical medical decisions—the doctors, the patients, or HMO bureaucrats?

It is important for every Member of the Senate to understand how we got where we are on this issue. We started out by placing a fair definition of medical necessity. The plan would have to abide by the Patients' Bill of Rights itself. It was a definition that was consistent with what most plans already did.

Every Democratic Member of the Senate voted for that approach. I still think it has much to commend it. But we heard complaint after complaint from the other side that putting a definition into law would be a straightjacket for health plans, it would prevent them from keeping pace with medical progress, and so on.

So Congressmen JOHN DINGELL and CHARLIE NORWOOD changed that provision. They removed the definition of medical necessity from the law. Instead, they said, let the plans choose the definition that works best for them. But if a dispute went to an independent medical review, the reviewers would need to consider that definition. But they would not be bound by it in cases involving medical necessity; that is, they would be able to use in the review their own judgment in terms of the medical necessity. They would make the decision based on the kind of factors all of us would want for ourselves and our families—the medical condition of the patient, and the valid, relevant, scientific and clinical evidence, including peer-reviewed medical literature, or findings, including expert opinion.

Mr. GREGG. Mr. President, will the Senator yield for a question?

Mr. KENNEDY. Yes.

Mr. GREGG. I understand the Senator's time has expired. I ask unanimous consent that whatever time the Senator consumes, an equal amount of time be added to our time.

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

Mr. KENNEDY. Mr. President, at the time of these appeals, they would make the decision based on the kinds of factors all of us would want for ourselves and our families—the medical condition of the patient, and the valid, relevant, scientific and clinical evidence, including peer-reviewed medical literature, or findings, including expert opinion.

Those factors essentially say that the independent medical reviewer should strive to make the same recommendation that the best doctor in the country for that particular condition should make. It is a fair standard. It is a standard all of us hope our health plan would follow.

The Senate should understand that this was not only a bipartisan compromise between Congressmen JOHN DINGELL and CHARLIE NORWOOD, it was a compromise on which every member of our conference signed off in the last Congress, from DON NICKLES and PHIL GRAMM to JOHN DINGELL and myself. In fact, this concept of letting the external reviewer consider but not be bound by the HMO's definition of medical necessity is also included in the Frist-Breaux bill endorsed by the President.

On this issue, the legislation before the Senate is clearly the middle ground. It is the fair compromise. But my concern is that the amendment we will face will tilt us away from that compromise and more to the HMO's.

Now the authors of this amendment claim that they have just provided a safe harbor for HMOs that want to be able to maintain a fair definition of medical necessity throughout the entire process. But our list of the factors that must guide the external reviewers' decision is already consistent with every fair definition of medical necessity. The fact is that this amendment may create a safe harbor for HMOs, but it tosses patients over the side into the storm-tossed seas. It would allow HMOs to adopt some of the most abusive definitions ever conceived. It ties the hands of the independent medical reviewers. It puts HMO bureaucrats in the driver's seat—and kicks patients and doctors all the way out of the automobile and is not in the interest of the patient.

Our concern is that the amendment we anticipate will be offered will say that HMOs could adopt any definition used by a plan under the Federal Employees Health Benefits Program that insures Members of Congress and the President, by a State, or developed by a ''negotiated rulemaking process.'' Each of these approaches is fatally flawed, if our goal is to protect patients.

The Federal Employees Health Benefits Program plans can change their definitions every year. An administration hostile to patient rights can accept any unfair definition it chooses. To be perfectly frank, even administrations that support a Patients' Bill of Rights have not paid much attention to these definitions, because they have so many other controls over the way the plans behave. And Senators and Congressmen can always get the medical care they want, regardless of the definitions in the plan's documents, but ordinary citizens cannot.

So the Federal employees' plan can change these definitions. It is important that we establish the definitions so it is very clear to the patients about how their interests are going to be protected.

States often provide good definitions of medical necessity, but sometimes they do not. Do we really want, after the tremendous struggle we have gone through to pass this legislation, for consumers to have to fight this battle over this definition again and again in every State in the country year after year? I do not believe so. Administrative rule-making is only as fair as the participants. An administration hostile to patients' rights and sympathetic to plans can appoint any unfairly stacked set of participants that it wants.

And finally, under the amendment, the plan gets to choose any one of these options. That is what we anticipate of the format of the amendment. So it could seek out the worst of the worst. But consumers get no comparable rights to demand the best of the best.

If we look at the options that would be immediately available to health plans under the amendment, it is obvious why the disability community, the cancer community, the American Medical Association, and other groups who understand this issue are so vehemently opposed to that as an alternative—and why it is supported by no one but the health plans.

There are no health groups that support that option—none, zero. All of the health groups effectively support what was worked out in the compromise last year and has been included in the legislation before us which, as I mentioned, I think is the real compromise.

One Federal plan defines ''medical necessity'' as ''Health care services and supplies which are determined by the plan to be medically appropriate.'' That is a great definition. If the plan determines the service your doctor says you need is not appropriate, you are out of luck. There is nothing to appeal, because the plan's definition of ''medical necessity'' controls what the external reviewers can decide.

Another plan uses different words to reach the same result. It says, medical

necessity is ''Any service or supply for the prevention, diagnosis or treatment that is (1) consistent with illness, injury or condition of the member; (2) in accordance with the approved and generally accepted medical or surgical practice prevailing in the locality where, and at the time when, the service or supply is ordered.'' Doesn't sound so bad so far, but here is the kicker. ''Determination of 'generally accepted practice' is at the discretion of the Medical Director or the Medical Director's designee.'' In other words, what is medically necessary is what the HMO says is medically necessary.

Among those who have been most victimized by unfair definitions of ''medical necessity'' are the disabled. Definitions that are particularly harmful to them are those that allow treatment only to restore normal functioning or improve functioning, not treatment to prevent or slow deterioration.

That is a key element in terms of the disabled community. Most of these definitions, even for Federal employees, say that they will permit the treatment just to restore the normal functioning or to improve functioning. So many of those who have disabilities need this kind of treatment in order to stabilize their condition, in order to prevent a deterioration of their condition; or if there is going to be a slow deterioration, to slow that down as much as possible.

The only definition that really deals with that is the one which is in the McCain-Edwards and the Breaux-Frist legislation, which was agreed to because it does address that. That is why the disability community is so concerned about this particular amendment.

Every person with a degenerative disease—whether it is Parkinson's, Alzheimer's, or multiple sclerosis—can be out of luck with this kind of definition.

For example, in the clinical trials, you have to be able to demonstrate that the possibilities, by participating in the clinical trial, are going to improve your condition. There are other kinds of standards as well, but that happens to be one of them: to improve your kind of condition. We find that the Federal Employees Health Benefits Program uses language that is very similar to that.

As I mentioned, when we are talking about those that have some disability—when you are talking about Parkinson's disease, Alzheimer's disease, multiple sclerosis—you have the kind of continuing challenge that so many brave patients demonstrate in battling those diseases, but you want to make sure that your definition of ''medical necessity'' is going to mean that really the best medicine that can apply to those particular patients, based upon the current evolving development of medical information, is going to be available to those patients.

Another issue which should be of concern to every patient, but especially to those with the most serious illnesses, is the allowing cost-effectiveness to be a criterion for deciding whether medical care should be provided. The question is always, cost-effectiveness for whom, the HMO, or the patient? It was cost-effective for one HMO to provide a man with a broken hip a wheelchair rather than an operation that would allow him to walk again. It was cost-effective for another HMO to amputate a young man's injured hand, instead of allowing him to have the more expensive surgery that would have made him physically whole. It may be cost-effective for the HMO to pay for the older, less effective medication that reduces the symptoms of schizophrenia but creates a variety of harmful side effects rather than for the newer, more expensive drug that produces better cures and less permanent damage—but is it cost-effective for the patient and her family? Is this really the criterion we want applied to our own medical care or the care of our loved ones?

And on a practical level, how in the world is an independent review organization ever supposed to judge cost-effectiveness. Its members under all the bills are health professionals, not economists. They have the expertise to decide on the best treatment for a particular patient, but they cannot and should not be asked to evaluate its cost-effectiveness. To paraphrase our opponents, when your child is sick, you want a doctor, not an accountant. But here we have one of the State plans saying, in its definition of medical necessity, ''cost-effective for the medical condition being treated compared to alternative health interventions, including no intervention.''

I urge my colleagues to stay with us on this definition and to resist an amendment to alter and change it. The amendment that we anticipate will reverse a bipartisan compromise broadly supported by Members of both parties. It is included in the bill the President has endorsed. The anticipated amendment will stand the whole goal of this legislation on its head.

I think this is very likely to be a litmus test on the whole issue for the Senate. What we want to do is to make sure ultimately that it is the doctors who are going to make the best medical decisions, based on the information that they have available to them. That is what this legislation does, the McCain-Edwards, as well as in the Breaux-Frist. We do not want to change that. That has been basically supported by the President. It was supported in the conference. It represents basically the mainstream of the views of the Members of this body. We should resist any alteration or change of that particular provision.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I ask unanimous consent I be permitted to speak as in morning business on the time of the Republicans.

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

Mr. KERRY. Let me begin by thanking my colleague, the senior Senator from Massachusetts, for his extraordinary leadership on this critical issue for our country with respect to the Patients' Bill of Rights. That is without any question the most important business before the country and the most important business before the Senate. I will return to the floor of the Senate either later today or tomorrow to share some thoughts with respect to that.

(The remarks of Mr. KERRY are located in today's RECORD under ''Morning Business.'')

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. THOMAS. Mr. President, we have some time to speak on the bill on this side; is that correct?

The PRESIDING OFFICER. The minority controls the next 41½ minutes.

Mr. THOMAS. I thank the Chair.

Mr. President, we have been on this bill now, it seems, for a very long time. It is very important, and indeed we should be on it. On the other hand, we also ought to be making some progress. It appears we are not. We hear all this talk about how we can get together, let's put it together, and we can agree. But I see nothing of that nature happening. It seems to me we continue to hear the same things coming forth. I hear a recitation of a great many people who are opposed to the bill listed off name by name. I suppose we can do that for the rest of the day.

Here is a list of people opposed to the Kennedy bill. There are over 100 names of businesses and organizations. I could do that, but I don't know that there is great merit in doing that. We have talked about what we are for, and I think, indeed, we Republicans have certain principles, and we have talked about that: Medical decisions should be made by doctors; patients' rights legislation should make coverage more accessible, not less; coverage disputes should be settled quickly, without regard to excessive and protracted litigation.

Most of us agree that employers that voluntarily provide health coverage to employees should not be exposed to lawsuits. That is reasonable. Congress should respect the traditional role of States in regulating health insurance. That is where we have been and what works. We intend to stand by those principles. I don't think that is hard to agree with. We have talked about the President's conversations with some of the people on the other side of the aisle who apparently say he wants a bill and they think we can get together. But I don't see any evidence of that.

It seems to me if we are going to do that, we ought to do it. Instead, it seems we are in this kind of bait and switch sort of thing that we hear. I think the McCain-Edwards-Kennedy bill, as described by the sponsors, is a far cry from what is written. How many times have we been through that? The sponsors promise it would shield employers from lawsuits, that it would uphold the sanctity of employer health care contracts, and require going through appeals before going to court. However, when you look at the language of the bill, that is not what is there.

One of the sponsors says: We actually specifically protect employers; employers cannot be sued under the bill. Yet you find in the bill itself exclusions of employers and other plan sponsors, and it again goes into causes of action. And then, unfortunately, the next provision says certain causes of action are permitted, and then it goes forward with how in fact they can be sued. They say, first of all, we specifically protect employers from lawsuits. Then it says in the bill that certain causes of action are permitted to sue them.

So we don't seem to be making progress and meeting the kinds of agreements we have talked about. What we simply do is continue to get this conversation on the one hand, which is endless, and it isn't the same as what is in the bill. I don't know how long we can continue to do that.

I am hopeful we can come to some agreement. I think people would like to have a Patients' Bill of Rights that ensures that what is in the contract is provided for the patient. I think we can indeed do some of those things. However, I have to say it seems to me if we intend to do it, we need to get a little more dedicated to the proposition of saying, all right, here is where we need to be on liability and let's see if we can work out the language to do that. We have been talking about it now for a week and a half. It is not there. All right. We are talking about the opportunity for holding to the contract, not going outside the contract. We need to have that language.

So I think most of us are in favor of getting something done here, but we are getting a little impatient at the idea of continuing to recite the same things over and over again when in fact the bill does not say that. We ought to be making some propositions to be able to make the changes that indeed need to be made if that is our goal.

Frankly, Mr. President, I hope that it is.

I see other Members in the Chamber. I will be happy to yield the floor.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. GREGG. Mr. President, I yield back such time as I might have at this point.

The PRESIDING OFFICER. The Senator's time is yielded back.

Mr. REID. If the Senator will yield for a brief statement, there are efforts being made now to work out what some deem to be better language on the McCain amendment. If that is not possible, the Senator from New Hampshire and I have said we might be able to voice vote that anyway. I personally do not expect a recorded vote on that, but time will only tell.

I ask unanimous consent that the McCain amendment be set aside and the Senator from Missouri be recognized to offer his amendment.

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

The Senator from Missouri.

AMENDMENT NO. 816

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Missouri [Mr. BOND] proposes an amendment numbered 816.

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

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

The amendment is as follows:

(Purpose: to limit the application of the liability provisions of the Act if the General Accounting Office finds that the application of such provisions has increased the number of uninsured individuals)

On page 179, after line 14, add the following:

SEC. ___. ANNUAL REVIEW.

(a) IN GENERAL.—Not later than 24 months after the general effective date referred to in section 401(a)(1), and annually thereafter for each of the succeeding 4 calendar years (or until a repeal is effective under subsection (b)), the Secretary of Health and Human Services shall request that the Institute of Medicine of the National Academy of Sciences prepare and submit to the appropriate committees of Congress a report concerning the impact of this Act, and the amendments made by this Act, on the number of individuals in the United States with health insurance coverage.

(b) LIMITATION WITH RESPECT TO CERTAIN PLANS.—If the Secretary, in any report submitted under subsection (a), determines that more than 1,000,000 individuals in the United States have lost their health insurance coverage as a result of the enactment of this Act, as compared to the number of individuals with health insurance coverage in the 12-month period preceding the date of enactment of this Act, section 302 of this Act shall be repealed effective on the date that is 12 month after the date on which the report is submitted, and the submission of any further reports under subsection (a) shall not be required.

(c) FUNDING.—From funds appropriated to the Department of Health and Human Services for fiscal years 2003 and 2004, the Secretary of Health and Human Services shall provide for such funding as the Secretary determines necessary for the conduct of the study of the National Academy of Sciences under this section.

Mr. BOND. Mr. President, it is clear that all of us agree that protection for patients of health care delivery systems is very important. Patients need to get quick, independent second opinions when their insurance company or their HMO denies care. Women need unimpeded access to obstetricians or gynecologists. Children need pediatric experts making decisions about their care and providing them care. Patients need to go to the closest emergency room and be confident that their insurance company or HMO will pay for the care.

Those things ought to be understood as the basis on which we all agree. To say, as some have, that those of us on this side of the aisle are not concerned about patients is just flat wrong.

I have spoken in the past about patients who are employees of small business, who are owners of small businesses, who are the families of small business owners. They do not get patient protection because they cannot afford insurance. They cannot even be patients because they do not have the care.

We need to figure out how we can assure patient protections, get more people covered by health care insurance, health care plans, HMOs, and give them the protections they need within those plans.

This bill is about balance. As we provide patient protections, we need to be concerned about how much we increase the cost of care because at some point these costs will start to bite. At some point, employers, particularly small business employers, will not be able to offer coverage to anyone so their employees cannot be patients. In addition, as prices go up, the employees or patients may not be able to afford their share of the insurance costs. The results: Fewer people with health care.

It is generally understood that for every percent increase in the cost of health care, we lose about 300,000 people from health care coverage. It is a fact of life. No matter what we do here, no matter how much we expound and gesticulate and obfuscate, we cannot repeal the laws of economics. When something gets more expensive, you are going to get less of it. The question is, How far do you go? How much is too much?

The folks on my side of the aisle have said we need to give patients basic, commonsense protections, such as the ones I mentioned in the beginning: Independent second opinions, access to emergency care, access to OB/GYN care, access to pediatric care, and many more. But that is not enough. Some of our friends on the other side have insisted on going forward. In addition to the consensus patient protections, they want to add an expensive new right to sue that poses a huge threat to runaway health care costs.

There are some people who are very interested in the right to sue. Those

people are called trial lawyers, and they do really well at bringing lawsuits. They get a lot of fees from winning those lawsuits, particularly if the judgment is high and they have a good contingency fee contract. At the same time, those costs ultimately can deny people health care coverage because to pay these judgments, the companies involved have to raise costs.

As we have debated this legislation, I have tried to focus on what patient protections are needed and on the other crucial questions: What will this bill do to employers' ability to offer health care insurance to their employees? How many health care patients might lose their coverage?

I know proponents of this version of the bill do not want to talk about the people across America, the patients, who will lose their health insurance because this bill as a whole, including the new lawsuits, may cost more than a million people their health care coverage. We need to talk about it. We need to focus on it because over 1 million people who have health insurance today—men and women who are getting their annual screenings, mothers-to-be who are receiving prenatal care, and parents whose children are getting well-baby care—will be losing care because of this bill, and how many of them can we afford to lose?

We will be losing health care coverage for seniors who are taking arthritis medicines, men and women who are being treated with chemotherapy or kidney dialysis, families waiting for a loved one to have heart bypass surgery. These are the lives that will be disrupted, even devastated, as a direct result of this bill. Whom will they have a chance to sue then? What good is the right to sue a health plan if I have lost my health plan in the first place? It does not do me much good.

I have said in the past we know there are going to be people who lose their insurance coverage as a result of this bill. In the past several days, I have brought to the Chamber a chart that keeps a running total of the number of patients who will lose their health care coverage because their employers have told us that if the provisions of the current McCain-Kennedy bill with the right to sue employers are enacted into law, they will have no choice but to drop health care. They want to provide health benefits to their employees. They are important benefits, they are attractive benefits and ensure the employers get good work from employees, and they take care of the patients who are the employees and the families of the employees.

These small businesses have told me if they are faced with lawsuits from one of their employees or dependents who do not get the right kind of health care, they cannot afford to take that risk. Health care costs are too much already. Health care costs are going up. They are seeing more and more of the costs burdening their ability to provide health care.

In the past, I have read from letters from small businesses in Missouri that are fearful of losing health care coverage for their employees and their employees' dependents. These are real life examples of people who have written in, saying they are very worried about the provisions of the McCain-Kennedy bill.

I read yesterday a letter from a fabricator company. Today I have a letter from an accounting group. They are a small business, currently insuring four employees at a cost of $1,935 a month; they pay 100 percent of the premiums. Last year, their health care coverage costs went up 21 percent. They note there has been a steady increase over the past few years. They have had to pass these costs on to clients to cover the charges for their employees. At this rate, providing health insurance may become impossible. If the new Patients' Bill of Rights proposed by Senator KENNEDY expands liability and results in employers being held responsible for medical court cases, they will certainly be forced to cancel this employee benefit.

They go on to say:

I do small business accounting every day.

These are small mom-and-pop businesses that cannot exist if they are treated in the same way as large businesses with regard to employee benefits. Sometimes Congress forgets that mom-and-pop businesses of America are simply people who are working hard, day in and day out, just to maintain a moderate lifestyle. While they are not poor, they are not employers in the same sense as major corporations.

Please help us keep our businesses and try to provide for our employees.

That is one thing we need to remember. As we look at things on a grand scale and look at large employers, we cannot forget the mom-and-pop businesses providing a living for mom and pop, their families, their employees, and their employees' families. We want all of them to be able to get good health care coverage. We want them to have rights that they can exercise if the HMO or the insurance company denies them coverage. But we certainly don't want to throw them out of health care coverage.

Here is another company in Missouri. They write:

I have been doing business in Missouri for over 15 years and have been providing health insurance to my employees since November of 1993. At that time, counting myself, I insured four employees at an average cost of $78.50 a month. I now insure five at a monthly cost of $199.60, with the same high deductible coverage. My cost has increased over 250 percent, way beyond the rate of inflation and way beyond the growth of my business. I have just had to absorb this increased cost in the bottom line. This bill Senator KENNEDY has now in committee looks like a disaster ready to happen. I am not alone as a small business owner wondering if I might be able to continue to offer this benefit to my employees in view of the rising costs of the policies. If I would be legally responsible for medical court cases, I might as well just toss in the towel and close my business.

Those are the mom-and-pop operations, the small businesses, the lifeblood of our economy, the dynamic, growing engine of our economy that provides the jobs and the well-being and meets our needs for services and goods that everybody wants to talk about and everybody loves as the small businesses. But we need to be sure we are not pricing them out of business or even costing them the ability to cover their employees' health care costs.

Right now, our toll is 1,895 Missourians losing their health care coverage from what their employers have told us about the burdens they expect from the McCain-Kennedy bill. One can argue they may be wrong. I can make an argument based on reading the pages I have read before of exceptions under which an employer can be sued. But they would be well advised, if they cannot stand the costs of a lawsuit, to give up their health insurance. You can argue about it one way or the other, but 1,895—almost 1,900—employees will be thrown out of work, according to their employers who have communicated directly to us, if this measure is unamended and goes into effect.

What are we going to do about it? I hope we can work on the liability sections. I have heard people want to compromise. I haven't seen that compromise yet. So I will offer a very simple proposal. My amendment says one simple thing: At a certain point, enough is enough. If more than one million Americans lose health care coverage because of this bill, the most expensive part of this bill, the right to sue, should be reevaluated.

The beautiful thing about this amendment is, all of the disagreements that exist about how much the McCain-Kennedy bill will increase costs and how many people will lose coverage won't matter. We will never get an agreement on this floor, I don't believe, on just how many people will be knocked out. So we won't rely on predictions. All that will matter is what actually happens.

Health economists assure this analysis can be done, they say, over a 2-year period, and we will look at employment patterns, inflation, health regulations, or policy measures other than patient protections and other factors that affect employers and employees' ability to purchase coverage. Economists can estimate how many people lose coverage due to a major piece of health legislation. The Institute of Medicine has more than enough expertise and brain power at its disposal to do this.

The amendment I have proposed says not later that 24 months after the effective date, and thereafter for each of the 4 succeeding years, the Secretary of Health and Human Services shall ask the Institute of Medicine of the National Academy of Sciences to prepare and submit to the appropriate committees of Congress a report concerning the impact of the act on the number of individuals in the United States with health care insurance.

Then, if the Secretary, in any report submitted, determines more than one

million individuals in the United States have lost their health insurance coverage as a result of the enactment of this act as compared to the number of individuals with health insurance coverage in the 12-month period preceding the act, then the liability section shall be repealed, effective on the date 12 months after the date on which the report is submitted. The Department of Health and Human Services is authorized to get funding for the conduct of the study, the National Academy of Sciences.

It is very simple. If it throws more than a million people out of health care coverage, then we repeal the liability section. Then Congress comes back and looks at it and says: Can we do a better job? We don't have to rely on any estimates or predictions. We can find out how many people have lost their coverage. I think a million people is a lot. But granted, anything we do is going to have a cost. What constitutes too much? I propose that as a starting point we say that 1 million people losing coverage is too much.

The two key issues in this debate are:

First, access to care; second, access to coverage.

Patients need access to care without undue managed care interference. Thus, we need a patient protection bill. That is the external appeal. That is the right to see certain specialists, and the very important provisions we have in it. But the patients also need access to coverage. Are we going to get more people covered? Are we going to knock more people out of coverage?

The ability to sue HMOs sounds nice. But at what price? If the ability to sue HMOs and the ability to sue employers is too high, and if the price is 1 million Americans who lose coverage, then that price is too high.

I urge my colleagues to accept this amendment. I believe it is one way to make sure that we have a fail-safe mechanism to make sure that we observe that basic principle of medicine: first do no harm. I think a million individuals losing health care coverage is harm. That is why I suggest that we should agree to the amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. GREGG. Mr. President, I rise in support of the excellent idea of the Senator from Missouri.

One of the big concerns that has been heard expressed throughout this entire debate has been the effect especially of the plethora of lawsuits which would be created under the present bill as it is structured on employers, especially small employers, and their willingness to continue to offer health insurance to their employees.

The real issue for most people is, first, do they have health insurance. When someone goes to find a job, one of the key conditions that most people look at is if that job has a decent health insurance package that is coupled with it. This is an extraordinarily big problem for not only people working at high-level jobs but especially people who work at entry-level jobs and in between.

You can take large employers in the retail industry or large employers in the manufacturing industry. In all of these areas, employees see as one of their primary benefits the pay they receive, obviously, but additionally the fact that they have good health insurance from their employers.

Then with the smaller employers, people who run small restaurants or small gas stations, or small mom-and-pop manufacturing businesses, the people who work for those folks also appreciate greatly the fact that they might have a health insurance package that is coupled with their employment. This is especially true for families. I don't think there is anything a family fears more than having a child get sick and not having adequate coverage, and not being able to get that child into a situation where they can be taken care of, or alternatively having their savings wiped out by the need to do something to take care of that child who has been sick, or a member of the family.

Quality insurance is absolutely critical.

We should not do anything that undermines the willingness of manufacturers, of employers, of small businesspeople, of mom and pop operators to offer insurance to their employees. It should almost be a black letter rule for this bill that we do not do something that is going to take away insurance because, as I have said before in this Chamber, there is no Patients' Bill of Rights if a person does not have insurance. They have no rights at all because they do not have any insurance.

So what the Senator from Missouri has suggested is a very reasonable approach. If this bill, as it has been proposed, is such an extraordinarily positive vehicle in the area of giving people rights for their insurance and is such a positive vehicle in the area of allowing people who interface with their health agencies to get fair and adequate treatment from their health agencies, then the authors of this bill should have no objection to the amendment offered by the Senator from Missouri.

Because the Senator from Missouri isn't suggesting that the bill should be changed in any way. He is simply saying, if the effects of the bill are that people are thrown out of their insurance and no longer have the ability to hold insurance because their employer says, ''We are not going to insure you anymore; we can't afford it because of the number of lawsuits that are going to be thrown at us as a result of this bill,'' if that is the case, and more than one million people in America—and that is a lot of people—lose their insurance, then the liability section of this bill will not be effective. It does not affect the underlying issues of access and does not affect the underlying issues of the ability to go to your own OB/GYN or your own specialist or the various other specific benefits which are afforded under this bill, most all of which there is unanimous agreement on in this Senate.

All it simply says is, listen, if the liability language in the bill simply isn't going to work because it throws a million people out of their insurance and, therefore, a million people lose their rights versus gain rights under this bill, then we basically do not enforce liability provisions until that gets straightened out. The Congress can come back at that time and take another look at the liability provisions and correct them. At least nobody else will be thrown out of the works because of the liability provisions; they will essentially be put in a holding pattern by this amendment.

That is an entirely reasonable approach. Instead of saying we are going to function in a vacuum in this Chamber, where essentially we throw out ideas that we think are good but don't know what is going to happen, this is essentially saying, all right, if we think we have ideas that are good, we are going to hold those ideas to accountability.

We heard the Senator from Massachusetts talking about accountability in another section of this bill. He brought up the education bill, which we talked about for the last 7 weeks before we got to this bill. And the issue was accountability. Does it work? The education bill we passed has language in it that essentially took a look at what had happened in order to determine what would occur in the future. What Senator BOND has suggested is that we do that under this bill. It is a very practical suggestion. He is saying if a million people lose their insurance, then we will put the liability language in the bill on hold until we can straighten it out. Actually, it would be sunsetted.

The practical effect of that is, I presume, Congress would come back and say, listen, we didn't intend to have a million people lose their insurance. Our purpose in this bill was to give people more rights, not to give them less rights. You give people less rights if they lose their ability to have insurance.

So by taking this language we will be in a position of being sure that what we are doing in this Chamber, and what we are doing in the isolation of the legislative process—although we get input, we never really see the actual events—will have a positive impact. We will know that if it isn't having a positive impact, there will be a consequence. The consequence is that that part of the bill, which has created the

negative impact—throwing people out of their insurance—will be held up or stopped or sunsetted until we can correct it.

So the Senator's concept in this amendment makes a huge amount of common sense. It is truly a commonsense idea. I guess it comes from the ''show me'' State. Nobody has used that term today on this amendment. I do not think they have described it that way. This is a classic ''show me'' amendment. This says: Show me how the bill works. If the bill does not work, OK, we are going to change it to the idea of having this trigger, which establishes whether or not the bill is positive or whether the bill is negative. If the bill is negative—''negative'' meaning over a million people losing their insurance as a result of the effects of this bill—then we sunset the liability language.

I do think it is important to stress that this amendment does not sunset the whole bill. It just focuses on the liability sections within the bill, which sections I have severe reservations about and have referred to extensively in this Chamber, which I think are going to have unintended consequences which will be extraordinarily negative on employees in this country where a lot of people are going to lose their insurance.

This amendment just goes to that section of the bill. It doesn't go to the positive sections of the bill that there is general agreement on. It does not even go to those sections of the bill where there isn't general agreement on, such as the scope issues of States' rights or the contract sanctity issue, for that matter.

But it does go to this question of, if you have people losing their insurance because their employers are forced to drop that insurance because it has become so expensive as a result of the liability provisions of this bill, then, in that case, where that happens to a million people—a million people, by the way, is essentially the population of the State of New Hampshire. It is not the population of Missouri, but essentially we have 1,250,000 people in New Hampshire, so we are talking about not an inconsequential number of people; it is pretty much the whole State in New Hampshire. So it is a reasonable threshold.

If a million people lose their insurance because employers cannot afford it, because the liability costs have driven them out of the ability to ensure their employees, then we should stop that; we should end that liability language and take another look at it as a Congress and correct it.

So I congratulate the Senator from Missouri for offering this classic ''show me'' amendment. It is very appropriate that is has been offered by the Senator from Missouri, from the ''show me'' State. It makes incredible common sense. I also would say it is a ''Yankee commonsense'' amendment. So we shall claim it for New England also. I join enthusiastically in supporting this amendment.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. SANTORUM. Mr. President, I rise in support of the Bond amendment. I commend the Senator for standing up and trying to mold patient protection legislation to comply with a fundamental principle that he has repeated many times today: The first order of business in medicine is to do no harm. And building on this principle, as I continue to iterate so many times when I come to this Chamber to speak, we cannot afford to ignore what I believe to be the No. 1 problem in health care today: the fact that we have anywhere between 42 and 44 million people who do not have health insurance.

I will state again for the record—and I am happy for anyone to come forward and tell me differently—there is not one thing in this bill that increases the number of insured people in America, not one thing. This is a pretty good-sized bill. It has 179 pages to it. Not one page, not one paragraph, not one sentence, not one word will cover one additional person in America.

For many of the people who are the greatest critics of the health care delivery system in this country, the paramount feature of which they are most critical is the number of uninsured in our society. If there is a criticism levied by people around the world against America's health care system, it does not have to do with quality of care. I think everyone will agree that America pretty much sets the gold standard in terms of the quality of care delivered to patients. I think most people say, yes, the best health care in the world is available here in the United States. But the critics around the world will say, it may be the best system but you have 42 to 44 million people in this country who are not insured.

Do you think the first health care bill we are considering here in the Senate should consider what most people see as the greatest problem with America's health care system? Most people in this country would say, yes, that is what we should be considering. But this bill doesn't do that. Interestingly enough, what does this bill do? It provides patient protection. That is great. I am for that. There are a group of people in this country, people who have health insurance plans that are regulated solely by the Federal Government, who have very few patient protections afforded to them because they are not covered under State patient protection laws. So we should pass a Federal Patients' Bill of Rights to cover those people. I am all for that, and we should have adequate protection.

But what this bill does, what the Senator from Missouri is trying to really focus on, is it does a whole lot of other things that will cause at least one million more Americans to become uninsured. Now, I am pleased that the President of the United States has vowed to veto this legislation should it come to his desk in its present form for signature. But if for some reason it is enacted into law, maybe over the President's objections, this will result in millions more being uninsured.

You can put all the benefits aside. Let's assume this is the greatest patient protection bill in the history of the world, that as a result of this bill, patients will be supremely protected, a notion, of course, with which I take issue. I don't believe that will occur. But let's assume it does. The result of this bill will be millions more uninsured. In particular, if the liability provisions of this bill are enacted, which allow employers to be sued—and that is really the issue that is at heart of the Bond amendment, if it allows employers to be sued, to practically an unlimited extent—you won't have a million or 2 million people who won't have insurance as a result of this bill. You will have tens of millions of people who will lose their insurance. Why? Do I say I am against employer liability because I love employers? No. Employers are nice people. Employees are nice people. They are all nice people. The question is, What is the effect of holding employers liable? The effect of holding employers liable is employers who voluntarily provide health insurance as a benefit, will simply stop providing that benefit because it will jeopardize their entire business. If they can be sued for a decision that is made with respect to a benefit they voluntarily provide one of their employees, the provision of which is not the core function of their business, they are simply going to stop providing that benefit.

That is what the Senator from Missouri is trying to get at. If we cause, as a result of the employer liability provisions, and some of the general liability provisions, and some of the contract provisions, which basically allow outside entities to rewrite contracts in litigation and in appeals, if we open up this Pandora's box of problems for employers to continue to provide insurance to their employees, employers will do what employers must do: first, protect the survival of their business. And this will be a direct threat to the survival of their business.

What is now a pleasant benefit that you can provide to your employees and something that you can help to attract employees with by providing good health care insurance will become a serious liability risk that a business simply cannot afford to take.

The Senator from Missouri is saying, very simply: We have a great patient protection bill here, but we have the

very real potential of having a tremendous downside, in really hurting people.

I am very sympathetic about all the cases being brought forward, about the need for patient protection. I think you will find fairly universal agreement on this side that we want to provide those protections. But the first protection should be to preserve the possession of insurance in the first place. If we deny them that protection, all these other protections don't matter, really, if they lose their insurance. This could be a great bill, but if you don't have insurance, then this bill doesn't help you. In fact, it can hurt you because it can cause the loss of your insurance.

What the Senator from Missouri is saying is: Let's go through, and we will work on some more amendments. We will try to get this thing honed down until we have a good patient protection bill. If we can't fix the liability provisions, which I don't know whether we will be able to or not, at least let's say that if the liability provisions are what we believe they are, in other words, problematic to the point of causing devastation to millions or at least a million people in losing their insurance, then we should have a trigger.

You are seeing all of these kinds of comments by folks who are supportive of this bill and supportive of the liability provisions in the bill saying: Hey, this isn't going to hurt anybody. We are not going to cause any problems with this. No, no, no, employers aren't going to drop their coverage. Health care costs are not going to go up. Millions more won't be uninsured.

They will make that statement and have made that statement over and over again. Fine. They may be right.

What happens if they are wrong? What happens? What happens if past experience is any guide, if we are right and millions do become uninsured? Should we have to wait for an act of Congress for this body generally to realize that we made a mistake and have to come back through this whole legislative process to repeal the problem here? Should we have to wait for that? Or should we just simply have a trigger that says, look, if we made a mistake, if we made a mistake, if we were wrong, then we are going to immediately cancel that portion of the bill that is causing the problem upon recognition that we have a problem of a million uninsured.

As the Senator from New Hampshire said, a million people is a lot of folks, a lot of children, a lot of families. It is a lot of people who are going to go without health care. If what we really care about is providing good, quality health care, the first thing we should care about is to get them an insurance policy in the first place.

One of the things that strikes me most about this bill is blithe references as to how we are going to go out and get the HMOs. These HMOs are a bunch of bean counters who don't care about people. There is all these horrible cases about HMOs.

My understanding is that the liability provision that allows you to sue your employer, that allows you to sue your insurance company, does not just apply to HMOs. It applies to PPOs. It applies to all insurance contracts. Obviously, if it is a fee-for-service contract and there is no limitation on what provider you want to go to, that is one thing. But in most insurance plans today that are not HMOs, there is some limitation of some sort, certainly some limitation on procedures that are covered. But that is not what is talked about here, folks. What we talk about, when they talk about this liability provision, they are talking about these nasty HMOs.

What they don't tell you is that it ain't just the nasty HMOs that can be sued under this bill, it is any insurance company who provides any insurance product and any employer that provides any insurance product.

Oh, that is a different story, isn't it? You don't hear them up there railing against those nasty fee-for-service plans or those nasty PPO plans because they don't poll as well as going after those nasty HMOs. But this isn't just about nasty HMOs, this is about all insurance products. There is no way out of this liability provision unless, of course, you just want to say to your employees: We will cover everything. Doesn't matter what you want, where you want to go, we will just pay for everything you want. Of course, we all know what an exorbitant cost of that would entail, and so this is neither practical or realistic.

The point is, this bill has serious consequences for millions of people who are on the edge, whose employers are sitting there right now saying: Well, I have a 13 to 20 percent increase in my premiums this year. The economy is flattening out a little bit. I am looking forward. I will tighten my belt a little bit more, and we will continue to provide health insurance to our employees. Then this bill comes along, which will increase costs more and potentially expose them to liability for doing what is right by their employees and providing insurance to them.

I haven't talked to an employer yet, I have not talked to an employer yet who told me that if this bill passes and they are liable for lawsuits simply because they are providing a health benefit to their employees, I haven't talked to one employer who has told me that they will keep their insurance.

They can't. How can they? In good conscience to their shareholders or the owners of the company, how can they keep providing a benefit that simply opens up a Pandora's box of liability, 200 causes of action, in State court, Federal court, unlimited damages, unlimited punitive damages, and allow clever lawyers to forum shop all over the country so as to find that good court down in Mississippi in a small county there that is used to handing out $40 million or $50 million jury awards.

I ask you, whether you are an employer or employee, put yourself in the shoes of a small businessperson who has 20 employees, barely making ends meet, running a small business—maybe a family business—their employees are like members of the family. You have lots of businesses like that across America. They want to do well by their employees because they are like family. So they provide good benefits, good pay, and even before family and medical leave, they gave time off when their employees were sick or they needed to take care of their children who were sick at school.

Now comes this bill that says if one person has a problem with the health care system and the insurance policy that employer offered didn't give them everything they wanted, and some savvy lawyer decides he or she can get you everything you want and more, and all of a sudden that family business that employs 20 or so people in the community all of a sudden that business is on the hook. And maybe they may even prevail against a lawsuit, but how many tens of thousands of dollars is it going to take, or hundreds of thousands, simply to defend the lawsuit? We are talking about big awards. I can tell you that a lot of companies are just going to be worried about fighting the lawsuit in the first place, about being dragged into court to prove positive against the liability ambiguities in this legislation?

I am just telling you that what the Senator from Missouri has put forth is a reasonable amendment. We will have amendments on the floor dealing with employer liability. We must do something about it. I believe if we allow this employer liability provision to stand, we will destroy the private health care system in this country—the employer-provided health care system. It will go away.

I know there are some Members on the floor right now who are against the private health care system, who want a Government-run, single-payer health care system. Fine.

Mr. GREGG. If the Senator will yield, I advise Members that it is very possible we will have a vote around 6 o'clock. So Senators should be aware of that.

Mr. SANTORUM. As I was saying, I know there are many people in this Chamber who believe a single-payer health care system is the best way, the most efficient way, the most compassionate way—to use these wonderful, glorious terms—to provide health insurance in this country. Obviously, I disagree, but it is a legitimate point of view. I think we should have that debate.

We had that debate in 1994 with the Clinton health care proposal, and we had a good debate on the floor of the Senate about the kind of health care delivery system we should have. But it was a deliberate debate about how we can change the health care system by a direct act of the Congress. The problem

with this legislation is that we are going to severely undermine one health care system, which is a health care system that is principally funded through employer contributions, and we are not going to replace it with anything.

You see, as many of my colleagues well know, if employers stop providing health insurance, then people are going to have to go out with their aftertax dollars and buy health care, and the costs will be prohibitive. If you don't believe me, I would ask any of my colleagues to drop their federal health insurance plan today, and to endeavor to purchase health insurance with aftertax dollars. It is very difficult.

One of the things I hope to accomplish—and maybe we can work on this in this bill—is to create refundable tax credits for those who do not have access to employer-provided health insurance, so they can get help from the Government equivalent to the subsidy that the government offers for employer-provided health insurance. We give a deduction for the business. In other words, if I am an employer and I provide health insurance to my employees, I get to deduct the cost of that off of my earnings, my income. We also subsidize it on the other end. If you are an employee and you have employer-provided health insurance, you don't have to pay taxes on the money that your employer uses to purchase that insurance. In other words, let's say it is a $5,000 family policy. That is a benefit to you. That is compensation to you. It is $5,000 of insurance costs that your employer pays for you, but you don't have to pay taxes on it. It is tax-free compensation to you. So, in that sense, we subsidize you by not taxing you on that benefit. So the employer gets subsidized and the employee gets subsidized.

But if you are an individual who does not have access to employer-provided health insurance, you have to take the money that is left after you pay all your taxes—after you pay Social Security taxes, income taxes, State taxes, local taxes, and Medicare taxes—and then you can take your money and try to buy health insurance.

That is a pretty rotten system. If we are going to do anything about the problem with the millions of uninsured in this country, we are going to have to start treating people who don't have access to employer-provided insurance the at least as well as we do with those who do have it. None of that is in this bill, there is no tax equity.

I will say it again. There isn't one paragraph in this bill that will increase the number of insured in this country. There are, unfortunately, pages and pages and pages and pages in this bill that will result in more and more and more people losing their insurance. But we can mitigate that—or at least a big part of it—if we adopt the Bond amendment.

The Bond amendment says if we have a problem, let's not wait for an act of Congress to admit our mistake. I know those who are listening might find this hard to believe, but sometimes Congress is a little slow in admitting we made a mistake. Sometimes we don't own up to the fact that it was our fault. I know some within the sound of my voice will find that to be almost an incredible proposition on my part—that somehow Congress doesn't immediately come in and say, yes, we understand we made a mistake; we are sorry America, we blew it. Everything I said the year or two before about how this wasn't going to cause a problem, you are right; it did. My mistake; we are going to repeal this.

I just ask my colleagues, when was the last time that happened? I know some in this room will remember the last time it happened. My recollection is that it happened back in 1988, when it came to Medicare catastrophic coverage. Congress tried to pass catastrophic prescription drug coverage for seniors, and quickly found out that seniors really didn't like what Congress did. Seniors rose up and screamed and hollered, and within a year or so—I wasn't there at the time, but I recall Congress repealed it. That was about 12 years ago. I can't think of any instance since and, frankly, I can't think of anything before that.

So let's just assume—I think it is a pretty safe assumption—that the people who are saying that this liability provision will not cause a problem are wrong. They will be in very good company if they go on to insist that they aren't wrong in the future—that even though we may have evidence of millions more uninsured as a result of this provision, somehow or another they will avoid blame and will point to something else that caused this problem, not the liability provisions. So it will be some sort of contest here as to whether we even take up this issue again.

The Bond amendment avoids all that. It says, look, if the GAO says this provision, the liability provision, has caused a problem of causing more than million additional uninsured, then that part of the bill sunsets, the rest of the bill stays in place. Patient protections stay in place.

Patient protections stay in place. It affects just the liability provisions. The internal-external reviews stay in place so there is patient protection. What does not stay in place are the provisions that are causing massive damage to millions of American families.

I am hopeful, No. 1, we can fix these liability provisions because we should not pass a bill that is going to cause this kind of severe dislocation, this kind of trouble for millions of American families. We should not consciously do harm to people, particularly when we understand it is the No. 1 problem facing our health care system today, which is the lack of insurance for 42 to 44 million people.

We should not do this. We should not pass flawed liability provisions. I know the Senator from New Hampshire and Senators on both sides of the aisle are trying to see if we can get a good provision. But should we not get a good liability provision, the Bond amendment is a very prudent stopgap measure so as to ensure that we do not go down the road of making what is the worst problem facing health care today even worse.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I thank my friend from Pennsylvania for making a very compelling argument. I very much appreciate his support because we are talking about something that should be of concern to every American who wants to be sure that they and their families are covered by health insurance. If you price it out of range and lose your health care, it does not matter how many independent reviews might be provided in the law. If you do not have a plan, they do not do you any good.

The basis for our trigger, our safety valve, is, let's just see if this bill has a cost. We say that the Institute of Medicine within the National Academy of Sciences can figure it out. It has been indicated they can rely on work that has already been done by the General Accounting Office, CBO, and other congressional bodies. But for constitutional purposes, the ultimate responsibility of this study has to be in the executive branch, and that is why it is in the Institute of Medicine. We know from our work with the GAO and CBO the kind of format, the kind of approach that can be taken. We move that function into an executive branch area.

We say if this bill throws more than 1 million people out of their workplace health care coverage or their own health care coverage, then we sunset the most expensive part, the liability part.

I said earlier that the general rule of thumb is that 300,000 people will lose their health care coverage if health care costs go up 1 percent. I ought to be a little more specific and explain something. As I understand it, when the costs of this bill are calculated, it is impossible to determine how many dollars will be added to the health care costs from the liability provisions themselves. Basically, the additional responsibilities that go into the bill—setting aside the liability questions—the Congressional Budget Office estimated a previous and substantially equivalent form of this bill would raise private health insurance premiums an average of 4.2 percent. That comes from the mandates in coverage, external review, and all those other things.

This 4.2 percent would mean that over 1 million people will be thrown out of work. But that does not deal with the number of people who would lose their health care coverage because of the exposure to liability or because of the costs of liability judgments.

We probably will not have liability judgments in the first couple of years. It will take some time for cases to work their way through the court system. But you can bet if a couple of juries come in with the billion-dollar judgments that some juries are coming in with now, those costs are going to have to be factored into the health care premiums for everybody, whether it is an employer, whether it is the employee-paid provision of it, and there are going to be a lot of people who are not going to be patients because they are going to lose their health care coverage.

Then there are those, such as the small businesses I have referenced from Missouri, who say: I cannot take the chance; I cannot put my business at risk of one of these multimillion-dollar judgments, a tort action or contract action—tort action most likely—brought against me as an employer because I provide health care insurance or health care coverage or a health care plan; I am going to drop the plan.

We know what happens when they drop the plan. Most of the time the employee cannot pick up health insurance for her or his family and self. They are going to be out of business. They are going to be out of the health coverage that their employers provided. That is over and above the directly calculated costs CBO comes up with to say that a similar bill would increase health care costs by 4.2 percent.

The cost of this bill is 4.2 percent plus whatever the impact of the liability exposure would be, and we think that is much more significant even than the costs of the mandates in the bill. That is why we say if 1 million people are thrown out of health care coverage as a result of this bill—the National Academy of Sciences Institute of Medicine will make that report to the Secretary of Health and Human Services—then the liability provisions sunset in 12 months and Congress gets to review this measure and say: How can we make it work better?

That is a reasonable approach. It does not require us to make judgments, but it does say if 1 million people are thrown out, we need to revisit our work.

Mr. President, I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

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

Mr. REID. Madam President, what is pending before the Senate?

The PRESIDING OFFICER. The amendment of the Senator from Missouri, Mr. BOND.

AMENDMENT NO. 812

Mr. REID. I ask unanimous consent that amendment be set aside and we turn to McCain amendment No. 812.

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

If there is no further debate on McCain amendment No. 812, the question is on agreeing to the amendment.

The amendment (No. 812) was agreed to.

Mr. REID. I move to reconsider the vote by which the amendment was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. Madam President, I ask unanimous consent that at 6:05 p.m. this evening the Senate vote in relation to the Bond amendment numbered 816, with no second-degree amendments in order prior to the vote; further, that following the vote, Senator Nelson of Nebraska be recognized to offer a Nelson-Kyl amendment regarding contract sanctity and there be 1 hour for debate this evening, with the time divided in the usual form; further, following the use or yielding back of time on the Nelson-Kyl amendment this evening, the amendment be laid aside and Senator ALLARD be recognized to offer an amendment regarding small employers, with 1 hour for debate this evening, equally divided in the usual form; further, that when the Senate resumes consideration of the bill at 9:30 a.m. on Wednesday, there be 60 minutes of debate in relation to the Allard amendment prior to a vote in relation to the amendment, with no second-degree amendments in order prior to the vote; further, following the vote in relation to the Allard amendment, there be 60 minutes for debate in relation to the Nelson of Nebraska-Kyl amendment, followed by a vote in relation to the amendment, with no second-degree amendments in order prior to the vote.

Mr. GREGG. Reserving the right to object, it is my understanding there will be no additional amendments this evening other than these two.

Mr. REID. I also say to my friend if any Member feels the necessity this evening to debate more, we have no objection.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

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

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

VOTE ON AMENDMENT NO. 816

Mr. GREGG. I ask for the yeas and nays on the Bond amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to amendment No. 816. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from New York (Mr. SCHUMER) is necessarily absent.

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

The result was announced—yeas 93, nays 6, as follows:

[Rollcall Vote No. 198 Leg.]

YEAS—93

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

NAYS—6

Biden	Corzine	Voinovich
Boxer	Hollings	Wellstone

NOT VOTING—1

Schumer

The amendment (No. 816) was agreed to.

Mr. BOND. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mrs. BOXER. Mr. President, I voted against the Bond amendment. If this legislation is enacted, as I hope it will be, I believe we should review it periodically and make changes to ensure that it is working to protect Americans against the outrageous practices of some HMOs. An annual review, as required by the amendment, would be a good thing. It would give us insight into what is working and what may not be.

However, this amendment goes beyond an annual review. If the number of uninsured individuals increases by more than 1 million, the Bond amendment gives the Secretary of Health and Human Services the authority to take away a person's right to sue an HMO.

One unelected individual should not have the unilateral power to take away every American's right to hold an HMO accountable for its bad decisions. I am very supportive of efforts to increase the number of people with insurance. I think we need to address that issue. But this amendment does not do that. The problem of the uninsured will not be solved by allowing a single unelected government official to let HMOs off the hook for their actions.

The PRESIDING OFFICER. Under the previous order, the Senator from Nebraska will be recognized.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 818

Mr. KYL. Madam President, I have an amendment I send to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arizona (Mr. KYL), for himself, Mr. NELSON of Nebraska, and Mr. NICKLES, proposes an amendment numbered 818.

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

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

The amendment is as follows:

(Purpose: To clarify that independent medical reviewers may not require coverage for excluded benefits and to clarify provisions relating to the independent determinations of the reviewer)

Beginning on page 35, strike line 20 and all that follows through line 8 on page 36, and insert the following:

(C) NO COVERAGE FOR EXCLUDED BENEFITS.—Nothing in this subsection shall be construed to permit an independent medical reviewer to require that a group health plan, or health insurance issuer offering health insurance coverage in connection with a group health plan, provide coverage for items or services that are specifically excluded or expressly limited under the plan or coverage and that are disclosed under subparagraphs (C) and (D) of section 121(b)(1) and that are not covered regardless of any determination relating to medical necessity and appropriateness, experimental or investigational nature of the treatment, or an evaluation of the medical facts in the case involved.

On page 37, line 16, strike ''and''.

On page 37, line 25, strike the period and insert ''; and''.

On page 37, after line 25, add the following:

''(iii) notwithstanding clause (ii), adhere to the definition used by the plan or issuer of 'medically necessary and appropriate', or 'experimental or investigational' if such definition is the same as either—

''(I) in the case of a plan or coverage that is offered in a State that requires the plan or coverage to use a definition of such term for purposes of health insurance coverage offered to participants, beneficiaries and enrollees in such State, the definition of such term that is required by that State;

''(II) a definition that determines whether the provision of services, drugs, supplies, or equipment—

''(aa) is appropriate to prevent, diagnose, or treat the condition, illness, or injury;

''(bb) is consistent with standards of good medical practice in the United States;

''(cc) is not primarily for the personal comfort or convenience of the patient, the family, or the provider;

''(dd) is not part of or associated with scholastic education or the vocational training of the patient; and

''(ee) in the case of inpatient care, cannot be provided safely on an outpatient basis;

except that this subclause shall not apply beginning on the date that is 1 year after the date on which a definition is promulgated based on a report that is published under subsection (i)(6)(B); or

''(III) the definition of such term that is developed through a negotiated rulemaking process pursuant to subsection (i).

On page 66, between lines 10 and 11, insert the following:

''(i) ESTABLISHMENT OF NEGOTIATED RULEMAKING SAFE HARBOR.—

''(1) IN GENERAL.—The Secretary shall establish, on an expedited basis and using a negotiated rulemaking process under subchapter III of chapter 5 of title 5, United States Code, standards described in subsection (d)(3)(E)(iii)(IV) (relating to the definition of 'medically necessary and appropriate' or 'experimental or investigational') that group health plans and health insurance issuers offering health insurance coverage in connection with group health plans may use when making a determination with respect to a claim for benefits.

''(2) PUBLICATION OF NOTICE.—In carrying out the rulemaking process under paragraph (1), the Secretary shall, not later than November 30, 2002, publish a notice of the establishment of a negotiated rulemaking committee, as provided for under section 564(a) of title 5, United States Code, to develop the standards described in paragraph (1). Such notice shall include a solicitation for public comment on the committee and description of—

''(A) the scope of the committee;

''(B) the interests that may be impacted by the standards;

''(C) the proposed membership of the committee;

''(D) the proposed meeting schedule of the committee; and

''(E) the procedure under which an individual may apply for membership on the committee.

''(3) TARGET DATE FOR PUBLICATION OF RULE.—As part of the notice described in paragraph (2), and for purposes of this subsection, the term 'target date for publication' (as referred to in section 564(a)(5) of title 5, United States Code, means May 15, 2003.

''(4) ABBREVIATED PERIOD FOR SUBMISSION OF COMMENTS.—Notwithstanding section 564(c) of title 5, United States Code, the Secretary shall provide for a period, beginning on the date on which the notice is published under paragraph (2) and ending on December 14, 2002, for the submission of public comments on the committee under this subsection.

''(5) APPOINTMENT OF NEGOTIATED RULEMAKING COMMITTEE AND FACILITATOR.—The Secretary shall carry out the following:

''(A) APPOINTMENT OF COMMITTEE.—Not later than January 10, 2003, appoint the members of the negotiated rulemaking committee under this subsection.

''(B) FACILITATOR.—Not later than January 21, 2002, provide for the nomination of a facilitator under section 566(c) of title 5, United States Code, to carry out the activities described in subsection (d) of such section.

''(C) MEMBERSHIP.—Ensure that the membership of the negotiated rulemaking committee includes at least one individual representing—

''(i) health care consumers;

''(ii) small employers;

''(iii) large employers;

''(iv) physicians;

''(v) hospitals;

''(vi) other health care providers;

''(vii) health insurance issuers;

''(viii) State insurance regulators;

''(ix) health maintenance organizations;

''(x) third-party administrators;

''(xi) the medicare program under title XVIII of the Social Security Act;

''(xii) the medicaid program under title XIX of the Social Security Act;

''(xiii) the Federal Employees Health Benefits Program under chapter 89 of title 5, United States Code;

''(xiv) the Department of Defense;

''(xv) the Department of Veterans' Affairs; and

''(xvi) the Agency for Healthcare Research and Quality.

''(6) FINAL COMMITTEE REPORT.—

''(A) IN GENERAL.—Not later than 1 year after the general effective date referred to in section 401, the committee shall submit to the Secretary a report containing a proposed rule.

''(B) PUBLICATION OF RULE.—If the Secretary receives a report under subparagraph (A), the Secretary shall provide for the publication in the Federal Register, by not later than the date that is 30 days after the date on which such report is received, of the proposed rule.

''(7) FAILURE TO REPORT.—If the committee fails to submit a report as provided for in paragraph (6)(A), the Secretary may promulgate a rule to establish the standards described in subsection (d)(3)(E)(iii)(IV) (relating to the definition of 'medically necessary and appropriate' or 'experimental or investigational') that group health plans and health insurance issuers offering health insurance coverage in connection with group health plans may use when making a determination with respect to a claim for benefits.

Mr. KYL. Madam President, this amendment is offered on behalf of myself and Senator NELSON. It is an amendment that deals with the definition of ''medical necessity'' under the bill and is intended to provide a safe harbor for those who comply with certain requirements. I should also say this amendment is also offered on behalf of Senator NICKLES. I apologize to my colleague from Oklahoma.

First, let me offer some general views on S. 1052, the Kennedy-McCain Patient Protection Act, and then I will discuss this amendment.

As you know, President Bush has reiterated his intention to veto this legislation because, in his view, it ''would encourage costly and unnecessary litigation that would seriously jeopardize the ability of many Americans to afford health care coverage.'' None of us wants that result. As a result, we are trying to do our best to work with the sponsors of the bill to make some changes that would make it palatable to both the President and to most of us in this Chamber.

My concerns include the fact that it will undoubtedly raise premium costs due to new lawsuits and increased regulation, that it will undermine the States' traditional role of regulating the health insurance industry and make employers who voluntarily provide health care coverage to their employees vulnerable to frivolous lawsuits, and that it will violate the terms of the contract between the employer and the health plan. This latter issue is

the one the Nelson-Kyl-Nickles amendment is intended to address.

Under S. 1052, the external reviewer is ''not bound by'' the ''medical necessity'' definition contained in the plan document. And there is no substitute definition provided, so there is really no standard for review.

Let me put in context what this means. What we have provided for here is a method by which people will actually get the care they believe they have contracted for and deserve. The object is not to create a lawsuit to try to pay the money after the fact for some injury they suffered but, rather, to get the care for them upfront. That is what this should all be about.

So we have a review process by which first somebody within the company, and then an external reviewer, takes a look at the case and says: All right, this is what the contract means. This is what medical care would require under this circumstance as called for under the contract, and therefore the patient is entitled, or is not entitled, to this particular procedure.

That review process is supposed to occur quickly so that the patient receives the care he or she has contracted for and deserves under the circumstances.

In order for an external reviewer to know whether or not a particular procedure or treatment is called for, there has to be some standard by which to judge that. The Presiding Officer and the other lawyers in this body will know that anytime you ask some reviewer to determine whether or not something has to be done, you need to provide some standard upon which that reviewer can base a decision.

The bill right now contains no standard, and it needs such a standard. Our amendment supplies that standard. We believe it supplies a very fair and reasonable standard. The language in S. 1052 gives the external reviewer a free hand to disregard the definition of ''medical necessity'' contained in the contract and, as I say, supplies no substitute definition.

As in all of the bills, this external review requirement is the last process prior to going to court. But, as I said, the external reviewer is ''not bound by'' the contract's key definition of ''medical necessity'' or ''experimental and investigational.'' As a result, the external reviewers can simply make up their own definition of ''medical necessity.''

Private contracts negotiated between the parties—insurers and employees, or insurers and individual consumers—would become virtually meaningless in this circumstance, and the financial obligations of the health plan could become totally unpredictable.

The plan or insurer could become obligated to pay for items or services based on definitions outside the contract, even potentially including contractually excluded items that were deemed to be medically necessary by the reviewer. The ''not bound by'' provision, therefore, would have the effect of eliminating the ability of the parties to negotiate the key terms and conditions of health insurance contract agreements.

Madam President, in addition to vitiating legal contracts, the ''not bound by'' language would have the following negative effects.

First, inconsistent standards: The standards used by reviewers would vary with each review panel and with each case within the same plan. We are trying to create some degree of uniformity with this legislation, but under the bill you could have the potential for a wide variety of very arbitrary decisions because of the lack of a standard.

Second, quality of care: The mere threat of contract nullification could prompt some plans to pay for all claims regardless of the cost and the impact on the quality of patient care.

Solvency and stability: The use of unpredictable outside definitions of medical necessity will impose costs for unanticipated treatments not reflected in actuarial data used to determine the amount of the health care premium.

And finally, cost increases: Solvency concerns would result in increased cost for employers and increased premiums for employees.

The net result of that, of course, will be to remove more people from the rolls of the insured.

Under S. 1052 as written, these contracts, negotiated between the parties and often approved by State insurance regulators, will be voidable, not by a judge or a court of law but by an unrelated nonjudicial third-party reviewer. This will undermine the principles of the contract as well as due process.

So, as I said, to address this problem we have sponsored an amendment that would allow the plan to adopt a widely accepted safe harbor definition of medical necessity as its contract definition. If a plan utilized this safe harbor definition, then the external reviewer would be bound by it when hearing a patient's appeal of denial of coverage.

Safe harbor definitions contained in the amendment are basically at three different levels. First, we take the definition from the Federal Employee Health Benefits Plan that currently covers about 73 percent, as best we can calculate it, of the employees under the Federal Employee Health Benefits Plan. Over 6 million Federal employees and Members of Congress are covered by this definition.

It is important to recognize—I think some of our friends on the other side misunderstood and thought we were offering an amendment that had been offered a couple years ago; I want to make it very clear—this definition is not the FEHBP or Office of Personnel Management definition for managed care plans, for HMO plans.

This definition is the definition for the fee-for-service plans. As a result, it is a more strict definition. The insurance companies are going to have to provide a higher quality of care under this definition than they would under the HMOs that provide some coverage to roughly one-fourth of the people served under the FEHBP program.

So, first of all, we have this definition. I will actually read it in just a moment.

Secondly, there are going to be some States that already have a binding State statutory definition. There are 13 of them. Of course, a legally binding State definition of medical necessity would apply to claims filed in those States. That would constitute a safe harbor for the companies that use that definition. Obviously, it would be only prospective, not an after-the-claim adoption of the definition. So obviously that would have to apply.

Third, if there is a question about whether this first FEHBP definition works or that people like it, we have established a negotiated rulemaking process under the bill which would involve all of the stakeholders involved—the plans, the employers, providers, and consumers—and they could arrive at a definition that is different if they felt that it could be improved.

If the rulemaking failed to arrive at a definition, then, again, you either have a State definition or the FEHBP definition we provide. But if the rulemaking did achieve a definition that all agreed to, that then would supplant the FEHBP definition we have.

I will ask staff to give me the actual language now since I gave the copy of my legislation to the clerk. I would like to read the elements of this definition now. This is the definition, as I say, that already applies to, we know, about 49 percent of the employees, and we think it applies to another 23 or 24 percent as well.

First of all, the determination provides whether services, drugs, supplies, or equipment provided by a hospital or other covered provider are, No. 1, appropriate to prevent, diagnose, or treat your condition, illness, or injury—obviously, very straightforward and, No. 2, probably the most important point, consistent with standards of good medical practice in the United States. That is the key. If the employee argues that something is being denied in the way of treatment or care and good standards of good medical practice in the United States would call for that treatment, then that treatment will have to be provided under this definition. So standards of good medical practice is the same standard essentially that would be used in a court case. It is the same standard that is used for most of the Federal employees. It is obviously a good standard to use.

There are three other aspects of it. I will read each of the three. They deal with very specific situations: Not primarily for the personal comfort or convenience of the patient, the family, or the provider; No. 4, not part of or associated with scholastic education or vocational training of the patient; and No. 5, in the case of inpatient care,

cannot be provided safely on an outpatient basis. That would enable the treatment to be provided on an outpatient basis if it could be done.

It is a very straightforward definition. It is one that has been used literally hundreds of times. It covers a significant portion of the 6 million people covered, and we think it is a good definition to be included in this legislation.

We think it represents a reasonable compromise on the one hand between requiring an external reviewer to be bound by a too narrow definition in a ''rogue'' plan contract and, on the other hand, affording a majority of the plans that operate in good faith the opportunity to adopt a widely accepted safe harbor definition of medical necessity to which the external reviewer would be bound.

Madam President, we think this is a good compromise. It is clearly important for us to include some kind of definition in the legislation. We had hoped that the sponsors of the legislation would be willing to work with us to include this definition. So far they have declined to do so. But I am hopeful that we can continue to talk with them, and perhaps we can reach some understanding that would enable us to substitute this definition for the lack of a definition in the legislation right now.

At this point, I yield time to the cosponsor of the amendment, BEN NELSON, the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. NELSON of Nebraska. Madam President, I rise today to offer, along with my colleague and friend from Arizona, Senator JON KYL, an amendment to protect the sanctity of health insurance contracts, to provide certainty and clarity so that both the issuer and the insured can know what coverage they have.

This amendment will preserve a patient's right to receive the health benefits that they paid for while keeping insurance premiums affordable. In more colloquial terms, this amendment is what is needed to see that the people who pay for health care coverage get it. It may sound extraneous, and this is anything but exciting language, but I know from my experience as a State insurance commissioner in Nebraska two decades ago that this amendment is essential for the preservation of what I believe is an extraordinarily fundamental patient right.

Before I elaborate further on this point, let me state that I think a Patients' Bill of Rights is not only a good idea; it is an excellent idea. I believe Congress should be acting in the best interests of all Americans to enact such legislation.

We need a Patients' Bill of Rights to ensure that doctors make medical decisions. We need a Patients' Bill of Rights to protect patients and federally regulated health care plans that are currently unprotected and have been unprotected for more than two decades. We need a Patients' Bill of Rights to guarantee patients' access to independent and external medical review and, only as a last resort, to guarantee them access to the courts.

There is no shortage of reasons why this legislation merits passage.

But before my support for a Patients' Bill of Rights is misconstrued as an ''anything goes'' approval, I want to be clear that while I believe the Senate should approve a Patients' Bill of Rights, I think that some improvements are justifiable. And right now, we have the opportunity to make those much-needed improvements which will ultimately increase the effectiveness of the Patients' Bill of Rights.

I believe the bill needs to carefully consider matters such as the issue addressed by this amendment pertaining to the sanctity of health insurance contracts. And I hope that the sponsors of the legislation will look very favorably on this matter and that we will be able to work out an arrangement or agreement to get it included as part of the bill.

First, this amendment would ensure that patients receive the care that they are entitled to under the plans to which they subscribe. External reviewers would be required to assess treatment options based on the contract that exists between the patient and the plan.

Patients would be entitled to the care outlined as a provided benefit within the contract that exists. External reviews would not be able to circumvent the contract to force employers to expand coverage for any particular patient unless the patient was entitled to the care as specified by the care contract.

This will help keep down the high cost of health care and, at the same time, will enable employers to continue to provide their employees with the best care possible.

More importantly, this amendment will provide three safe harbors for employers with respect to protecting them against unnecessary litigation over treatment. While patients will have the right to sue under this bill, this amendment will more clearly define the parameters by which treatments can be determined as ''medically necessary'' and thus will provide a safeguard of medically necessary standards for employers that administer their own health plans.

The McCain-Edwards-Kennedy bill contains something that I think would currently require external reviewers to abide by the standard for the determination of medical necessity included in the bill, but it doesn't bind the reviewers by the insurers' definitions for medical necessity. This is problematic as it relates to the existing contract between patient and provider and provides a great deal of unclarity and uncertainty.

So to remedy this situation, this amendment proposes to identify three separate and distinct sources of definitions that employers could choose to use in the contract by which reviewers will be bound. The three options that we create for the plans are:

One, a definition that plans are required to use by State law. This would protect the previously existing and any newly created State laws that require plans to use a definition put forward by the State.

Second, any definition used by a plan which is codified by the language in the fee-for-service agreement that is currently covering maybe 50 to 75 percent of the Federal employees under the FEHBP, or the Federal Employees Health Benefit Program, would be used by the plans covering those who would be covered under these ERISA plans. What that means is, if it was good enough for Members of Congress and Federal employees, this certainly ought to be good enough for everyone else.

Three, a definition that is to be developed through negotiated rulemaking. This option requires the Secretary of Labor to develop a rulemaking committee that will seek public comment to develop a definition of ''medical necessity.'' In other words, State laws will be recognized and respected. Secondly, there will be a definition that is now included as a fee-for-service definition in the current Federal Employees Health Benefit Program. And in the event that a rulemaking process is negotiated through the Department of Labor, the rulemaking committee will seek public comment to develop a definition of what is ''medical necessity.''

The negotiated rulemaking committee, the third item of this three-pronged approach, will consist of at least one individual representing each of the following groups: Health care consumers, small employers, large employers, physicians, hospitals, other health care providers, health insurance issuers, State insurance regulators, health maintenance organizations, third party administrators, the Medicare Program, the Medicaid Program, the Federal Employees Health Benefits Program, the Department of Defense, the Department of Veterans Affairs, and the Agency For Health Care Research and Quality. That is quite a list of individuals for public comment and public input.

This committee would have until 1 year after the general effective date of the bill's implementation to propose a rule to the Secretary. The Secretary, then, would be required to publish the rule within 30 days of the receipt.

Madam President, our goal is to ensure that all patients have access to all treatment options available under their plans. We need to provide this access without undermining the integrity of the contract between the patient and the provider. Without some standard for a definition on ''medical necessity,'' these objectives would be impossible to obtain. Both parties are entitled to certainty and predictability.

This will provide it. Without passage of this amendment, there will be both uncertainty and a lack of predictability and neither party will be benefited.

I ask my friends and colleagues to consider this amendment as one that will improve the McCain-Edwards-Kennedy HMO reform bill. I ask for their support.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Madam President, I reluctantly have to rise in order to oppose the amendments of my good friends on the issue of medical necessity. I outlined earlier in the day the basic judgment and basic history of how we reached the language that we have included in our bill.

First, let us look at what will be the standard that is in both the McCain-Edwards bill, as well as in the Frist-Breaux bill. Effectively, both treat this particular issue of medical necessity the same. This is a result of the fact that this issue had been debated 2½ years ago when we considered the Patients' Bill of Rights here and in the House of Representatives. We tried to define the test on medical necessity during that period of time. What we resolved is to permit, at the time of the external review, the kind of test that we have included in our language here and in the Frist-Breaux language. This was actually the language which was agreed to in the conference last year, a conference that never resulted in an overall outcome of the legislation. Nonetheless, we had agreed on a handful of different areas of dispute. That was agreed to by my colleagues, Phil Gramm, Don Nickles, myself, and others, after a good deal of negotiation.

It seems wise to continue that particular proposal because basically this is what we are doing. At the time of the appeal of any of these medical necessity issues, we are permitting for the standard of determination in our bill, on page 35: ''The condition shall be based on the medical condition of the participant.'' That is obvious. No. 1, what is wrong with the patient? And then it talks about ''valid, relevant, scientific evidence and clinical evidence, including peer-reviewed medical literature and findings, including expert opinion.''

Basically, the reason for that is to allow for the possibility that we find out there are new kinds of discoveries, new kinds of techniques, new kinds of treatments for various health conditions. In order to not use a stagnant kind of proposal, we included that language. This language which was agreed to is supported by the American Medical Association and other medical groups.

So in the legislation that we have here in the McCain-Edwards proposal, which I support, and the Frist-Breaux proposal, which others including the President of the United States support, and in the agreement that was made by Republicans and Democrats alike, we agreed effectively to this language. This agreement occurred after considering all the different kinds of proposals. It raises questions of why we are today attempting to alter that particular proposal.

The argument is, first of all, that we can offer three different options. One would be that the administration can propose an administrative group, a commission that can make some recommendations about what that standard would be.

That may work out, but it may not work out very well if we have an administration that is not as sympathetic to the protection of patients' and doctors' decisions as we have tried to be in this undertaking. That is one way of doing it.

Second, the results of State actions can be the criteria. In some States the protections have been very good, and other States have left a lot to be desired.

I understand the basic thrust of this legislation is to establish minimum standards. If States want to have higher protections for consumers, they are welcome to do it. What we are trying to do is ensure that all Americans, all American families are protected.

In the area of scope, all Americans being protected—actually, every Republican proposal that was considered in the House of Representatives included all Americans—we were attempting to ensure that there was going to be a minimum standard. However, we can use another standard, such as the good Federal employee standard to which the Senator just referred.

It is interesting, though, that the Office of Personnel Management does not use the Federal employee standard on their reviews. What do they do? They do something very similar to what we have done. They permit the doctor to make the ultimate decision and not be bound by some definition. The reason for this is because they do not believe that that should to be the restrictive definition for all appeals.

In turn, there is a Federal employee program of which all of us are a part. In our program if there is going to be an appeal, this is a different standard. Basically, it is a standard that permits the doctors to make the judgments and decisions.

I find it difficult to be convinced at this hour. We waited a good deal of time. I know we were all pressed with the different proposals. I have had a chance to talk to my friend and colleague, Senator NELSON, on a number of different provisions. From personal experience, I can tell that this is a Senator who has spent a good deal of time on this legislation and has been willing to spend a great deal of time visiting with me and with others, and also talking extensively with the House Members who are interested in various provisions. I know a good deal of thought has gone into this matter.

My final point is the underlying commitment of this legislation to make sure that doctors are going to make the decisions. Trained medical personnel and families are going to make these judgments and decisions. It seems to me that when we have included in the legislation's language—in fact, insisted on—permitting the doctor to use the best medical information and judgment of this decision making and will permit them to also take advantage of the latest ideas, new conclusions, new consensus of the treatment of various medical conditions, this is the best way rather than a review being bound up in some process.

We do not know tonight, for example, whether the board is going to be overly sensitive to the consumers and patients. There is a wide variety of interpretations in many of the States.

This is unlike other parts of this legislation where there is a difference between what we have proposed, what is included in Breaux-Frist, and what the President has recommended. In these areas, the McCain-Edwards proposal, the Breaux-Frist proposal, the conference committee by Republicans and Democrats alike, and the President have reached similar conclusions. This is one of the most important areas of the legislation. It seems to me what we have in the underlying legislation is completely consistent with what the President has indicated would be key to this legislation.

Mr. President, I yield 10 minutes to my colleague.

The PRESIDING OFFICER (Mr. DURBIN). The Senator from North Carolina.

Mr. EDWARDS. Mr. President, I start by thanking my two colleagues, the Senator from Arizona, my good, dear friend from Arizona, for his work on this issue, and now my friend from Nebraska, with whom I have had occasion on this specific bill to work many days and many hours. As the Senator from Massachusetts has suggested, he has great expertise in this area, both in his time as insurance commissioner and his time as Governor. He and I have worked together on a number of issues, such as employer liability which we will be offering an amendment on hopefully tomorrow. We have talked about a number of other issues, such as the scope of the legislation, and medical necessity is another issue in which the Senator has been actively involved.

I specifically thank him for his work on this issue on behalf of the people of Nebraska whom he represents. He has been extraordinarily diligent and involved in this very important issue of the Patients' Bill of Rights and patient protections. I thank him very much for all of his work and will continue to work with him. He has had terrific ideas all the way through the discussion.

As to this specific amendment, I announce to my colleagues that we have negotiated during the course of the day with other Senators besides the sponsors of this amendment and have reached an agreement on a compromise

that we believe accurately and adequately reflects a balance between recognizing the sanctity of the contract language while at the same time giving medical reviewers the flexibility they need to order care in those cases where the care needs to be ordered.

Tomorrow we anticipate an amendment being offered by Senators BAYH, CARPER, and perhaps others, that will reflect the results of those negotiations. We feel very pleased we were able to resolve that issue with some of our colleagues.

For that reason, we will not be able to support this particular amendment, but I believe our amendment goes a long way toward addressing the same issues that my colleagues are trying to address with this amendment. Their work is helpful and productive, and we appreciate it very much.

Tomorrow morning we will be offering the results of the work we have done with Senators BAYH, CARPER, and others which, as I indicated, properly reflects the balance between the importance of the language of the contract and showing deference to that language while at the same time recognizing that in some cases the medical reviewers will need some more flexibility to do what is necessary for a particular family or for a particular patient.

Mr. KENNEDY. Will the Senator yield?

Mr. EDWARDS. Yes.

Mr. KENNEDY. Will the Presiding Officer let us know when we have 5 minutes remaining?

The PRESIDING OFFICER. The Chair will do so.

Mr. KENNEDY. As I understand it, and I can be corrected, under one of the provisions, HHS establishes a board. At some time the board tries to work out the definition, but we do not know how that will work out, what the framework will be, or how many patients, consumers, and HMO personnel will be on the board. That board will have a meeting, and they will work out some definition of ''medical necessity'' which creates a degree of uncertainty.

Second, we have questions about the States, some of which have adopted various criteria about what is medical necessity.

Third, we have the Federal employees health program, which, as I mentioned, is not the standard which is used on review by the Office of Personnel Management. They don't use that. They use a standard much closer to what we have. Even on that standard, many cancer groups are very concerned about possible restrictions on palliative care, care which is enormously important to cancer patients. We have heard from a number of cancer organizations about their serious concern regarding this particular point. On the other hand, they are in support of the language we have included in the Edwards bill.

First, we know we have something that the American Medical Association, the medical professionals, patients, the doctors, and the health care delivery system have said is a good standard. Our opponents offer a standard that may turn out to be fine in the future but we don't know. And secondly, as another standard which has serious problems with the cancer community because it raises questions, doesn't the Senator agree with me, we ought to use what is now agreed to by Republicans, by Democrats? Most importantly, ought we not use the standard endorsed by those within the medical profession? If this standard does not work, we will have an opportunity to take a look down the road in terms of altering and changing. Is that a preferable way to proceed?

Mr. EDWARDS. I agree with the Senator.

As the Senator knows, the legislation offered by the Senator, myself, and Senator MCCAIN, this specific language is supported by the medical groups from around the country involved with this issue on a daily basis that have a first-hand understanding of what works and what doesn't work. We have been working with those groups to fashion this language. That is the reason that language exists. We know from the American Medical Association and all the health care groups around the country that they support the language we have in the bill.

That having been said, I say to the Senator, in order to try to address some of the concerns raised, my colleagues who are the sponsors of this amendment have been working with a group of Senators today to fashion an alteration to this language that makes it clearer that the contract language will be respected but balances that against the need for flexibility with the review panel. I believe we will have an amendment tomorrow to offer on that subject.

I end by thanking my colleagues from Arizona and Nebraska. While I will not be able to support their amendment, we understand the issue. We believe our bill is adequate on this issue, but we will have an alternative to propose tomorrow. Ultimately the point of this, of course, is to protect patients, make sure patients get the care they need. I think the language in our bill plus the language in the amendment will accomplish that purpose.

I yield the floor.

Mr. NICKLES. Mr. President, I rise in support of the amendment and I urge my colleagues to support it. I will make a couple of comments about some of the statements that were made.

I appreciate Senator EDWARDS' comments saying we are willing to have an amendment tomorrow to try to fix part of the problem. We heard that earlier today when we had an amendment to exempt employers.

There were statements made by many proponents of the language, employers can't be sued under this bill. That is a direct quote. So earlier today we tried to make sure employers couldn't be sued, and people voted against the amendment. But we heard: Well, there is an amendment coming that will protect employers.

We understand this bill language, and there is a section that deals with employers that says employers shall be excluded from liability, and then there is an exception. As a matter of fact, on page 144, causes of action against employers and plan sponsors are precluded, paragraph (A).

Paragraph (B) says:

CERTAIN CAUSES OF ACTION PERMITTED.—Notwithstanding subparagraph (A), a cause of action may arise against an employer or other plan sponsor. . . .

We tried to make sure employers would be exempted, and unfortunately that amendment didn't pass. But we did hear assurances from some of the sponsors, we have an amendment and we will protect employers. But, yes, employers can be sued because obviously the Gramm amendment didn't pass. So I just mention that.

We raised the point, and it was raised well by Senator KYL from Arizona and Senator NELSON of Nebraska, that said we are not bound by contracts, and there is all kinds of language here dealing with contracts. You don't have to have coverage for excluded benefits. That sounds very good, but there is language ''except for,'' language that says you have to cover benefits that are excluded from a contract. Then I heard my colleague from North Carolina say we will have an amendment tomorrow to take care of that.

There are several major provisions with this bill that are wrong, one of which is the liability is far too generous and one which says the contracts don't mean anything. So we are wrestling with the liability.

We tried to exempt employers today and were not successful. Now we are working on contract sanctity. I hope all Democrats and Republicans will look at the language that is in the bill and realize how far it goes and think about what is getting ready to happen. I use for an example President Clinton's appointment of a bipartisan commission to make recommendations on this issue. They said in the report:

The right to external appeals does not apply to denials, reductions, or terminations of coverage or denials of payment for services that are specifically excluded from the consumer's coverage as established by contract.

In other words, the report to the President by the Advisory Commission on Consumer Protection and Equality in Health Care says if it is excluded in the contract, you don't have the right to even have an appeal. That is not appealable. In other words, if the contract says don't cover it, it shouldn't be covered.

Yet in the language in the bill, did we adhere to the President's commission? No. If you look at the language on page 35 of the bill:

NO COVERAGE FOR EXCLUDED BENEFITS.—Nothing in this subsection shall be construed

to permit an independent medical reviewer to require that a group health plan, or health insurance issuer offering health insurance coverage, provide coverage for items or services for which benefits are specifically excluded or expressly limited under the plan or coverage in the plain language of the plan document—

If it stopped there, it would be great, but it doesn't stop there, if you read the additional language:

and which are disclosed under section 121(b)(1)(C) except to the extent that the application or interpretation of the exclusion or limitation involves a determination described in paragraph (2).

In other words, you don't have to pay for an excluded benefit ''except for.''

Wait a minute, you have a contract, and a medical provider says, I will provide this list of contracts and I will charge so much per month to provide these contracts, and this bill says we are not going to overturn that exclusion. That is what the first part of the paragraph says. And the second part of the paragraph says ''except for,'' and you have to ask, well, what do you mean ''except for''? Start reading: except for medically reviewable decisions, and it turns out anything is a medically reviewable decision.

So anyone can say it is medically reviewable if the denial is based on medical necessity and, appropriately, denial based on experimental or otherwise based on evaluation of medical facts. The net result is, bingo, anything is covered. You have a lottery.

I heard my colleague from Massachusetts—and I have great respect for him—say we had an agreement last year and basically Senator NICKLES in the conference committee agreed to this language.

We did not. I will make a few comments to get specific on the language. We came close in a lot of areas. But I will refresh my colleagues on things we did agree to that do not appear in the bill today.

I have a document, agreed-to elements of the external appeals section, dated April 13, 2000, 6 o'clock. We agreed to many items which were not in the underlying bill. I don't think you can say we agreed to one provision—whoops, we forget to say we agreed on a lot of other things.

We agreed that a patient should have access to independent reviews for any denial of claim of benefits, No. 1, if the amount of such item or service exceeds a significant financial threshold or, No. 2, if there is a significant risk of placing the life, health, or development of the patient in jeopardy.

I see in the bill we have before us there is no such thing as a financial threshold. This clearly violates the so-called agreement that was entered into last year.

Further, the language regarding the ''denial creates a significant risk of placing the life health or development of the patient in jeopardy'' is not in the bill before us. It is not in the McCain-Kennedy-Edwards bill.

It is interesting; that language was in the original Senate bill, S. 6. It was also in President Clinton's report on quality. But it is not in the bill that we have before us. It is not in the McCain-Kennedy-Edwards bill. My point is, before we had included some language to try to make sure we would have some protections and that was disregarded.

In addition, last year we agreed to a $50 filing fee to discourage frivolous filings. I see this particular agreement was also absent from today's version. The bill before us has a $25 filing fee. One of the reasons why we had a $50 filing fee was because we did not want frivolous filings. We didn't want people to say:

I will appeal. Maybe I will get lucky; maybe I will have extra benefits, more coverage; maybe I can lay a predicate for lawsuits in the future. What do I have to lose? If you had a little more of a threshold, it may discourage frivolous suits.

We also agreed at one time to consider expert opinion if it was by informed, valid, and relevant scientific and clinical evidence. The language we have before us on page 35 talks about the standard for determination. It says we are going to review:

. . . valid relevant scientific evidence and clinical evidence, including peer-reviewed medical literature and findings including expert opinion.

But it did not include everything we had agreed to in the past.

What I do recall is last year we did agree that both sides maintained there was a goal to maintain the sanctity of the contract and not establish appeals which allowed for the coverage of any excluded benefit. In fact, the very basis for today's debate is ensuring that patients are not denied promised benefits. It is not a debate to create a process to resolve and order unpromised benefits.

I think the language we have before us in the McCain-Kennedy-Edwards bill does just that. It is the legislative process that we would make where people could get unpromised benefits, to get items that in some cases are contractually prohibited to be covered benefits.

That is a stretch. Federal employees do not have that; Medicare does not have that; Medicaid doesn't have it. There is a list of covered benefits and there is also a list of excluded benefits.

I will give an example and I will put this in the RECORD. This is from CHAMPVA. It has a list of about 25 items that are excluded, specifically, from VA coverage. I will mention a couple of them: acupuncture, air conditioners, humidifiers, exercise equipment, eyeglasses, and contact lenses.

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

Mr. NICKLES. I ask unanimous consent to proceed for another 6 minutes.

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

Mr. NICKLES. Health club memberships, hearings aids or hearing aid exams, homemaker services, hypnosis, massage therapy, physical therapy consisting of general exercise programs, plastic and other surgical procedures primarily for cosmetic purposes, smoking cessation programs, and several others.

My point is, here is a Government plan for veterans that has specifically excluded items that should not be covered. I will venture to say every private health care plan has excluded items as well. Under the bill we have before us, it says you don't have to cover excluded items except for—and then it opens the door. That, to me, says do not pay any attention to the contract. Contracts do not mean anything.

What is the net result of that? If people who have contracts are not bound by the contracts, then the cost of providing health care is going to go way up. There is no real definitive way of knowing how much the coverage is going to cost because it is not defined coverage. There is nothing you can bank on.

I compliment my friends and colleagues from Arizona and Nebraska for their leadership in putting this amendment together. This amendment is equally as important—maybe not quite as easy to understand but very much as important—for containing the cost of health care as anything we have considered so far. Are we going to allow people to have contracts? Are we going to live by those contracts? Or are we going to take the language in this bill and say: Contracts? We don't care. Are we going to violate what the President's Commission on Health Care said? They said you should not cover items that are excluded from contracts. Are we just going to ignore it as does the underlying McCain-Kennedy-Edwards bill? Are we going to have a medical necessity definition that is the same thing Federal employees have on their fee-for-service plans, which is a quality plan which most all of us are in and most all of us are happy with? Isn't that good enough? Can't we give some assurances that those are things that people can rely on?

Again, I compliment my colleague from Nebraska, Senator NELSON, for his expertise. He brought this to my attention when I was discussing this legislation. He was exactly right. He said this has to be fixed. We are working to fix it. We can fix it.

I urge my colleagues, let's not just be voting on remote control, on how some leaders tell us how to vote. Let's look at the language. Do you really want to have language that basically abrogates contracts, ignores contracts, no telling how much it can cost and also, incidentally, have liability?

You could have, under the McCain-Kennedy bill, a situation where somebody doesn't provide a service that is contractually prohibited and they can be sued because some expert might determine it is medically necessary. This expert might be a acupuncture specialist and they might determine that what you need to solve your back problem is acupuncture and even though

your contract, as VA's, says you do not have to cover it, you have to cover it because that is a solution and under the bill it says expert opinion. So maybe it should be covered.

If you think that is a stretch, it is not a stretch. You can find experts to say almost anything in the medical field and sometimes in the legal field.

My point is this bill undermines contracts in a way in which I think we should be very, very wary. We should not do this. My colleagues from Nebraska and Arizona have come up with a good fix, a good solution. I appreciate that the Senator from North Carolina said he is amenable to fixing this problem. The way to fix it is to pass the Kyl-Nelson amendment. I urge my colleagues to vote for this amendment tomorrow morning.

I thank the indulgence of my colleagues I yield the floor, and ask unanimous consent the CHAMPVA list be printed in the RECORD.

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

OTHER MEDICAL SERVICES . . . WHAT IS NOT COVERED

(Not all-inclusive—see Specific Exclusions)

Acupuncture.

Acupressure.

Air conditioners, humidifiers, dehumidifiers, and purifiers.

Autopsy.

Aversion therapy.

Biofeedback equipment.

Biofeedback treatment of ordinary muscle tension or psychological conditions.

Chiropractic service.

Exercise equipment.

Eyeglasses, contact lenses,and eye refraction exams—except under very limited circumstances, such as corneal lens removal.

Foot care services of a routine nature, such as removal of corns, calluses, trimming of toenails, unless the patient is diagnosed with a systemic medical disease.

Health club memberships.

Hearing aids or hearing aid exams.

Homemaker services.

Hypnosis.

Medications that do not require a prescription (except for insulin and other diabetic supplies which are covered).

Massage therapy.

Naturopathic services.

Orthotic shoe devices, such as heel lifts, arch supports, shoe inserts, etc., unless associated with diabetes.

Physical therapy consisting of general exercise programs or gait analysis.

Plastic and other surgical procedures primarily for cosmetic purposes.

Radial Keratotomy.

Sexual dysfunction/inadequacy treatment related to a non-organic cause.

Smoking cessation programs.

Transportation services other than what is described for ambulance service under What Is Covered in this section.

Weight control or weight reduction programs, except for certain surgical procedures (contact HAC).

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The Senator from Massachusetts has 12½ minutes remaining.

Mr. KENNEDY. I yield myself 4 minutes.

Mr. President, we have had a good discussion coming back, once again, to what I think is one of the fundamental aspects of this bill. We have gone through this. I have taken the time to go through this evening what the criteria were going to be for the medical officer at the time of the external appeal. Those criteria have been supported today by the overwhelming majority of the medical profession because they understand that, with those criteria, we are going to get a medical decision that will be in the best interests of the patient. That is really not challenged.

What is being suggested are three different options that might be used. The one we offer has the support of the medical community. It has the overwhelming support of the medical community. That is the first point.

With all respect to my friend and colleague from Oklahoma, regarding the provisions, when it comes down to what is and is not going to be permitted, clearly if there is an exclusion in the contract there will not be the right of the medical officer to alter and change that. Let me give an example on the issue of medical necessity under the criteria that we have, where it might very well be interpreted by a medical officer. Say a particular HMO excluded cosmetic surgery.

The question came down to a child that had a cleft palate, and the medical officer said: Well, they are excluding cosmetic surgery, but a cleft palate for a child is a medical necessity. That medical officer, I believe, ought to be able to make that judgment. Under the language that we have, that medical officer would be able to do it.

If, on the other hand, the HMO had put in the contract that they will not permit a medical procedure for a cleft palate, then clearly that would be outside of the medical judgment, and outside of medical necessity.

That is the example that is really reflected in the language which we have included. But the fact is those are exceptional cases. They are not unimportant. But the most important aspect of the case is that the judgment that is going to be made by the medical officer is going to be based on the medical needs of the particular patient and the best medical information that is available.

That is what has had the broad support. There may very well be a new commission established under HHS made up of a number of different stakeholders which may come up with some recommendation that may be a better one. That might be so. If that is the case down the road, maybe we can have the opportunity to consider it and bring some change to it. But as we have heard earlier, and as we have seen, the Federal employees standard that is used is not permitted to be used in terms of appeals procedure. The reason, evidently, is because they believe the medical officer ought to be able to use the criteria which brings into play the latest information and the latest scientific information that is available, and the best information that would be helpful to that medical profession.

Finally, there is the question, What are we going to do? Are we really going to ultimately let their judgment and decision be made by the medical professional with enough flexibility so that they can bring to bear medical judgments on this, and also consider the best information that is available to them and apply that best medical information available to benefit the patient?

I think we have a good process and a good way of proceeding. That is why I believe that we ought to stay the course with what is included in the legislation and resist the amendment.

Mr. President, I know we have another amendment that we are going to debate this evening. If there are others who want to speak on this, we welcome them.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, if this side has run out of time, I ask unanimous consent to speak for what time I might consume. But I don't expect it will be over 10 or 12 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. I don't intend to object. Is this in favor of the amendment?

Mr. GRASSLEY. Yes. I am sorry I didn't say that. I am in favor of the amendment.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I want to address what I believe is a very fundamental, fatal flaw in the legislation before us. That flaw relates to how the bill treats health plan contracts, and the precedents that this treatment sets for all contracts, not just those between health plans and employers.

As currently drafted, the bill states that specific definitions and terms in health plan contracts can be entirely thrown out in favor of another definition made up by a third party charged with reviewing a plan's decision to deny care.

This basically invalidates all contracts between health plans and employers and makes them non-binding.

Putting the terms of health plan contracts on the chopping block undercuts the very purpose of the health plan contract itself.

If these contracts are not binding, the health plan will have no way of knowing what standard it should follow in making coverage decisions, the employer will have no way of knowing what its costs will be, and the patient will have no way of knowing what kinds of items and services are covered.

In short, the contract won't be worth the paper its printed on.

How do you do business without a contract? Quite frankly it's almost impossible to imagine doing business at all without a binding agreement.

The Kennedy-McCain bill forces managed care plans to do business in a way that no other industry is forced to do—by that I mean without a binding and valid contract.

Now, let me stop here for a minute and talk about these health plan contracts.

First, contracts between health plans and employers are actually negotiated with all parties involved.

Employers, usually with the help of unions and other worker representatives, bargain for specified coverage in order to meet the unique needs of different employees. Every contract is different.

What's more, these contracts are typically reviewed and approved by state insurance regulators before they become effective. The whole process is deliberative, time consuming and, all told, is truly a ''meeting of the minds.''

The Kennedy-McCain bill says, in effect, to heck with that meeting of the minds. The bill gives unrelated third parties reviewing patient complaints unprecedented authority to take out contract terms that were bargained for in good faith and literally throw them in the trash.

This authority to override contracts at any time and for any reason goes far beyond the authority given even to judges, who in all but the rarest instances are obliged to apply the terms of a contract.

And where judges must explain their rationale in opinions and are generally accountable as public officials, these third party reviewers as outlined in the Kennedy-McCain legislation are private citizens and are not accountable to anyone at all.

I do believe that every patient should have a right to an independent, external review of a health plan's decision to deny care. But that right cannot be without some rationality and accountability.

Third parties charged with reviewing patient complaints should have broad discretion to thoroughly assess, and even overturn, a plan's decision so long as that authority is exercised within the four corners of the contract.

Kennedy-McCain authorizes third parties to veer far, far away from those four corners, and to tear up the contract altogether.

I encourage my colleagues to think about what it would be like if the contracts that they live by everyday contracts for life insurance, home mortgages, even car leases could be torn up and rewritten by an unaccountable third party at any time.

Moreover, I encourage my colleagues who know small business owners or who were themselves small business owners, to think about doing business without the security of a binding contract.

I believe that those of my colleagues who do think about this will come to understand that the consequences of allowing contract terms to be thrown out could be disastrous, and that all contracts, whether involving a health plan or not, deserve the deference that our laws traditionally give them.

I urge my colleagues to reject the Kennedy-McCain approach to health plan contracts and to support the Kyl-Nelson amendment—which is an approach that honors both the integrity of the contract itself, as well as the intent of the parties to it. In the end, it is the patient who wins under this amendment.

Thank you.

The PRESIDING OFFICER. Under the previous order, the Senator from Colorado is to be recognized to offer an amendment.

AMENDMENT NO. 817

Mr. ALLARD. Mr. President, I call up amendment No. 817.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Colorado [Mr. ALLARD], for himself, Mr. BOND, Mr. SANTORUM, and Mr. NICKLES, proposes an amendment numbered 817.

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

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

The amendment is as follows:

(Purpose: To exempt small employers from causes of action under the Act)

On page 148, between lines 23 and 24, insert the following:

''(D) EXCLUSION OF SMALL EMPLOYERS.—

''(i) IN GENERAL.—Notwithstanding any other provision of this paragraph, in addition to excluding certain physicians, other health care professionals, and certain hospitals from liability under paragraph (1), paragraph (1)(A) does not create any liability on the part of a small employer (or on the part of an employee of such an employer acting within the scope of employment).

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

''(I) that, during the calendar year preceding the calendar year for which a determination under this subparagraph is being made, employed an average of at least 2 but not more than 50 employees on business days; and

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

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

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

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

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

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

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

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

''(D) EXCLUSION OF SMALL EMPLOYERS.—

''(i) IN GENERAL.—Notwithstanding any other provision of this paragraph, in addition to excluding certain physicians, other health care professionals, and certain hospitals from liability under paragraph (1), paragraph (1)(A) does not create any liability on the part of a small employer (or on the part of an employee of such an employer acting within the scope of employment).

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

''(I) that, during the calendar year preceding the calendar year for which a determination under this subparagraph is being made, employed an average of at least 2 but not more than 50 employees on business days; and

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

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

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

Mr. ALLARD. Mr. President, I am offering an amendment to S. 1052 that would prevent frivolous, unnecessary, and unwarranted lawsuits against small employers. That is what my amendment is all about. It exempts small employers that have 50 or fewer employees in their firm. I think this is an important provision. I plan on sharing with my colleagues in this Senate Chamber some of my experiences as a small businessman.

I have had the experience of having to start my business from scratch. I worked with fewer than 50 employees. Believe me, from personal experience, I know what happens when you are a small employer and you have too many mandates on your business and you do not have all the staff and accountants and lawyers in your firm to help you along, and you have to go to an attorney or accountant outside your business. I know the impact it can have as far as cost is concerned.

Believe you me, I know what it feels like to have taxes increased on you as a small businessman because you are in the dollar game; every dollar makes a difference on what your bottom line is going to be.

Contrary to what many Members of the Senate are trying to argue, S. 1052 does not exempt small employers from lawsuits. Under S. 1052, employees could sue their employers when an employer—and I quote—''fails to exercise ordinary care in making a decision.'' That is from page 140 of the bill.

Mr. President, 72 percent of small employers in the United States provide health care that Americans need. They do not have to provide that coverage, but they choose to on their own. The Senate should honor that. The Senate should respect that. S. 1052, however, undermines that.

Allowing small employers to be liable for health care decisions would unduly burden a small employer. It would force them to drop health insurance coverage for millions of America's small business employees. At the very least, it adds a new burden to the businessperson who already spends too much time dealing with Government mandates and paperwork.

Without our amendment, S. 1052 places medical treatment decisions in the hands of lawyers and judges and will trigger a plethora of lawsuits against small employers, in my view, creating a field day for trial lawyers. The Senate should not support legislation that allows unwarranted lawsuits that hurt small employers.

This year, employers are trying to cope with a 12-percent increase in health care costs that employers experienced last year. Now, as we move forward into another year, they are looking at somewhere around a 13-percent increase.

I have a recent survey that was jointly put together with the consulting firm Deloitte & Touche and the industry of business and health that reveals that health premiums increased more than 12 percent last year and are expected to increase 13 percent in both 2001 and 2002. So this is a burden with which small employers are faced.

With the passage of this bill, the Congressional Budget Office has estimated it would increase premiums another 4 percent. That would have a very adverse impact on small employers. We have heard it is likely we will have an additional 1 million who are uninsured with the passage of this Patients' Bill of Rights. I suggest to the Members of the Senate, a large part of that million is going to come from the very small employers, those with 50 employees or fewer.

S. 1052, as it is currently written, would cause further increases in health care costs for American families, workers, and businesses across the board. The Congressional Budget Office has estimated that the previous version of S. 1052, which is substantially identical to the current bill under consideration, would increase the Nation's health care costs, as I mentioned earlier, by more than 4 percent. This is above and beyond the additional 13-percent increase in health care costs employers will face this year. Moreover, this year's increase would be the seventh annual increase in a row.

If S. 1052 passes, many small employers will stop providing health care for their employees and the number of uninsured Americans will increase. The country cannot afford this. The small businesses of America cannot afford this. The country cannot afford S. 1052 in its current form.

I personally know the costs of providing health care to employees. As I mentioned earlier, for 20 years I practiced veterinarian medicine and provided health care insurance to my employees. I can speak from personal experience: Providing health care was costly. If I were still practicing veterinarian medicine as a private employer, I could not begin to imagine the burden S. 1052 would place on me, my employees, and everybody's families involved in that business.

I believe we should pass a Patients' Bill of Rights, not a lawyers' right to sue. Our bill should focus on expanding access to affordable health care for the Nation's 43 million uninsured, not on taking steps that will cause more Americans to lose their health insurance and further burden small business.

I also bring up the point that in this particular piece of legislation there are four exemptions. There is an exemption for physicians, an exemption for hospitals, an exemption for a record-keeping function in health care, as well as an exemption for some insurance providers.

The point I make is that if you are beginning to provide an exception for certain businesses, then why not provide that exception for those people who are going to be most adversely impacted by this particular piece of legislation? Those 1 million or so that will be uninsured are going to come out of that small business sector because small employers will have to make the tough decision as to whether they can afford it or not, and many of them are going to say: We can't afford it, so we are going to have to make some adjustments.

One of the major adjustments because of the threat of a lawsuit—and I point out to the Presiding Officer that not only is it the lawsuit itself when you happen to get a judgment against you that is such a problem; it is the threat of a lawsuit because your margin of profit is so narrow that you cannot afford to pay for the professional help, the attorneys to defend you. So small employers will make the decision not to provide health care insurance.

My amendment to S. 1052 would exclude small business employers from being the victims of frivolous lawsuits. I urge my colleagues to consider the consequences of the small employer liability provisions in S. 1052 and to support this amendment.

I think at a time when our economy in this country is struggling, and at a time when I think everybody in this Chamber understands how important it is to have a vital small employer sector—it is the small employers that have come up with new ideas; it is the small employers that are the backbone of economic growth in many of our small communities, particularly in rural areas; it is the small employers that so many of us look to, to be the leaders in our communities—I hope there remains a sensitivity to what the small employer contributes in the way of competition, in the way of developing new ideas, and in the way of making sure we have stronger family-oriented communities. It is a pool of leadership that not only strengthens our communities and our States and our Nation, but it is something around which our whole economy evolves because the importance of competition, and using the dollar and the marketplace to allow the consumer to predict the best services is an important concept in this country.

I don't want to see us lose that by moving constantly towards larger businesses and a corporate-type of society. There is no doubt that small business is important to this country. I hope Members of the Senate will join me in making sure the small employer, those with 50 employees or less, is exempted from the liability provisions in S. 1052. I ask for their support of this amendment.

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

Mr. KENNEDY. Mr. President, I thank the good Senator for his amendment and his thoughtful explanation of it. I will oppose the amendment. I will state briefly why this evening.

Basically, we have a number of definitions of small business. We are taking now the definition of 50 employees or less. That is about 40 percent of the workforce. It might be as high as 43 percent. So with this amendment, effectively we are undermining 40 to 43 percent coverage for all those employees across the country. If we believe in the protections of this legislation, that is a major exclusion.

What are those protections? Those protections are very simple. They are very basic and fundamental. For example, doctors ought to be making the decisions on medical care and not the HMOs. The employees who work in these businesses and where the HMOs are selling these policies are being hurt just as those who are above the 50. Excluding them from these kinds of protections is unacceptable.

Their children are going to be hurt. Their children should be able to get the kind of specialty care that others can. The wives of those who work in those plants and factories ought to be able to get into clinical trials if they have breast cancer. They ought to be able to have an OB/GYN professional as a primary care physician, if that needs to be so. They ought to get the prescription drugs they need, if a drug is not on the formulary. They ought to be able to get the continuity of care they need.

This care protects expectant mothers from losing a doctor during the time of their pregnancy, if the employer drops the coverage with an HMO. These are very important kinds of protections we are discussing.

If we accept the Senator's amendment, we are effectively excluding 40 percent of the population.

The Senator makes a very good point about cost, particularly for small business. I am always amazed in my State of Massachusetts. You go down to 15, 20 employees and still the small businessmen are providing health care coverage. What is happening, they are paying anywhere from 30 to 40 percent more in premiums every single year. This occurs because they are not able to get together with other kinds of groups and get the reductions that come from the ability to contract with large numbers of employers. They are getting shortchanged in those circumstances. Many of the firms they work with are in the business one year and out of the business a second year.

The point the Senator makes about the particular challenge for small employers to offset health coverage for their employees is very real. We ought to help them. There have been a number of different proposals which I have supported and others have supported in terms of deductibility and helping those companies. That is an important way of trying to get about it. But the suggestion that is underlying the Senator's presentation is that the cost of this particular proposal is what is really going to be the straw that breaks the camel's back.

He talks about a 4-percent increase in premiums. That is a percent a year, as we have learned. The alternative percent is around 3 percent. It is 3 percent over the period of 5 years. The CBO points out that the cost of the various appeals provisions and the liability provisions are eight-tenths of 1 percent over the 5 years. And in the alternative bill, it is four-tenths of 1 percent.

I mentioned earlier in the day that the largest CEO salary of an HMO was $54 million a year, and $350 million in stock options. This constitutes a benefits package of $400 million. That adds $4.25 to every premium holder, small business premium holder, $4.25 a month. Our proposal adds $1.19 a month. That is just one individual. I am sure, in this case, he does a magnificent job. But when you are talking about the cost of this, we have also brought in the fact that the average income for the 10 highest salaried HMO CEOs is $10 million a year. Their stock options are in the tens of millions of dollars a year. The profits are 3.5 percent a year, $3.5 billion last year in profits. And still they ratcheted up their premiums 12 percent to maintain their profit margin. They made $3.5 billion.

Yet they cannot make sure that we are going to be able to provide protections for their employees. They cannot make sure that they are not going to overrule doctors in local hospitals and community hospitals, in the urban hospitals, and in rural hospitals trying to give the best medical attention to the children and the women and their workers? We can't say that we want to provide that degree of protection for them?

I just can't accept that. I would welcome the opportunity to work with the Senator in the area of small business. But that isn't what we are about this evening. The Senator's amendment, as I said, would effectively exclude 40 percent, 43 percent of all the employees. It makes the tacit assertion—more than tacit, explicit assertion—that the increased premiums that are going to be included in this bill are just going to be unbearable. I suggest there are ways of getting cost savings on this.

We have 50 million Americans now that have the kinds of protections that we are talking about. They have the liability protections. We don't see their premiums going up. We see the right to sue in the States of Texas and California, and the premiums aren't going up. There is very little distinction between the 50 million Americans now who have the liability provisions and those who do not.

We are talking about a major assurance to families all over the country. When this bill passes and families go in and pay their premiums for health insurance, they will know they are getting coverage for the kinds of sickness, illness, and serious disease. Without this legislation, they may think they are covered. Then, at a time of great tension and pressure—they may have cancer for example—they are told by their primary care doctor that even though there is a specialist, an oncologist down the street who is the best in the country and is willing to treat that child, they are told they cannot have that specialty care.

They are also told that they can't appeal that once the HMO makes that decision. They are being denied that, when we know what a difference it can make in terms of saving that child's life and in terms of that child's future.

We want to make sure every parent knows that when they sign onto an HMO, they are going to be able to get the best care that is available for their child, for their wife, for their mother, for their son, for their grandparent, and not have these medical decisions overridden by the HMO.

So it seems to me that those protections ought to be there for the 40 percent of the workers, as well as to the other 60 percent. We ought to get to the business of paying attention to, helping, and assisting the smaller businesses. One of the best ways is for these major HMOs to stop spending the millions and millions of dollars they are spending every single night, right now, in distorting and misrepresenting the truth. Evidently, they are flooded with money because they are spending so much of it in order to defeat this legislation.

This isn't an industry that is hard pressed. They are ready to open up all of their wallets and pocketbooks to distort and fight this legislation. And, they have the resources to be able to do it. They are not short on those resources. We do not see cutbacks on executive pay. We do not see cutbacks on stock options and the other hefty perks of being an HMO CEO. The idea that this particular legislation is going to be the straw that breaks the camel's back doesn't hold up. It is a smokescreen. It is not an accurate representation!

I think that those 40 percent of American workers are entitled to coverage and protection.

(Mr. CORZINE assumed the Chair.)

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

Mr. KENNEDY. Yes.

Mr. DURBIN. I listened to the Senator from Colorado present his amendment on behalf of small businesses and employers. I recall, before my election to Congress, running a law office and buying health insurance for myself and my employees. I recall the experience when I went to one of the larger health insurance companies to cover my employees. So the belief that small businesses only do business with small insurance companies I am not sure is an accurate description. I think that small businesses often do business with large insurance companies.

If I understand the Senator from Massachusetts and the amendment of the Senator from Colorado, if one employer has 49 employees here and is doing business with a large insurance company, that large insurance company doesn't have to offer the same protections to the small business' employees that it might offer to the business next door with 60 employees. So the people who are losing are not the small business owners but the small business employees who don't get the benefit of the same protections that we are trying to guarantee to all Americans. Is that how the Senator from Massachusetts sees it?

Mr. KENNEDY. The Senator is quite correct on this. That, of course, raises competitive situations. You are going to have competition on the dumbing down of protections for employees, rather than establishing a standard in competition in terms of the quality of the product. It is a race to the bottom, so to speak.

Mr. DURBIN. So this will, in fact, limit the protections for employees of small businesses across America so that if you go to work for a small business, you just won't have the right to specialty care, to the drugs your doctor thinks are necessary to cure your disease, the right to a specialist in a critical circumstance, access to emergency rooms—all the things we are trying to guarantee in this bill. What the Senator from Colorado does is say we are not going to provide those protections if you are one of the 40 percent who works for a small business in America. Is that what the Senator understands?

Mr. KENNEDY. The Senator is correct. I will make the case tomorrow, but it is my judgment that you will find that there are greater abuses in the areas of these smaller companies, smaller HMOs, appealing to smaller companies, rather than some of the larger HMOs which are tried and tested and have the reputation within a community to try and defend. We have had many that do a credible job, but you are going to find, I believe—and I will get to this more tomorrow morning—that the workers who are the most vulnerable are going to be workers in these plants.

Mr. DURBIN. May I ask another question of the Senator from Massachusetts?

Mr. KENNEDY. Yes.

Mr. DURBIN. While I listened to the Senator from Colorado explain the increase in premiums, he suggested premiums had gone up 12 percent last year, and they anticipated they would come up 13 percent nationwide this year and the following year, which suggests that in a 3-year period of time, the Senator from Colorado tells us, we are going to see a 38-percent increase in health insurance premiums.

Going back to a point earlier, how much will the Kennedy-Edwards-McCain bill increase premiums each year over the next 5 years if we are going to have 38 percent in 3 years, just the natural increase in health insurance; how much will this legislation we are debating add to that cost?

Mr. KENNEDY. Well, according to the Congressional Budget Office and OMB it will be less than 1 percent a year over the next 5 years—much less, closer to 4 percent. So, effectively, it is 4 percent.

As we pointed out earlier in the debate, under the alternative proposal that the President supports, it is effectively 3 percent over 5 years. As the Senator is pointing out, it is somewhat less than 1 percent a year against what the Senator from Colorado mentioned—12 percent last year and 13 percent this year. That is what is happening already, without these kinds of protections.

Mr. DURBIN. I think that really addresses the issues raised by the Senator from Colorado. First, we are saying to employees of small businesses that you are not going to receive the protection of others with health insurance. Secondly, even though the cost is less than 1 percent a year to give these added protections, we are not going to ask the small businesses to accept this, even in the face of an increase in premiums, which the Senator from Colorado tells us was 38 percent over 3 years.

I thank the Senator from Massachusetts.

Mr. KENNEDY. I thank the Senator for his helpful comments.

Mr. REID. Will the Senator yield?

Mr. KENNEDY. Yes.

Mr. REID. I know the Senator is in a rush. I just want to make two brief comments. First of all, to make it plain English so somebody from Searchlight, NV, where I was born, understands it, the Congressional Budget Office says S. 1052 would result in a premium increase of only 4.2 percent over 5 years. The cost of the average employee would be $1.19 per month. This would be 37 cents per month more than the legislation that really gives no coverage at all on the other side.

I want to say one last thing to my friend. We were here on the floor earlier today. We know one of the things that is trying to be injected into this is that this is a terrible thing for small business. That is what this amendment is all about—that the Kennedy-Edwards-McCain legislation is bad for small business. I read to the Senator earlier today—and I am going to take 1 minute to read a communication I got from a small businessman in Nevada today:

> As a small business owner—
>
> Less than 50 employees—
>
> and as a citizen, I urge you to support the upcoming bill commonly known as the ''Patients' Bill of Rights.'' I also would like to state that I support your and Senator McCain's version of the bill. If the HMOs can afford to spend millions on lobbyists and advertisements, then they can afford to do their job correctly, preventing the lawsuits in the first place . . .
>
> . . . I am willing to pay to know that what I am purchasing from my HMO will be delivered, not withheld until someone is dead, then approved postmortem. While a believer in the market and freedom, I feel that we need a better national approach to health care. As the richest nation in the world, as the only real superpower, why do so many Americans get Third World levels of health care, even when they have insurance?
>
> Thank you for your time. Michael Marcum, Reno, NV.

This is a small businessperson. He doesn't have millions of dollars to run TV ads, radio ads, and newspaper ads, but he has the ability to contact me, as hundreds of thousands of other small businesspeople can do. This legislation that you are supporting is good for small business, and this is only one of the other ploys to try to distract from the true merits of this legislation.

Mr. KENNEDY. I thank the Senator because in his statement he has really summarized the importance of resisting this amendment. Those 40 percent of workers deserve these kinds of protections. These are not very unique or special kinds of protections.

They are the commonsense protections we have illustrated during the course of this debate—access to emergency room care based upon a prudent layperson standard, protections of speciality care, clinical trials, OB/GYN, continuity of care and point of service. So patients are able to get the best in specialty care and formulary, the new medicines, and making sure their doctors, American doctors, are the best trained in the world. These doctors have committed their lives to benefit patients, and they are trained to do so trained to make the medical judgments.

That is what American families believe they are paying for when they pay the premiums, but we have a group of HMOs that feel they can put the financial bottom line ahead of patient interests and shortchange millions of Americans. We should not let the 40 percent that will be affected by this amendment be excluded.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I want to respond to some of the comments that were just made. The fact remains if you survey employers, half say they will drop employee coverage if exposed to lawsuits. I can understand that having been a small businessman, and I understand how one tries to deal with the bottom line of that business, usually a very marginal business.

Again, I agree with the Senator from Massachusetts when he says we are talking about 40 to 45 percent of the workforce in this country. It points out how important that small business sector is. Those were 50 employees or less. They are a vital part of our economy. We want to make sure they have an ability to attract employees into their business. We want to make sure they can meet the bottom line. We want to make sure they stay in business.

I want to share a quote with the Members of the Senate made by William Spencer, who is with the Associated Builders and Contractors, Inc. We all know many times builders and contractors are small businesspeople, sometimes, at least in my State, frequently 4 and 5-man operations, rarely over 10, particularly in the subcontracting area:

> Many of the ABC's member companies are small businesses, and thus the prospect of facing a $5 million liability cap on civil assessments is daunting. Financial reality is that if faced with such a large claim, many of our members could be forced to drop employee health insurance coverage rather than face the potential liability or possibly even shut their business down.

I think he is right on, and I agree with him. The question is, how do you respond as a small employer when you are faced with an untenable exposure from a lawsuit or costs or regulatory burden? You try to figure out a way you can move out of that liability you are facing. What I did, and I think many small employers will do, is go back to their employees and say: Look, there is no way we can cover your medical insurance. There is no way we can work with a program, whether it is an HMO or whatever, to provide you with medical insurance.

If you are a small employer such as I was—I had part-time employees working for me. Many who came to work for me had never held a job in their life. They were just out of high school, in many instances, and going to college. I was going to give them their first experience in the workplace.

I had to make a decision as to what we were going to do in a case where I had increasing costs in my small business. Many of them were as a result of

insurance premiums. I decided that I was going to approach my employees and say: I would much rather pay you extra to work in my business and leave it up to you to line up your own health care coverage.

Again, they were part-time employees who we expected, in many cases, to work for us for 3 months, sometimes 2, 3 years, and then they would be moving on.

By taking this approach, I also gave them portability. In other words, when they left my business, they were not faced with the issue of what is going to happen with my insurance when I get to a new employer; what is going to happen, from the employee's perspective; what am I going to do when I am no longer working for my current employer as far as health coverage is concerned.

That is how I decided to handle it. I think most small employers will view it the same way I did. When they see that untenable exposure, they are going to decide not to have coverage for their employees. In order to stay competitive, they might decide to pay them more or some other way to compensate them for that loss in health care coverage.

The fact remains, from my own personal experience, it is not hard for me to believe that many small employers, as many as half, will elect not to provide health care coverage for their employees.

We need to do everything we can to encourage the small business sector to survive. This is not the only place where we draw a bright line, where we recognize how important the small business sector is to us. In other places in the law, we have tried to define what a small business is. In some cases, we drew it at 150 employees or less; in some cases, 100 employees or less; or maybe, in some cases, 50 employees or less. In fact, in some cases, they even tried to define the very small employer of 15 employees or less.

It is not an unusual policy for the Senate in legislation to draw a bright line to define what a small employer would be. In this particular instance, it is entirely appropriate to make that at 50 employees or less, and if you have 50 employees or less, you would be exempted from the provisions of the Senate bill that is before us.

Small businesses are important for the economic growth of this country. Small businesses are important to generate new ideas. When an American has a great idea, many times they go into business for themselves, and they try to market that idea. If it works, it may eventually grow into a large business. If it does not work, they may eventually end up having to work for another employer. But many times they are contributors to their communities. They are contributors to the employee base. They are contributors to the leadership within that community and help make that community a better place in which to live.

I believe we need to be sensitive to what small employers can contribute to our economy and the vital role they play. I believe this mandate, this bill will make it much more difficult to stay in business, and, consequently we will begin to lose that pool of talent that is so vital to the health of this country.

The PRESIDING OFFICER. Who yields time?

Mr. REID. Mr. President, under the order that is now before the Senate, if the Senator from Colorado yields back his time, we will do so and finish this debate in the morning under the time that is scheduled.

Mr. ALLARD. Is the Senator from Nevada yielding back his time?

Mr. REID. Yes.

Mr. ALLARD. I will yield back the remainder of my time.

Mr. REID. We will complete the debate in the morning. The Senator from Colorado will have an hour in the morning.

Mr. ALLARD. That is my understanding, there will be an hour.

Mr. REID. Evenly divided.

I yield back our time and the minority has yielded back their time.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent there be a period of morning business, and Senators be permitted to speak for up to 5 minutes each.

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

PRESIDENTIAL TRADE NEGOTIATING AUTHORITY

Mr. BYRD. Mr. President, I am very much concerned about our loss of direction with regard to Presidential trade negotiating authority. Many Members of the House, and some of my colleagues here in the Senate, advocate a wholesale surrender—a wholesale surrender—of Congress' constitutional authority over foreign commerce, as well as the evisceration of the normal rules of procedure for the consideration of Presidentially negotiated trade agreements.

I am talking about what is commonly known as ''fast-track,''—fast track—though the administration has chosen the less informative moniker—the highfalutin, high sounding ''trade promotion authority.'' ''Trade promotion authority'' sounds good, doesn't it? ''Trade promotion authority,'' that is the euphemistic title, I would say—''trade promotion authority.'' The real title is ''fast-track.''

What is this fast-track? It means that Congress agrees to consider legislation to implement nontariff trade agreements under a procedure with mandatory deadlines, no amendments, and limited debate. No amendments. Get that. The President claims to need this deviation from the traditional prerogatives of Congress so that other countries will come to the table for future trade negotiations.

Before I discuss this very questionable justification—which ignores almost the entire history of U.S. trade negotiating authority—I think we ought to pause and consider—what?—the Constitution of the United States. I hold it in my hand, the Constitution of the United States. That is my contract with America, the Constitution of the United States.

Each of us swears allegiance; we put our hand on that Bible up there. I did, and swore to support and defend the Constitution of the United States against all enemies, foreign and domestic.

Each of us swears allegiance to this magnificent document. As Justice Davis stated in 1866:

> The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government.

Ex Parte Milligan, 71 U.S. 2 (1866). This was the case that refused to uphold the wide-ranging use of martial law during the Civil War.

Thus, Mr. President, let us review the Constitution to see what role Congress is given with respect to commerce with foreign nations. Article 1, section 8, says that ''The Congress shall have power to . . . regulate commerce with foreign nations, and among the several states, and with the Indian tribes . . . .''

This Constitution also gives Congress the power ''to lay and collect . . . Duties, Imposts, and Excises.'' The President is not given these powers. Congress is given these powers. There it is. Read it. The President is not given these powers. These powers have been given to Congress on an exclusive basis.

Nor is this the extent of Congress's involvement in matters of foreign trade. It scarcely needs to be pointed out that Congress's central function, as laid out in the first sentence of the first article of the Constitution, is to make the laws of the land. Were it not for that first sentence in this Constitution, I would not be here; the Presiding Officer would not be here; the Senator from the great State of Minnesota, Ohio, Florida, the great States, Alabama, we would not be here. Congress makes the laws of the land. Some people in this town need to be reminded of that.

For example, Congress decides whether a particular trade practice in the U.S. market is unfair. Congress decides whether foreign steel companies can use the U.S. market as a dumping ground, which they have been doing, for their subsidized overcapacity. Are we to give this authority to the President and make Congress nothing more than a rubber stamp in the process of formulating important U.S. laws? As the great Chief Justice of the United States John Marshall might have asked: Are we ''mere surplusage''? Is the Senate mere surplusage?

The Founding Fathers' memories were not short. Those memories were not occluded by real-time television news, nor were they occluded by the proliferation of ''info-tainment.'' The Founding Fathers had a vast reservoir of learning, particularly classical learning, to draw upon and a treasure trove of political experience.

Our Founding Fathers were not enamored with the idea of a President of the United States who would gather authority unto himself, as had been experienced with King George III of England. Most of the administrations that have occurred—there have been at least 10 different Presidents with which I have served; I have never served under any President, nor would any of those framers of the Constitution think well of me if I thought I served under any President. The framers didn't think too much of handing out executive power.

So this exclusive power to regulate foreign commerce was not centered upon the legislative branch by whim or fancy. There were weighty considerations of a system founded on carefully balanced powers.

The U.S. Congress tried to give away some of its constitutional authority by granting the President line-item veto power a few years back. Fie on a weak-minded Congress that would do that, a Congress that didn't know enough and didn't think enough of its constitutional prerogatives and powers and duties to withhold that power over the purse which it did give the President of the United States. Mr. Clinton wanted that power. Most Presidents want that power. Congress was silly enough to give the President of the United States that power. It was giving away constitutional power that had been vested in this body of Government, in the legislative branch.

Thank God, in that instance at least, for the Supreme Court of the United States. It said Congress can't do that. Congress can't give away that power that is vested in it, and it alone, by the Constitution of the United States.

So the U.S. Congress tried to give away some of its power. But, ultimately, as I say, that serious error was corrected by the Supreme Court. The Supreme Court saved us from ourselves. Hallelujah. Thank God for the Supreme Court. Boy, I was with the Supreme Court in that instance. Yes, sir. They saved us from ourselves.

The ancient Roman Senate, on the other hand, was successful in giving away the power of the purse. And when it did that, when the ancient Roman Senate gave away the power of the purse, first to the dictators and then to the emperors, it gave away an important check on the executive. First, Sulla became dictator in 82 B.C. He was dictator from 82 to 80. Then he walked away from the dictatorship, and he became counsel in 79. He died in 78 B.C., probably of cancer of the colon.

Then in 48 B.C., what did the Roman Senate do again? It lost its way, lost its memory, lost its nerve, and restored Caesar to the dictatorship, Julius Caesar, for a brief period. In 46 B.C., it made him dictator for 10 years. Then in 45 B.C., the year before he was assassinated, the Roman Senate lost its direction, lost its senses and made Caesar dictator for life.

Well, I don't know whether or when we will ever reach that point. But we need to understand how extraordinary, how very extraordinary this fast-track authority is that President Bush is running around, over the country, asking for—fast-track authority, but he is not calling it that. He is calling it something else.

From 1789 to 1974, Congress faithfully fulfilled the Founders' dictates. During those years, Congress showed that it was willing and able to supervise commerce with foreign countries. Congress also understood the need to be flexible. For example, starting with the 1934 Reciprocal Trade Act, as trade negotiations became increasingly frequent, Congress authorized the President to modify tariffs and duties based on negotiations with foreign powers. Such proclamation authority has been renewed at regular intervals.

What happened in 1974? At that time we relegated ourselves to a thumb's up or thumb's down role with respect to agreements negotiated on the fast track. Stay off that track. Congress agreed to tie its hands and gag itself when the President sends up one of these trade agreements for consideration.

Why on Earth, you might ask, would Congress do such a thing? What would convince Members of Congress to willingly relinquish a portion of our constitutional power and authority? What were Members thinking when they agreed to limits on the democratic processes by which our laws are made? And why, in light of the fact that extensive debate and the freedom to offer amendments are essential to effective lawmaking, would Congress decide that we can do without such fundamentally important procedures when it comes to trade agreements?

The U.S. Senate is the foremost upper house in the world today. Why? There are many reasons. But two of the main reasons are these. The U.S. Senate has the power to amend, and the U.S. Senate is a forum in which men and women are able to debate in an unlimited way—they can limit themselves; otherwise, in this forum, I can stand on my feet as long as my feet will hold me and debate. And nobody—not the President of the United States, not the Chair—can take me off my feet, not in this body. Nobody. And I am not answerable to anybody for what I say here. Our British forebears took care of that when they provided in 1689 that there would be freedom of speech in the House of Commons.

Well, we are doing it to ourselves when we pass fast track. We are saying: No amendments. You just either stamp up or down what the President sends up here.

Again, why, in light of the fact that extensive debate and freedom to offer amendments are essential to effective lawmaking, would Congress decide that we can do without such fundamentally important procedures when it comes to trade agreements?

I submit that, in 1974, we had no idea of what kind of Pandora's box we were opening. At that time, international agreements tended to be narrowly limited. Consider, for example, the U.S.-Israel Free Trade Agreement of 1985. The implementing language of that agreement was all of four pages, and it dealt only with tariffs and rules on Government Procurement.

Fast track began to show its true colors with the 1988 U.S.-Canada Free Trade Agreement which, despite its title, extended well beyond traditional trade issues to address farming, banking, food inspection, and other domestic matters.

The U.S.-Canada agreement required substantial changes to U.S. law, addressing everything from local banking rules to telecommunications law, to regulations regarding the weight and the length of American trucks. These changes were bundled aboard a hefty bill and propelled down the fast track before many Members of Congress knew what had hit them.

Most ominously, the U.S.-Canada agreement established the Chapter 19 dispute resolution procedure. This insidious mechanism, which was only supposed to be a stopgap until the U.S. and Canada harmonized their trade laws, gives the so-called trade ''experts'' from the two countries the authority to interpret the trade laws of the United States. We are not talking about judges now. We are not talking about persons trained in the laws of the United States. We are talking about trade ''experts,'' frequently hired hands for the industries whose disputes are under consideration.

Moreover, unlike our domestic courts, there is no mechanism by which American companies that are adversely affected by Chapter 19 panel decisions might obtain appellate review. The system simply does not work. It goes against fundamental American principles of fairness and due process.

In short, the U.S.-Canada agreement was nothing less than a dagger pointed at the heart of American sovereignty.

That agreement—and the process by which it was concluded—undermined both the legislative and judicial authority of the United States.

So where are we now? Today, American trade negotiators are faced with a completely different reality from what it was in 1974. Our trading partners know the game—shut out the people and appeal to the elite conceptions of a smoothly functioning global economy. In 1993, Lane Kirkland, then-president of the AFL-CIO, made an observation about NAFTA that is just as pertinent today as it was then, when I voted against it. Here is what he said:

Make no mistake, NAFTA is an agreement conceived and drafted by and for privileged elites, with little genuine regard for how it will affect ordinary citizens on either side of the Mexican border . . . The agreement's 2,000 pages are loaded with trade-enforced protections for property, patents, and profits of multinational corporations, but there are no such protections for workers.

In the new world of international trade negotiations, our trading partners, frequently assisted by their American trade lawyers, place on the table their ideas for elaborate changes to U.S. law. For example, our free trade area of the American trading partners propose dozens of pages of changes to our trade laws, modifications that are intended to eviscerate those laws.

The American workers who would be displaced if those modifications were implemented are given no role in this process. None. We, their representatives, are given a minimal role, a little teeny-weeny portion. But we are not yet voiceless, not yet drowned out by the elite consensus on the virtues of free trade. Well, I am for free trade - who would not be—as long as it is fair, fair trade. But that is quite another matter.

Let the free traders come to West Virginia. Come on down, Mr. President, and talk to those steelworkers over at Weirton. Come on down and talk to the steelworkers who are being laid off in Weirton, WV. Don't go over to Weirton and burn the flag. Those are patriotic citizens over there. But they are losing their jobs. Let the free traders come to West Virginia and talk to the steelworkers, talk to their families, talk to their neighbors. Let them talk to labor leaders from North America and Latin America. Let them try to explain why the disintegration of ways of life that give both opportunity and security is good ''in the long run.''

As John Maynard Keynes once wrote, ''Long run is a misleading guide to current affairs. In the long run, we are all dead.'' I will add: dead, dead, dead.

I am getting sick and tired of these administrations, Democratic and Republican, who run to West Virginia and want the votes there and turn around and fail to take a stand for American goods, American industries, and American men and women workers.

John Maynard Keynes also wrote, ''Practical men, who believe themselves to be quite exempt from any intellectual influences, are usually the slaves of some defunct economist.''

How many Washington Post editorialists will lose their jobs if our trade laws are eviscerated? How many libertarian think tanks will be shut down when the free trade dystopia is established? Shall we take their views—the views of some defunct economist—as gospel, or shall we listen to those who earn their living by the sweat of their brow?

When God evicted Adam and Eve from the Garden of Eden, they were told to earn their bread from the sweat of their brow, and that is why we are still doing it. I say listen to those who earn their living by the sweat of their brow. Go to Weirton to the steel town; go to Wheeling to that steel town, at Wheeling-Pitt with over 4,000 workers. I believe that is right. Go over there. Say to them: Boys, get in touch with your Senator and get in touch with your House Members and tell them to vote for—they do not call it fast track. What is it they call it? It is a sugar-coated pill. Tell your Senator to vote for that, and actually they will not say it out loud, but that is fast track. Tell your Senator to vote for that.

I am for expanding international trade. Who wouldn't be. But let the trade be fair. Let us have a level playing field, and let us not neglect our responsibility in this Senate to participate meaningfully in the formulation and implementation of U.S. trade policy.

I am not saying the Senate ought to vote on every duty and every tariff on every little toothbrush and every little violin string that is sent into this country. I am saying there are some big questions this Senate ought to be able to speak to and to vote on. At least on 2, 3, 4, 5, or 6, let's have a vote by this Senate.

One way we can reassert our constitutional role with respect to foreign trade is to create a Congressional Trade Office modeled after the Congressional Budget Office.

My colleagues might recall this was one of the many ideas discussed in the report of the U.S. Trade Deficit Review Commission. Senator BAUCUS and I are working on legislation that would give us a trade office with the information resources and expertise necessary to permit us to properly discharge our oversight responsibilities.

That is what we need. We need to exercise our oversight responsibility. We cannot do it if we gag ourselves, if we cannot speak, if we cannot amend. We cannot fulfill our responsibilities under the Constitution. We cannot fulfill our responsibilities to the people who sent us here.

Can anyone guess how many trade agreements have been negotiated without fast track? The President is running around saying: Oh, I have to have this; I have to have this in order to enter into these trade agreements. Can anyone guess how many trade agreements have been negotiated without fast track since that extraordinary authority was first granted to the President in 1974? The answer is in the hundreds. We have had fast track on this Senate floor 5 times in the last 27 years, but in the meantime, hundreds of trade agreements have been negotiated, the most recent examples being the U.S.-Jordan agreement and the U.S.-Vietnam agreement.

I think we need an analysis of all the trade agreements concluded over the past 27 years. Let us try to determine if the Founding Fathers were completely off the mark when they gave Congress authority over foreign commerce.

I believe that any impartial study of this history will demonstrate that we can have trade agreements without surrendering our constitutional authority over foreign commerce. If negotiation of trade agreements is in the interests of other nations, they will be at the table. They will be at the table, in my judgment, Congress or no Congress. Is there any serious argument to the contrary?

Let me be clear. I am thinking of a Presidential nominee some years ago who said this. For the moment I have forgotten his name. He said this: I didn't say that I didn't say it; I said that I didn't say that I said it.

And then he said: Let me be clear. I didn't say that I didn't say it; I said that I didn't say that I said it.

He said then: Let me be clear—after the audience had laughed.

Let me be clear. I am not suggesting that we noodle away at a Presidentially negotiated trade agreement by considering myriad small amendments. No, Congress should not focus on the minutiae. There may, however, be a small number of big issues in such an agreement that go to the root of our constituents' interests. We must have the authority to subject those issues to full debate and, if necessary, amendment.

In closing, I reiterate that we should put our trust in this document which I hold in my hand, the Constitution of the United States—not in fast track but in the Constitution of the United States and in the people for whom it was drafted and ratified: the people of America.

Let us not give away even one piece of our national birthright, the Constitution, without at least demanding hard proof that its tried and true principles must be modified.

Let us preserve our authority as Members of Congress to participate fully in the process of concluding international trade agreements. Let us not permit the globalization bandwagon to roll over us, to weaken our voices, to sap the vigor of our democratic institutions, and to blind us to our national interests and the needs of our communities.

If we cannot uphold this banner—the Constitution of the United States which I hold in my hand—if we cannot uphold this banner, the banner of our

more than 200-year-old constitutional Republic, if we cannot play a constructive role in taming the free-trade leviathan, then we are unworthy of our esteemed title.

Mr. President, I yield the floor.

IN RECOGNITION OF RAYMOND BOURQUE

Mr. KERRY. Mr. President, I would like to take a moment that I know my colleague from Massachusetts shares with me to pay special recognition and tribute, celebrating the career of one of New England's most beloved sports figures, Raymond Bourque, who announced his retirement today.

Over the course of a 22-year career in the National Hockey League, this future-certain Hall-of-Famer set a standard for all athletes—playing with a special kind of determination and grit and, above all, class that has been recognized by his fellow players and by sports fans all over this country and indeed the world.

He came to us in Boston from Canada as a teenager to play for our beloved Boston Bruins, earning Rookie of the Year honors for that first year in 1979 to 1980.

Many make a large splash with a lot of headlines in the first year, but Ray proved, even as he won Rookie of the Year, to be more marathon than sprint. Through perseverance and a deep dedication to his craft, he played his way into the hearts of sports fans across the region and throughout the league.

For over 20 years, touching literally four different decades for those 20 years, he was the foundation on which the Boston Bruins built their teams and chased the dream of bringing the Stanley Cup back to Boston. Alas, that was not to happen.

The statistics, however, of his chase speak for themselves: The highest scoring defenseman in league history; a 19-time All-Star; a five-time Norris Trophy winner as the league's best defenseman. But in many ways it was more than goals and assists and legendary defense that won him the tremendous admiration of Boston fans. It was his performance beyond the game itself.

December 3, 1987, is a day that remains indelibly imprinted in the hearts and minds of Boston sports folklore. It is next to Fisk's homer, Havlicek's steal, and Orr's flying goal. That day Bruin Hall-of-Famer Phil Esposito's No. 7 was retired and raised to the rafters of the old Boston Garden. Ray Bourque also wore No. 7 and most believed he was going to continue to wear his number for the remainder of his career.

That night, Ray touched generations of fans and nonfans by skating over to Esposito, removing his No. 7 jersey to reveal a new No. 77 that he was to wear for the rest of his illustrious career. He handed the No. 7 jersey to a stunned and emotional Esposito and said, ''This is yours, big fella. It never should have been mine.''

The Stanley Cup was the one thing that was missing during his years in Boston that continued to elude him and his teammates. In fact, Ray had the most games played without winning a Stanley cup—1,825. However, that distinction did not diminish him in the eyes of his fans or his teammates, the teammates who were proud to call him captain. It only made them all want to give him one last opportunity to prevail. With that in mind, Boston gave Ray his leave and he set his sights on that final goal—to win a Stanley Cup—only this time he set out to do it with the Colorado Avalanche.

Even after Ray left the Bruins in the midst of the 2000 season in search of that goal, the Boston fans never left him. His new Colorado team immediately recognized his value as a leader and they awarded him the moniker of assistant captain upon his arrival. When he finally raised the cup over his head in triumph this past season, all of New England cheered for him. In fact, in an unprecedented show of support for another team's victory, over 15,000 Bourque and Boston fans joined in a celebration on Boston's City Hall Plaza when Ray brought home the Stanley Cup earlier this month. It belonged to Ray and to Boston for those moments as much as to Colorado and the Avalanche.

Today we learned that Ray Bourque has laced up his skates as a professional in competition for the final time. He will retire and come home to Massachusetts to be with his wife, Christiane, and their three children, Melissa, Christopher, and Ryan. He will watch his eldest son, 15-year-old Christopher, as he plays hockey at a new school.

It is both fair and appropriate to say that for all of his children, as well as all young children, you could not have a better role model, not just in hockey but in life.

I have been privileged to share a number of charitable events with Ray Bourque. He is tireless in his contribution back to the community and in the leadership to help to build a better community.

If Ray's career were only measured in numbers, he would be an automatic Hall-of-Famer. But when you take the full measure of the man, he has shown to be one of those few athletes who transcends sports. He could have played a couple of years more. He could have made millions of more dollars. But he chose to go out on top and to return to his family. He felt his family had made enough sacrifices for him, and it was time for him to be there for them.

In Massachusetts, and fans everywhere, I think there is a special sense of gratitude for his success, for his happiness, and we are appreciative of all of his years with the Bruins and proud to have him back home in Massachusetts.

We wish him and his family well.

SOUTH DAKOTA NATIONAL PEACE ESSAY CONTEST WINNER

Mr. DASCHLE. Mr. President, I am honored today to present to my colleagues in the Senate an essay by Austin Lammers of Hermosa, SD. Austin is a student at St. Thomas More High School and he is the National Peace Essay Contest winner for South Dakota.

I ask unanimous consent that the essay be printed in the RECORD.

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

FAILURE IN AFRICA

Imagine how horrible living in a third world country would be during a giant civil war, and the people that are supposed to help allow death, famine and increased war. Death and war is precisely what has happened in this past decade in the warring countries of Somalia and Rwanda. Outsiders, such as the United Nations, can occasionally help in violent civil outbreaks but they are not consistent and rarely make the situation much better. Third parties should not interfere in civil conflicts unless they are well prepared, respond quickly, and benefit the country they are interfering.

Drought and famine has been the reason for civil war in Somalia since 1969, but the most recent civil war erupted between rebel and governmental forces in 1991 (Fox 90). The rebel forces seized Mogadishu, the capital of Somalia, and forced President Siad Barre to flee the country (Potter 12). The takeover which destroyed the economy also began a famine for about 4.5 million people who were faced with starvation, malnutrition, and related diseases (Johnston 5). The UN wanted to intervene; but according to the Charter, the UN can only act to stop war between nations, not civil war within a single country (Potter 26). Therefore, in December 1992 UN Secretary General, Butros-Ghali, passed Resolution 794 that permitted the UN to secure Somalia (Potter 27).

Following Resolution 794 the UN began the United Nations Operation in Somalia (UNOSOM) which monitored the new ceasefire between the rebels and the government forces while delivering humanitarian aid (Johnston 28). The cease-fire did not last long, and soon the sides were fighting again, but this time with UN peacekeepers caught in the middle (Benton 129). As the fighting grew worse, the UN soon abandoned UNOSOM (Johnston 29). A U.S. led force; the Unified Task Force (UNITAF) to make a safe environment for delivery of humanitarian aid replaced UNOSOM (Benton 133). In May 1993, UNOSOM II replaced UNITAF; but only starvation was relieved, there was still governmental unrest (Benton 136).

The U.S. decided to leave Somalia when on October 3, 1993, a Somalia rebel group shot down a U.S. helicopter, killing eighteen American soldiers (Fox 19). the U.S. was evacuated by 1994, and by 1995 all UN forces had left (Fox 22).

After the abandonment by UN in 1995, the new police force created by the UN committed numerous human rights abuses (Potter 17). Also bad weather, pests, and the UN ban on the export of livestock to the U.S. and Saudi Arabia have worsened the economy in Somalia (Johnston 56). The drop in economy has caused lowered employment and increased starvation (Johnston 60).

The UN should not have intervened in Somalia, but rather let Somalia deal with their own internal problems. While the UN was in Somalia, they made the war bigger and thus causing more starvation. After the UN was

removed, the police force abused citizens, and their economy went crashing further down (Potter 30).

The United Nations should have learned from their mistakes in Somalia, but instead ignored what had happened and tried to help the civil war in Rwanda during 1994. Rwanda's population is approximately 88% Hutu and 11% Tutsi. The two groups have had bad relations since that 15th century when the Hutus were forced to serve the Tutsi lords in return for Tutsi cattle (Brown 50). Since the 15th century, a number of civil disputes have begun between the Hutus and the Tutsis (Brown 51). The latest civil war has resulted in mass genocide (Prunier 38).

The latest civil war in Rwanda started on April 6, 1994, when the plane carrying Rwandan President Habyarimana and the President of Burundi was shot down near Kigali (Freeman 22). That same day the genocide began, first killing the Prime Minister and her ten bodyguards, then all Tutsi's and political moderates (Freeman 27). This genocide, which has been compared to the Holocaust, lasted from April 6 until the beginning of July (Prunier 57). The Interahamwe militia consisting of radical Hutus, started the genocide killing up to one million Tutsis and political moderates, bragging that in twenty minutes they could kill 1,000 Tutsis (Bronwyn 4). However, militia was not the only faction to lead the genocide. A local Rwandan radio broadcast told ordinary citizens to ''Take your spear, guns, clubs, swords, stones, everything—hack them, those enemies, those cockroaches, those enemies of democracy'' (Bronwyn 13).

The United Nations was in Rwanda before and during the mass genocide, but did not stop the killings or even send more troops (Benton 67). In 1993, the United Nations Assistance Mission to Rwanda, UNAMIR, oversaw the transition from an overrun government to a multiparty democracy (Benton 74). As the genocide broke out in 1994, the UN began to panic; and on April 21, just days after the genocide started, the UN withdrew all but 270 of the 2,500 soldiers (Freeman 44). When the UN saw the gradual increase of the genocide they agreed to send 5,000 troops, but those troops were never deployed due to UN disagreements (Freeman 45). UNAMIR finally withdrew in March 1996, accomplishing almost nothing (Prunier 145). Jean Paul Biramvu, a survivor of the massacre, commented on the UN help saying, ''We wonder what UNAMIR was doing in Rwanda. They could not even lift a finger to intervene and prevent the deaths of tens of thousands of people who were being killed under their very noses . . . the UN protects no one'' (Freeman 46).

Again, just as in Somalia, the United Nations failed to bring peace in a civil war. Not only did the UN do almost nothing to stop the genocide, they also knew that there was a plan to start the genocide before it even happened (Bronwyn 12). On December 16, 1999, a press conference about the genocide brought to light new information that the United Nations had accurate knowledge of a plan to start a genocide, three months before the killings occurred (Bronwyn 13). The UN had ample time to stop a large-scale slaughter of almost a million innocent people, and did not even send more troops that could have prevented the deaths of thousands of Tutsis (Bronwyn 13). Two reasons for the reluctance to do anything in Rwanda was that Rwanda was not of national interest to any major powers, and since the problems in Somalia, the UN did not want to risk being hurt again (Bronwyn 18). The United Nations work in Rwanda is a pathetic example of how peace missions should work.

The United Nations and other international communities can intervene and help prevent violent civil conflicts in many ways. The first way to improve intervention is that the International Community needs to keep a consistent stand on how to protect victims in civil disputes. The most important step to take when war is apparent is to protect people's lives.

Second, the International Community should establish a center that informs them of any early signs of war using human right monitors to decide if conditions might worsen. The genocide in Rwanda would have been prevented if the UN notices early signs of war, and listens to reports of a genocide.

Third, make better the criminal court for genocide, war crimes, and other human right infractions so the criminals are punished right away with a sentence that fits the crime. Many times people who commit war crimes are not punished, or do not get a harsh enough sentence.

Fourth, violent methods by the International community may only be used after non-violent methods have failed, and the government is unwilling to help. The UN in Somalia tried to use military force immediately instead of trying to use non-military force when war broke out and they were in the middle (Benton 107).

Fifth, International Communities need to have stand-by troops ready when a war is apparent, and impress on the warring country that if more problems arise, more troops will be sent in to stop the war. The UN did have troops ready in case of war, but when the war did break out in Somalia, they did not send more troops to secure the situation (Fox 28).

Sixth, every country, no matter how much power or relevence in the world, needs to be helped equally. The United Nations during the Rwandan genocide did not worry about helping the victims because Rwanda did not have much international power in the world such as valuable exports or strong economies. The UN cannot be worried how they will benefit but rather how the country warring will benefit (Bronwyn 18).

Third parties such as the United Nations are not consistent in their fight to keep peace in civil conflicts, especially conflicts that have been going on for hundreds of years. In some instance, such as Somalia and Rwanda, the UN hurt the people more than they helped by causing death and famine. The International community needs to come together and create new policies that help the countries that they are trying to keep peace instead of hurting them and sending them deeper into war.

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THE REGIONAL IMPORTANCE OF ECUADOR AND PERU

Mr. GRASSLEY. Mr. President, I rise today to highlight the countries of Ecuador and Peru within the context of the Andean Regional Initiative, ARI, the FY–2002 follow-on strategy to Plan Colombia. Although the ARI encompasses 7 South American counties, I want to focus today on these two important United States allies. Our hemispheric counterdrug efforts must be viewed within a regional context, or else any successes will be short-term and localized, and may produce offsetting or even worse conditions than before we started. Narcotics producers and smugglers have always been dynamic, mobile, innovative, exploitative, and willing to move to areas of less resistance. I am concerned that spillover, displacement, or narcotrafficker shifts, from any successful operations within Colombia, has the real potential to negatively affect Peru and Ecuador. I want the United States actions to help—and not hurt—our allies and this important region of our own hemisphere.

The State Department's June 2001 country program fact sheet reports that ''Ecuador has become a major staging and transshipment area for drugs and precursor chemicals due to its geographical location between two major cocaine source countries, Colombia and Peru. In recent months, the security situation along Ecuador's northern border—particularly in the Sucumbios province, where most of Ecuador's oil wealth is located—has deteriorated sharply due to increased Colombian guerrilla, paramilitary, and criminal violence. The insecurity on Ecuador's northern border, if not adequately addressed, could have an impact on the country's political and economic climate. Sucumbios has long served as a resupply and rest/recreation site for Colombian insurgents; and arms and munitions trafficking from Ecuador fuel Colombian violence.''

The Ecuador fact sheet continues ''[n]arcotraffickers exploit Ecuador's porous borders, transporting cocaine and heroin through Ecuador primarily overland by truck on the Pan-American Highway and consolidating the smuggled drugs into larger loads at poorly controlled seaports for bulk shipment to the United States and Europe hidden in containers of legitimate cargo. Precursor chemicals imported by ship into Ecuador are diverted to cocaine-processing laboratories in southern Colombia. In addition, the Ecuadorian police and army have discovered and destroyed cocaine-refining laboratories on the northern border with Colombia. Although large-scale coca cultivation has not yet spilled over the border, there are small, scattered plantations of coca in northern Ecuador. As a result, Ecuador could become a drug producer, in addition to its current role as a major drug transit country, unless law enforcement programs are strengthened.'' Finally, the

State Department concludes that ''Ecuador faces an increasing threat to its internal stability due to spillover effects from Colombia at the same time that deteriorating economic conditions in Ecuador limit Government of Ecuador, GOE, budgetary support for the police.''

The State Department's March 2001 country program fact sheet reports that ''Peru is now the second largest producer of coca leaf and cocaine base. Peruvian traffickers transport the cocaine base to Colombia and Bolivia where it is converted to cocaine. There is increasing evidence of opium poppy cultivation being established under the direction of Colombian traffickers.'' The fact sheet continues ''[f]or the fifth year in a row, Peruvian coca cultivation declined from an estimated 115,300 hectares in 1995 to fewer than an estimated 34,200 hectares in 2000 (a decline of 70 percent since 1995). The continuing [now-suspended] U.S.-Peruvian interdiction program and manual coca eradication were major factors in reducing coca leaf and base production.'' In addition, ''[t]hese U.S. Government supported law enforcement efforts are complemented by an aggressive U.S.-funded effort to establish an alternative development program for coca farmers in key coca growing areas to voluntarily reduce and eliminate coca cultivation. Alternative development activities, such as technical assistance and training on alternative crop production, are provided as long as the community maintains the coca eradication schedule. In Peru, activities include transport and energy infrastructure, basic social services (health, education, potable water, etc.), strengthened civil society (local governments and community organizations), environmental protection, agricultural production and marketing, and drug demand reduction.''

With respect to Peru, I also encourage the Department of State to quickly report to Congress the findings on the tragic shootdown on April 20 of this year and the intended future of the air interdiction program.

I encourage my colleagues, and the public, to be sensitive to the current delicate conditions and future developments in these countries. In addition, while I support the additional United States aid for Ecuador and Peru, as requested in the President's FY–2002 budget, for both law enforcement and many needed social programs, I remain concerned that our current efforts lack coherence or clear-sightedness. I will say again that I fervently want the United States actions to help—and not hurt—Colombia, Ecuador, and Peru, on this complicated and critical regional counterdrug issue. The goal is to make a difference—not make things worse or simply rearrange the deck chairs.

PENDING FISCAL YEAR 2002 DEFENSE BUDGET REQUEST

Mr. FEINGOLD. Mr. President, here we go again. Late last week, senior Administration officials indicated that the Bush Administration plans to submit to Congress, several months late, a budget request for the Department of Defense that increases the already bloated fiscal year 2001 spending level for that department by $18.4 billion.

I find it interesting that the Administration has yet to provide the details of this request to the Congress, to the dismay of both parties, but that the dollar amount increase over last year's $310 billion appropriation is already being widely reported.

This is in addition to the $6.5 billion supplemental appropriations request that the Senate may consider later this week, most of which is for the Department of Defense.

Where will it end, Mr. President?

While I commend Secretary Rumsfeld for undertaking a long-overdue comprehensive review of our military, I also urge him to consider carefully the impact that any proposed defense increases will have on the rest of the federal budget.

We are already feeling the impact left by the $1.35 trillion tax cut that this Administration made its number one priority. That tax cut virtually ensures that there can be no defense increases without making deep cuts in other parts of the budget. And the top priorities of the American people, such as saving Social Security and Medicare and providing a Medicare prescription drug benefit, will be that much harder to accomplish.

But it appears that the Administration will propose an increase in defense spending.

I fear that this pending request, coupled with the massive tax cut that has already been signed into law, will lead us down a slippery slope to budget disaster.

A TRIBUTE TO GOLD STAR MOTHERS

Mr. CAMPBELL. Mr. President, today I take this opportunity to call to the attention of our colleagues the national convention of the American Gold Star Mothers which began on Sunday, June 24 and concludes tomorrow, June 27, 2001, in Knoxville, TN.

The Gold Star Mothers is an organization made up of American mothers who lost a son or daughter while in military service to our country in one of the wars. The group was founded shortly after the First World War for those special mothers to comfort one another and to help care for hospitalized veterans confined in government hospitals far from home. It was named after the Gold Star that families hung in their windows in honor of a deceased veteran. Gold Star Mothers now has 200 chapters throughout the United States, and its members continue to perpetuate the ideals for which so many of our sons and daughters died.

Over this past Memorial Day weekend, I participated in the Rolling Thunder rally on the National Mall to honor our Nation's veterans and remember those missing in action. During that time, I personally met some of the Gold Star mothers and was moved by their compassion, their commitment and the sacrifices they and their families have made for our country.

I ask my colleagues to join me in recognizing the Gold Star Mothers for their many years of dedicated service and congratulating them on the occasion of their national convention.

OUTSTANDING SCHOOLS HONORED FOR SERVICE LEARNING

Mr. KENNEDY. Mr. President, I welcome this opportunity to recognize a number of schools that are doing an excellent job of encouraging community service by their students. The Nation has always relied on the dedication and involvement of its citizens to help meet the challenges we face. Today, the Corporation for National Service works with state commissions, nonprofits, schools, and other civic organizations to provide opportunities for Americans of all ages to serve their communities.

Learn and Serve America, a program sponsored by the Corporation for National Service, supports service-learning programs in schools and community organizations that help nearly a million students from kindergarten through college meet community needs, while improving their academic skills and learning the habits of good citizenship. Learn and Serve grants are used to create new programs, replicate existing programs, and provide training and development for staff, faculty, and volunteers.

This year the Corporation for National Service has recognized a number of outstanding schools across the country as National Service-Learning Leader Schools for 2001. The program is an initiative under Learn and Serve America that recognizes schools for their excellence in service-learning. These middle schools and high schools have earned their designation as Leader Schools. They serve as models of excellence for their exemplary integration of service-learning into the curriculum and the life of the school. I am hopeful that the well-deserved recognition they are receiving will encourage and increase service-learning opportunities for students in many other schools across the country.

The 2001 National Service Leader Schools are: Vilonia Middle School, Vilonia, AR; Chico High School, Chico, CA; Evergreen Middle School, Cottonwood, CA; Telluride Middle School/High School, Telluride, CO; Seaford Senior High School, Seaford, DE; Space Coast Middle School, Cocoa, FL; P.K. Yonge Developmental Research School, Gainesville, FL; Douglas Anderson School of the Arts, Jacksonville, FL; Lakeland High School, Lakeland, FL; Dalton High School, Dalton, GA; Sacred Hearts Academy, Honolulu, HI; Moanalua Middle School, Honolulu, HI;

Unity Point School, Carbondale, IL; Jones Academic Magnet High School, Chicago, IL; Valparaiso High School, Valparaiso, IN; Ballard Community High School, Huxley, IA; Lake Mills Community High School, Lake Mills, IA; Glasco Middle School, Glasco, KS; Spring Hill High School, Spring Hill, KS; Boyd County High School, Ashland, KY; Garrard Middle School, Lancaster, KY; Harry M. Hurst Middle School, Destrehan, LA; Drowne Road School, Cumberland, ME; Rockland District High School, Rockland, ME; Leavitt Area High School, Turner, ME; Gateway School, Westminster, MD; Millbury Memorial High School, Millbury, MA; Garber High School, Essexville, MI; Onekama Middle School, Onekama, MI; Tinkham Alternative High School, Westland, MI; Moorhead Junior High School, Moorhead, MN; Harrisonville Middle School, Harrisonville, MO; Pattonville High School, Maryland Heights, MO; Middle Township High School, Court House, NJ; Benedictine Academy, Elizabeth, NJ; Delsea Regional High School, Franklinville, NJ; Hoboken Charter School, Hoboken, NJ; Iselin Middle School, Iselin, NJ; Christa McAuliffe Middle School, Jackson, NJ; Notre Dame High School, Lawrenceville, NJ; North Arlington Middle School, North Arlington, NJ; West Brook Middle School, Paramus, NJ; Ocean County Vocational Technical School, Toms River, NJ; The Bosque School, Albuquerque, NM; Carl Bergerson Middle School, Albion, NY; Madison Middle School, Marshall, NC; Ligon Gifted and Talented Magnet Middle School, Raleigh, NC; Fort Hayes Metropolitan Education Center, Columbus, OH; Clark Center Alternative School, Marietta, OH; Ripley High School, Ripley, OH; Perry Middle School, Worthington, OH; Miami High School, Miami, OK; Alcott Middle School, Norman, OK; Yukon High School, Yukon, OK; Franklin Delano Roosevelt Middle School, Bristol, PA; Chapin High School, Chapin, SC 29036; Summit Parkway Middle School, Columbia, SC; Palmetto Middle School, Williamston, SC; Henry County High School, Paris, TN; Cesar Chavez Academy, El Paso, TX; Dixie Middle School, St. George, UT; New Dominion Alternative School, Manassas, VA; Kamiakin Junior High School, Kirkland, WA; Student Link, Vashon, WA.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of this year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred September 26, 1992 in Salem, Oregon. A black lesbian and a gay man died after a firebomb was thrown into their apartment. Philip Bruce Wilson Jr., 20; Sean Robert Edwards, 21; Yolanda Renee Cotton, 19; and Leon L. Tucker, 22, were charged in connection with the murders.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation, we can change hearts and minds as well.

ADDITIONAL STATEMENTS

TRIBUTE TO HUGH L. GRUNDY

• Mr. MCCONNELL. Mr. President, I rise today to pay tribute to Hugh L. Grundy for his many years of service to the United States. On June 30, 2001, Hugh will be honored by the City of Crab Orchard, Kentucky, for his dedication to our Nation, and I know my colleagues join me in expressing our gratitude for his many contributions.

Hugh Grundy is a true American hero and has dedicated much of his life to the cause of freedom. During World War II, he served as a Major in the U.S. Army Air Corps/Air Force. After that, Hugh went on to serve concurrently as president of the Civil Air Transport and Air America. Secretly owned by the Central Intelligence Agency, CIA, these two air transport organizations were staffed by civilians who conducted undercover missions in Asia and other parts of the world in support of U.S. policy objectives. Often working under dangerous conditions and with outdated equipment, CAT and Air America crews transported scores of troops and refugees, flew emergency medical missions, and rescued downed airmen. Hugh and the brave people he commanded played a vital role in the war against Communism and their commitment to freedom will never be forgotten.

Hugh Grundy is a native Kentuckian. Born on his parents' farm in Valley Hill, KY, he grew up helping his father raise and show yearling saddle horses. While Hugh's love for aviation and his service to our Nation caused him to be away from the Commonwealth for many years, he returned to the Bluegrass to retire. Hugh and his wife of 58 years, Elizabeth, or ''Frankie'' as she is known to her friends, now live on their family farm, called Valley Hill Plantation. After many years on the go, Hugh and Frankie are very content with the peace and quiet associated with farm life.

Although Hugh Grundy is now retired, his record of dedication and service continues. On behalf of this body, I thank him for his contributions to this Nation, and sincerely wish him and his family the very best.•

TRIBUTE TO JOHN P. KELTY

• Mr. SMITH of New Hampshire. Mr. President, I rise today to pay tribute to John P. Kelty of Hampton Beach, NH, for his heroic service to the United States of America during World War II.

On July 30, 2001 I will present John with the medals he so bravely earned while serving his Nation in battle. John was wounded in action while serving in the Marshall Islands where he volunteered to evacuate fallen comrades while under machine gun fire. He also participated in the battle of POI and NAMUR, Kwajalein Atoll, Marshall Islands.

John, a former Marine Private First Class, earned medals for his dedicated military service including: the American Campaign Medal, Asiatic-Pacific Medal with Bronze Stars, an Honorable Service lapel button, the Marine Corps Honorable Discharge button, a Purple Heart Medal, the Presidential Unit Citation with one Bronze Star and a World War II Victory Medal.

A family friend of John Kelty, John Taddeo, recently contacted my Portsmouth, NH office to inquire about obtaining the service medals for the former Marine. As the son of a Naval aviator who died in a World War II incident, I was proud to assist with this request to provide the medals that John so courageously earned.

I commend John for his selfless dedication to his State and country. He is an American hero who fought to preserve liberty and justice for all citizens of the United States. It is truly an honor and a privilege to represent him in the U.S. Senate.•

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 12:38 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 bills, in which it requests the concurrence of the Senate:

H.R. 645. An act to reauthorize the Rhinoceros and Tiger Conservation Act of 1994.

H.R. 1668. An act to authorize the Adams Memorial Foundation to establish a commemorative work on Federal land in the District of Columbia and its environs to honor former President John Adams and his legacy.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 161. Concurrent resolution honoring the 19 United States servicemen who died in the terrorist bombing of the Khobar Towers military housing compound in Dhahran, Saudi Arabia, on June 25, 1996.

The message further announced that the House has passed the following bill, without amendment:

S. 657. An act to authorize funding for the National 4–H Program Centennial Initiative.

ENROLLED BILL SIGNED

The message also announced that the Speaker has signed the following enrolled bill:

S. 1029. An act to clarify the authority of the Department of Housing and Urban Development with respect to the use of fees during fiscal year 2001 for the manufactured housing program.

The enrolled bill was signed subsequently by the President pro tempore (Mr. BYRD).

At 2:22 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. 2213. An act to respond to the continuing economic crisis adversely affecting American agricultural producers.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 645. An act to reauthorize the Rhinoceros and Tiger Conservation Act of 1994; to the Committee on Environment and Public Works.

H.R. 2213. An act to respond to the continuing economic crisis adversely affecting American agricultural producers; to the Committee on Agriculture, Nutrition, and Forestry.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 161. Concurrent resolution honoring the 19 United States servicemen who died in the terrorist bombing of the Khobar Towers in Saudi Arabia on June 25, 1996; to the Committee on Armed Services.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, June 26, 2001, he had presented to the President of the United States the following enrolled bill:

S. 1029. An act to clarify the authority of the Department of Housing and Urban Development with respect to the use of fees during fiscal year 2001 for the manufactured housing program.

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. SMITH of Oregon (for himself and Mr. BINGAMAN):

S. 1098. A bill to amend the Food Stamp Act of 1977 to improve food stamp informational activities in those States with the greatest rate of hunger; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. SMITH of Oregon (for himself and Mr. LEAHY):

S. 1099. A bill to increase the criminal penalties for assaulting or threatening Federal judges, their family members, and other public servants, and for other purposes; to the Committee on the Judiciary.

By Mr. CONRAD (for himself, Mr. GRASSLEY, Mr. BAUCUS, Mr. DASCHLE, Mr. MURKOWSKI, Mrs. LINCOLN, and Mr. KERRY):

S. 1100. A bill to amend the Trade Act of 1974 to provide trade adjustment assistance to farmers; to the Committee on Finance.

By Mr. WARNER (for himself and Mr. ALLEN):

S. 1101. A bill to name the engineering and management building at Norfolk Naval Shipyard, Portsmouth, Virginia, after Norman Sisisky; to the Committee on Armed Services.

By Mr. WELLSTONE:

S. 1102. A bill to strengthen the rights of workers to associate, organize and strike, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. ROCKEFELLER (for himself, Mr. DORGAN, and Mr. BURNS):

S. 1103. A bill to amend title 49, United States Code, to enhance competition among and between rail carriers in order to ensure efficient rail service and reasonable rail rates in any case in which there is an absence of effective competition, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. GRAHAM (for himself, Mr. MURKOWSKI, Mr. GRAMM, Mr. NICKLES, Mr. THOMPSON, Mr. KYL, Mr. HAGEL, Mr. ROBERTS, and Mr. CHAFEE):

S. 1104. A bill to establish objectives for negotiating, and procedures for, implementing certain trade agreements; to the Committee on Finance.

By Mr. THOMAS (for himself and Mr. ENZI):

S. 1105. A bill to provide for the expeditious completion of the acquisition of State of Wyoming lands within the boundaries of Grand Teton National Park, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DOMENICI:

S. 1106. A bill to provide a tax credit for the production of oil or gas from deposits held in trust for, or held with restrictions against alienation by, Indian tribes and Indian individuals; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mrs. CLINTON (for herself and Mr. SCHUMER):

S. Res. 117. A resolution honoring John J. Downing, Brian Fahey, and Harry Ford, who lost their lives in the course of duty as firefighters; to the Committee on the Judiciary.

By Mr. BOND (for himself, Mrs. HUTCHISON, Mr. DEWINE, and Mr. LIEBERMAN):

S. Con. Res. 55. A concurrent resolution honoring the 19 United States servicemen who died in the terrorist bombing of the Khobar Towers in Saudi Arabia on June 25, 1996; to the Committee on Armed Services.

By Ms. SNOWE:

S. Con. Res. 56. A concurrent resolution expressing the sense of Congress that a commemorative postage stamp should be issued by the United States Postal Service honoring the members of the Armed Forces who have been awarded the Purple Heart; to the Committee on Governmental Affairs.

ADDITIONAL COSPONSORS

S. 21

At the request of Mr. DASCHLE, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 21, a bill to establish an off-budget lockbox to strengthen Social Security and Medicare.

S. 145

At the request of Mr. THURMOND, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 145, a bill to amend title 10, United States Code, to increase to parity with other surviving spouses the basic annuity that is provided under the uniformed services Survivor Benefit Plan for surviving spouses who are at least 62 years of age, and for other purposes.

S. 180

At the request of Mr. FRIST, the names of the Senator from Iowa (Mr. HARKIN) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. 180, a bill to facilitate famine relief efforts and a comprehensive solution to the war in Sudan.

S. 249

At the request of Mr. REID, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 249, a bill to amend the Internal Revenue Code of 1986 to expand the credit for electricity produced from certain renewable resources.

S. 319

At the request of Mr. MCCAIN, the name of the Senator from New Jersey (Mr. CORZINE) 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. 543

At the request of Mr. LEAHY, his name was added as a cosponsor of S. 543, a bill to provide for equal coverage of mental health benefits with respect to health insurance coverage unless comparable limitations are imposed on medical and surgical benefits.

S. 550

At the request of Mr. DASCHLE, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 550, a bill to amend part E of title IV of the Social Security Act to provide equitable access for foster care and adoption services for Indian children in tribal areas.

S. 686

At the request of Mrs. LINCOLN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 686, a bill to amend the Internal Revenue Code of 1986 to provide a credit against tax for energy efficient appliances.

S. 706

At the request of Mr. KERRY, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 706, a bill to amend the Social Security Act to establish programs to alleviate the nursing profession shortage, and for other purposes.

S. 721

At the request of Mr. HUTCHINSON, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 721, a bill to amend the Public Health Service Act to establish a Nurse Corps and recruitment and retention strategies to address the nursing shortage , and for other purposes.

S. 731

At the request of Mr. NELSON of Florida, the name of the Senator from Missouri (Mrs. CARNAHAN) was added as a cosponsor of S. 731, a bill to ensure that military personnel do not lose the right to cast votes in elections in their domicile as a result of their service away from the domicile, to amend the Uniformed and Overseas Citizens absentee Voting Act to extend the voter registration and absentee ballot protections for absent uniformed services personnel under such Act to State and local elections, and for other purposes.

S. 778

At the request of Mr. HAGEL, the names of the Senator from Louisiana (Ms. LANDRIEU) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 778, a bill to expand the class of beneficiaries who may apply for adjustment of status under section 245(i) of the Immigration and Nationality Act by extending the deadline for classification petition and labor certification filings.

S. 804

At the request of Mrs. FEINSTEIN, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 804, a bill to amend title 49, United States Code, to require phased increases in the fuel efficiency standards applicable to light trucks; to required fuel economy standards for automobiles up to 10,000 pounds gross vehicle weight; to raise the fuel economy of the Federal fleet of vehicles, and for other purposes.

S. 827

At the request of Mr. ROCKEFELLER, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 827, a bill to amend the Social Security Act to guarantee comprehensive health care coverage for all children born after 2001.

S. 836

At the request of Mr. CRAIG, the names of the Senator from Indiana (Mr. BAYH) and the Senator from Utah (Mr. BENNETT) were added as cosponsors of S. 836, a bill to amend part C of title XI of the Social Security Act to provide for coordination of implementation of administrative simplification standards for health care information.

S. 847

At the request of Mr. DAYTON, the names of the Senator from South Dakota (Mr. JOHNSON), the Senator from North Carolina (Mr. EDWARDS), and the Senator from Alabama (Mr. SHELBY) were added as cosponsors of S. 847, a bill to impose tariff-rate quotas on certain casein and milk protein concentrates.

S. 859

At the request of Mr. THOMAS, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 859, a bill to amend the Public Health Service Act to establish a mental health community education program, and for other purposes.

S. 871

At the request of Mr. CLELAND, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 871, a bill to amend chapter 83 of title 5, United States Code, to provide for the computation of annuities for air traffic controllers in a similar manner as the computation of annuities for law enforcement officers and firefighters.

S. 873

At the request of Mr. HELMS, the names of the Senator from Virginia (Mr. ALLEN) and the Senator from Nebraska (Mr. HAGEL) were added as cosponsors of S. 873, a bill to preserve and protect the free choice of individual employees to form, join, or assist labor organizations, or to refrain from such activities.

S. 913

At the request of Ms. SNOWE, the names of the Senator from South Dakota (Mr. DASCHLE) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 913, a bill to amend title XVIII of the Social Security Act to provide for coverage under the medicare program of all oral anticancer drugs.

S. 969

At the request of Mr. DODD, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 969, a bill to establish a Tick-Borne Disorders Advisory Committee, and for other purposes.

S. 992

At the request of Mr. CONRAD, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 992, a bill to amend the Internal Revenue Code of 1986 to repeal the provision taxing policy holder dividends of mutual life insurance companies and to repeal the policyholders surplus account provisions.

S. 1022

At the request of Mr. WARNER, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 1022, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 1067

At the request of Mr. GRASSLEY, the name of the Senator from Tennessee (Mr. FRIST) was added as a cosponsor of S. 1067, a bill to amend the Internal Revenue Code of 1986 to expand the availability of Archer medical savings accounts.

S. RES. 71

At the request of Mr. HARKIN, the names of the Senator from Delaware (Mr. BIDEN) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. Res. 71, a resolution expressing the sense of the Senate regarding the need to preserve six day mail delivery.

S. CON. RES. 24

At the request of Mr. LIEBERMAN, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. Con. Res. 24, a concurrent resolution expressing support for a National Reflex Sympathetic Dystrophy (RSD) Awareness Month.

AMENDMENT NO. 810

At the request of Mr. ENZI, his name was added as a cosponsor of amendment No. 810 proposed to S. 1052, , a bill to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

At the request of Mr. BUNNING, his name was added as a cosponsor of amendment No. 810 proposed to S. 1052, supra.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SMITH of Oregon (for himself and Mr. BINGAMAN):

S. 1098. A bill to amend the Food Stamp Act of 1977 to improve food stamp informational activities in those States with the greatest rate of hunger; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. SMITH of Oregon. Mr. President, I rise today to introduce the State Hunger Assistance in Response to Emergency or SHARE Act of 2001. I introduce this bill because it is a tragedy, that in this land of plenty, people across America go to bed hungry. It is high time that Congress do something to combat this tragedy.

Over the past few years, my home State of Oregon has seen an unprecedented economic boom—as has much of the country. Our silicon forest has grown by leaps and bounds; unemployment has dropped, and our welfare rolls have been reduced by half. But this prosperity has not reached all Oregonians. Oregon has the appalling distinction of having the highest rate of hunger in the nation, according to the USDA. That means that per capita, more people in Oregon go without meals than in any other State. I think that it may surprise some of my colleagues to learn that many of their home States suffer from severe hunger problems as well.

Perhaps the most tragic aspect of America's hunger problem is that it can be prevented. Federal programs,

like Food Stamps and WIC, can help families fill the gap between the size of their food bill and the size of their paycheck, but too many people don't know that they qualify for the help available to them through these programs. This is especially true in the rural areas of Oregon, which is also home to most of my State's hungry citizens. Help exists for hungry people, and I want to make sure every American knows about the resources the Federal Government has already made available to them.

The Food Stamp Act of 1977 authorized the Secretary of Agriculture to provide states with up to 50 percent of the costs of informational activities related to program outreach; however, because the remaining 50 percent of the funds for these limited outreach activities must be supplied by the State, most States do not participate.

To ensure that more Oregonians and hungry people across the country take advantage of the resources available to them, the SHARE Act will provide additional funds to the 10 hungriest states, as named by the USDA, to help those in need learn about and sign up for federal food assistance programs. The SHARE bill authorizes the Secretary of Agriculture to make grants of up to $1 million to these states for 3 years. States can use these flexible funds for outreach—anything from distributing informational flyers at community health clinics to funding staff to help people fill out application forms. In addition, the bill will allow the Secretary of Agriculture to make grants available to States with particularly innovative outreach demonstration projects, so that we can find the best ways to combat hunger.

In a country as blessed with abundance as ours, no family should go hungry simply because they lack the information they need to get help. When passed, the SHARE Act will give Oregon and other states an opportunity to devise new and innovative programs that will allow the needy in our states to get the help they so desperately need. The idea behind this legislation is not very complicated—I simply want to make people aware of the food assistance already available to them—but I believe that this bill is as important as any we will consider in the Senate this year. With the help of my colleagues, we can stem the tide of this very preventable tragedy.

Mr. BINGAMAN. Mr. President, extreme forms of hunger in American households have virtually been eliminated, in part due to the Nation's nutrition-assistance safety net. Less severe forms of food insecurity and hunger, however, are still found within the United States and remain a cause for concern. The Food Stamp Program provides benefits to low-income people to assist with their purchase of foods that will enhance their nutritional status. Food stamp recipients spend their benefits, in the form of paper coupons or electronic benefits on debit cards, to buy eligible food in authorized retail food stores. Food stamp recipients, or those eligible for food stamps, cross the life cycle. They include individuals of all ages, races and ethnicity in both urban and rural settings.

As a result of the National Nutrition Monitoring and Related Research Act of 1990, the nutritional state of the American people has been closely monitored at State and local levels. We know that food insecurity is a complex, multidimensional phenomenon which varies through a continuum of successive stages as the condition becomes more severe. As the stage of food insecurity and hunger progresses, the number of affected individuals decreases. It is important for us to identify the stages of food insecurity and hunger as early as possible and, thus, continue to avoid the more severe stages of hunger. This means that we will need to focus on a much larger population base with a less dramatic stage of the condition which may be more difficult to identify. Fortunately, current tools to document the extent of food insecurity and hunger caused by income limitations are sensitive and reliable.

We must continue developing tools to document the extent of poor nutrition attributable to factors other than income limitations, like inadequate consumption of fruits and vegetables and overconsumption of sugar, fat, and empty calories. In the meantime, The State Hunger Assistance in Response to Emergency Act of 2001 (SHARE) would take information which is already being collected by the Department of Agriculture and allow the 10 States with the greatest rate of hunger to access funds to perform enhanced outreach activities for the food stamp program.

The goal of the food stamp nutrition education program is to provide educational programs that increase the likelihood of all food stamp recipients making healthy food choices consistent with the most recent dietary advice. States are encouraged to provide nutrition education messages that focus on strengthening and reinforcing the link between food security and a healthy diet. Currently USDA matches the dollars a State is able to spend on its Food Stamp nutrition education program. This nutrition education plan is optional but participation has increased from five State plans in 1992 to 48 State plans in FY 2000.

This bill expands the allowable outreach activities for the States with the worst statistics and would allow up to $1 million per State with 0 percent match requirement. In exchange for this unmatched money, the State must submit a report that measures the outcomes of food stamp informational activities carried out by the State over the 3 years of the grant. In addition, up to five States with innovative proposals for food stamp outreach could be selected by the Secretary of Agriculture for a demonstration project to receive the same amount of money over 3 years.

I have always been proud to represent my home State of New Mexico in the United States Senate. Unfortunately New Mexico has one of the worst hunger statistics in the nation. I think it is my duty to advocate for the New Mexicans that I represent as well as all Americans who are at risk for experiencing hunger, including those from Oregon, Texas, Arkansas and Washington who share similar statistics.

By Mr. SMITH of Oregon (for himself and Mr. LEAHY):

S. 1099. A bill to increase the criminal penalties for assaulting or threatening Federal judges, their family members, and other public servants, and for other purposes; to the Committee on the Judiciary.

Mr. SMITH of Oregon. Mr. President, one of the important tasks we have in Congress is to ensure that our laws effectively deter violence and provide protection to those whose careers are dedicated to protecting our families and also our communities.

With this in mind, today I rise to reintroduce the Federal Judiciary Protection Act with my esteemed colleague, Senator LEAHY. This bill will provide greater protection to Federal law enforcement officials and their families. Under current law, a person who assaults, attempts to assault, or who threatens to kidnap or murder a member of the immediate family of a U.S. official, a U.S. judge, or a Federal law enforcement official, is subject to a punishment of a fine or imprisonment of up to 5 years, or both. This legislation seeks to expand these penalties in instances of assault with a weapon and a prior criminal history. In such cases, an individual could face up to 20 years in prison.

This legislation would also strengthen the penalties for individuals who communicate threats through the mail. Currently, individuals who knowingly use the U.S. Postal Service to deliver any communication containing any threat are subject to a fine of up to $1,000 or imprisonment of up to 5 years. Under this legislation, anyone who communicates a threat could face imprisonment of up to 10 years.

Briefly, I would like to share several examples illustrating the need for this legislation. In my State of Oregon, Chief Judge Michael Hogan and his family were subjected to frightening, threatening phone calls, letters, and messages from an individual who had been convicted of previous crimes in Judge Hogan's courtroom. For months, he and his family lived with the fear that these threats to the lives of his wife and children could become reality, and, equally disturbing, that the individual could be back out on the street again in a matter of a few months, or a few years.

Judge Hogan and his family are not alone. In 1995, Mr. Melvin Lee Davis threatened two judges in Oregon, one judge in Nevada, and the Clerk of the

Court in Oregon. The threat was carried out to the point that the front door of the residence of a Mr. John Cooney was shot up in a drive-by shooting. Unfortunately for Mr. Cooney, he had the same name as one of the Oregon judges who was threatened.

In September 1996, Lawrence County Judge Dominick Motto was stalked, harassed, and subjected to terrorist threats by Milton C. Reiguert, who was upset by a verdict in a case that Judge Motto had heard in his courtroom. After hearing the verdict, Reiguert stated his intention to ''point a rifle at his head and get what he wanted.''

These are just several examples of vicious acts focused at our Federal law enforcement officials. As a member of the legislative branch, I believe it is our responsibility to provide adequate protection to all Americans who serve to protect the life and liberty of every citizen in this Nation. I encourage my colleagues to join us in sponsoring this important legislation.

Mr. LEAHY. Mr. President, I am pleased to join my friend from Oregon to introduce the Federal Judiciary Protection Act. In the last two Congresses, I was pleased to cosponsor nearly identical legislation introduced by Senator GORDON SMITH, which unanimously passed the Senate Judiciary Committee and the Senate, but was not acted upon by the House of Representatives. I commend the Senator from Oregon for his continued leadership in protecting public servants in our Federal Government.

Our bipartisan legislation would provide greater protection to Federal judges, law enforcement officers, and United States officials and their families. United States officials, under our bill, include the President, Vice President, Cabinet Secretaries, and Members of Congress.

Specifically, our legislation would: increase the maximum prison term for forcible assaults, resistance, opposition, intimidation or interference with a Federal judge, law enforcement officer or United States official from 3 years imprisonment to 8 years; increase the maximum prison term for use of a deadly weapon or infliction of bodily injury against a Federal judge, law enforcement officer or United States official from 10 years imprisonment to 20 years; and increase the maximum prison term for threatening murder or kidnaping of a member of the immediate family of a Federal judge or law enforcement officer from 5 years imprisonment to 10 years. It has the support of the Department of Justice, the United States Judicial Conference, the United States Sentencing Commission and the United States Marshal Service.

It is most troubling that the greatest democracy in the world needs this legislation to protect the hard working men and women who serve in our Federal Government. Just last week, I was saddened to read about death threats against my colleague from Vermont after his act of conscience in declaring himself an Independent. Senator JEFFORDS received multiple threats against his life, which forced around-the-clock police protection. These unfortunate threats made a difficult time even more difficult for Senator JEFFORDS and his family.

We are seeing more violence and threats of violence against officials of our Federal Government. For example, a courtroom in Urbana, Illinois was firebombed recently, apparently by a disgruntled litigant. This follows the horrible tragedy of the bombing of the federal office building in Oklahoma City in 1995. In my home state during the summer of 1997, a Vermont border patrol officer, John Pfeiffer, was seriously wounded by Carl Drega, during a shootout with Vermont and New Hampshire law enforcement officers in which Drega lost his life. Earlier that day, Drega shot and killed two state troopers and a local judge in New Hampshire. Apparently, Drega was bent on settling a grudge against the judge who had ruled against him in a land dispute.

I had a chance to visit John Pfeiffer in the hospital and met his wife and young daughter. Thankfully, Agent Pfeiffer has returned to work along the Vermont border. As a Federal law enforcement officer, Agent Pfeiffer and his family will receive greater protection under our bill.

There is, of course, no excuse or justification for someone taking the law into their own hands and attacking or threatening a judge, law enforcement officer or U.S. official. Still, the U.S. Marshal Service is concerned with more and more threats of harm to our judges, law enforcement officers and Federal officials.

The extreme rhetoric that some have used in the past to attack the judiciary only feeds into this hysteria. For example, one of the Republican leaders in the House of Representatives was quoted as saying: ''The judges need to be intimidated,'' and if they do not behave, ''we're going to go after them in a big way.'' I know that this official did not intend to encourage violence against any Federal official, but this extreme rhetoric only serves to degrade Federal judges in the eyes of the public.

Let none of us in the Congress contribute to the atmosphere of hate and violence. Let us treat the judicial branch and those who serve within it with the respect that is essential to preserving its public standing.

We have the greatest judicial system in the world, the envy of people around the globe who are struggling for freedom. It is the independence of our third, co-equal branch of government that gives it the ability to act fairly and impartially. It is our judiciary that has for so long protected our fundamental rights and freedoms and served as a necessary check on overreaching by the other two branches, those more susceptible to the gusts of the political winds of the moment.

We are fortunate to have dedicated women and men throughout the Federal Judiciary and Federal Government in this country who do a tremendous job under difficult circumstances. They are examples of the hard-working public servants that make up the Federal Government, who are too often maligned and unfairly disparaged. It is unfortunate that it takes acts or threats of violence to put a human face on the Federal Judiciary, law enforcement officers or U.S. officials, to remind everyone that these are people with children and parents and cousins and friends. They deserve our respect and our protection.

I thank Senator SMITH for his leadership on protecting our Federal judiciary and other public servants in our Federal Government. I urge my colleagues to support the Federal Judiciary Protection Act.

By Mr. WARNER (for himself and Mr. ALLEN):

S. 1101. A bill to name the engineering and management building at Norfolk Naval Shipyard, Portsmouth, Virginia, after Norman Sisisky; to the Committee on Armed Services.

Mr. WARNER. Mr. President, I rise today to introduce a bill that will redesignate Building 1500 at the Norfolk Naval Shipyard, Portsmouth, Virginia, as the Norman Sisisky Engineering and Management Building. I am joined by my Virginia Senate colleague, GEORGE ALLEN.

As a Navy veteran of World War II, Congressman Sisisky was proud to be a part of one of the most extraordinary chapters in American history, when America was totally united at home in support of our 16 million men and women in uniform on battlefields in Europe and on the high seas in the Pacific, all, at home and abroad, fighting to preserve freedom.

During our 18 years serving together, Congressman Sisisky's goal, our goal, was to provide for the men and women in uniform and their families.

The last 50 years have proven time and again that one of America's greatest investments was the G.I. Bill of Rights, originated during World War II, which enabled service men and women to gain an education such that they could rebuild America's economy. The G.I. Bill was but one of the many benefits that Congressman Sisisky fought for and made a reality for today's soldiers, sailors, airmen, and Marines.

His strength in public life was supported by his wonderful family; his lovely wife Rhoda and four accomplished children. They were always by his side offering their love, support, and counsel.

He worked tirelessly throughout Virginia's 4th District, however, there was always a special bond to the military installations under his charge. As a former sailor, the Norfolk Naval Shipyard was high among his priorities. He

knew the workers by name and the monthly workload in the yard. In consultation with his family and delegation members, we chose this building at the shipyard as a most appropriate memorial to our friend and colleague.

I waited until the special election was concluded so the entire Virginia delegation could join together on this legislation.

Norman Sisisky was always a leader for the delegation on matters of national security. We are honored to join in this bi-partisan effort to remember Congressman Norman Sisisky and his life's work; ensuring the nation's security and the welfare of the men and women in uniform and their families.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1101

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

SECTION. 1. DESIGNATION OF ENGINEERING AND MANAGEMENT BUILDING AT NORFOLK NAVAL SHIPYARD, VIRGINIA, AFTER NORMAN SISISKY.

The engineering and management building (also known as Building 1500) at Norfolk Naval Shipyard, Portsmouth, Virginia, shall be known as the Norman Sisisky Engineering and Management Building. Any reference to that building in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Norman Sisisky Engineering and Management Building.

By Mr. CONRAD (for himself, Mr. GRASSLEY, Mr. BAUCUS, Mr. DASCHLE, Mr. MURKOWSKI, Mrs. LINCOLN, and Mr. KERRY):

S. 1100. A bill to amend the Trade Act of 1974 to provide trade adjustment assistance to farmers; to the Committee on Finance.

Mr. CONRAD. Mr. President, today I am introducing legislation to bring fairness to farmers in an important element of our trade policy. I am very pleased to be joined in this effort by the ranking member of the Finance Committee, Senator GRASSLEY, who has been a true champion of this effort over the past several years.

The legislation we are introducing today would amend the Trade Act of 1974 to make farmers eligible for Trade Adjustment Assistance, TAA, so that they can get assistance similar to that provided to workers in other industries who suffer economic injury as a result of increased imports.

When imports cause layoffs in manufacturing industries, workers become eligible for TAA. Under TAA, a portion of the income these workers lose is restored to them in the form of extended unemployment insurance benefits while they adjust to import competition and seek other employment. When imports of agricultural commodities increase, though, farmers do not lose their jobs. Instead, the increased imports drive down the prices farmers receive for the crops they have grown. This drop in prices can have an impact that is every bit as devastating to the income of a family farmer as a layoff is to a manufacturing worker. In fact, it can be even more devastating. In many cases, the check that farmers get for all the hard work of growing crops or livestock for the year may not only leave the farmer with no net income, it may not even cover all the input costs associated with producing the commodity, leaving the farmer with thousands of dollars in losses. But, because job loss is a requirement for getting cash assistance under TAA, farmers generally don't get benefits from TAA when imports cause their income to plummet.

Trade is very important to our overall economy, and trade is especially important to our agricultural economy. For example, we export over half the wheat grown in the United States. That is why, historically, agriculture has been among the leading supporters of trade liberalization. However, today many farmers believe their incomes are hurt by free trade, and they have nowhere to turn for assistance when this happens.

Trade Adjustment Assistance for Farmers can not only provide badly needed cash assistance to the devastated agricultural economy, it can re-ignite support for trade among many family farmers. By giving farmers some protection against precipitous income losses from imports, this legislation will strengthen support for trade agreements.

The Conrad-Grassley TAA for Farmers Act would assist farmers who lose income because of imports. Farmers would get a payment to compensate them for some, but not all, of the income they lose if increased imports affect commodity prices.

The eligibility criteria are designed to be analogous to those that apply currently to manufacturing workers. First, just as the Secretary of Labor now decides whether there has been economic injury to workers in a given manufacturing firm by determining whether production has declined and significant layoffs have occurred, the Secretary of Agriculture would decide whether there has been economic injury to producers of a commodity by determining if the price of the commodity had dropped more than 20 percent compared to the average price in the previous five years. Second, just as the Secretary of Labor determines whether imports ''contributed importantly'' to the layoffs, the Secretary of Agriculture would determine whether imports ''contributed importantly'' to the commodity price drop.

In order to be eligible for benefits under this program, individual farmers would have to demonstrate that their net farm income had declined from the previous year, and farmers would need to meet with the USDA's extension service to plan how to adjust to the import competition. This adjustment could take the form of improving the efficiency of the operation or switching to different crops.

Farmers who are eligible for benefits under the program would receive a cash assistance payment equal to half the difference between the national average price for the year (as determined by USDA) and 80 percent of the average price in the previous 5 years (the price trigger level), multiplied by the number of units the farmer had produced, up to a maximum of $10,000 per year.

In most years, the program would have a modest cost, as few commodities, if any, would be eligible. But in a year when surging imports cause prices to drop precipitously, this program would offer a cash lifeline to give farmers the opportunity to adjust to this import competition. This legislation sends a strong signal to farmers that they will not be left behind in our trade policy, that agriculture must be a priority.

We need to be sure that we don't leave American farmers behind. I hope my colleagues will join me in supporting American family farmers as they compete in the global market place.

By Mr. WELLSTONE:

S. 1102. A bill to strengthen the rights of workers to associate, organize and strike, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. WELLSTONE. Mr. President, I rise today to introduce legislation to strengthen the basic rights of workers to organize and to join a union. This legislation, the ''Right-to-Organize Act of 2001,'' addresses shortcomings in the National Labor Relations Act, NLRA, that, over the years, have eroded the framework of worker empowerment the NLRA was designed to ensure.

The NLRA, also known as the Wagner Act, was enacted to ''protect the exercise by workers of full freedom of association, self-organization and designation of representatives of their own choosing for purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.'' Its proponents envisioned that the commerce of the Nation would be aided by workplaces that respected and empowered workers' voices about the terms and conditions of their own employment. Its proponents envisioned that supporting workers' right to organize would help lay the basic platform for healthy economies, healthy communities, and healthy families.

Grounded in lofty notions of ''full freedom of association'' and ''actual liberty of contract,'' the promise of the NLRA was a fundamentally democratic one: participatory processes as a way to guarantee basic protections and to give those affected a role in decision-making about issues of paramount concern to them.

That was the promise of the NLRA. Unfortunately, today that promise is far from being realized. Indeed, today

the democratic foundation we have attempted to erect for our workplaces is crumbling beyond recognition.

Today, instead of celebrating the participatory voice of workers, we are faced with the stark reality that in all too many cases, workers who do participate, workers who choose to organize, workers who choose to voice their concerns about the terms and conditions of their workplace live in fear. They live in fear of being harassed, of losing wages and benefits, of being put on leave without pay, and ultimately fear of losing their jobs. In a country that celebrates democracy and freedom, the land of the free, it is unconscionable that hard working men and women can be placed in fear of losing their livelihood because they choose to exercise their legal rights to associate for the purposes of bargaining collectively and participating in decisionmaking about their own workplaces.

Today, as one organizer told me, all too many times you have to be a hero when you try to organize your own workplace. That's true. The men and women who do this—who step up to take some ownership for what's going on in their own workplaces—are doing heroic work. But that shouldn't have to be the case. That wasn't the promise of democracy and participation—of the associational and liberty of contract values this Nation endorsed in the National Labor Relations Act.

It's urgent that we take action here. Estimates are that 10,000 working Americans lose their jobs illegally every year just for supporting union organizing campaigns. The 1994 Dunlop Commission found that one in four employers illegally fired union activists during organizing campaigns. Estimates are that one out of 10 activists is fired.

This is unacceptable. This is truly one of the most urgent civil rights and human rights issues of the new millennium. Working Americans are harassed, threatened and fired simply for seeking to have a voice and be represented in their workplace. According to the Dunlop Commission, the United States is the only major democratic country in which the choice of whether workers are to be represented by a union is subject to such confrontational processes.

As Chair of the Employment, Safety, and Training Subcommittee with jurisdiction over the National Labor Relations Act, NLRA, I am introducing the ''Right-to-Organize Act of 2001'' to shore up the crumbling foundation of democracy in the workplace that the NLRA was intended to promote. The Act will target some of the most serious abuses of labor law that unfortunately have become all too common in recent years.

First, employers routinely monopolize the debates leading up to certification elections. They distribute written materials in opposition to collective bargaining. They require workers to attend meetings where they present their anti-union views. They talk to employees one-on-one about the dire consequences of unionization, such as the possibility that the individual employee or all employees could lose their jobs. All too often, at the same time that this flagrant coercion, intimidation, and interference is taking place often on a daily basis—union organizers are barred from work sites and even public areas.

Second, as noted above, employers too frequently are firing employees and engaging in other unfair labor practices to discourage union organizing and union representation. They are doing this sometimes with near impunity because today's laws simply are not strong enough to discourage them from doing so. As the report, Unfair Advantage noted just last year, employers intent on frustrating workers' efforts to organize can, and do, drag out legal proceedings for years, at the end of which they receive a slap on the wrist in the form of back pay to the worker illegally fired and a requirement that they post a written notice promising not to repeat their illegal behavior. ''Many employers,'' according to this report '' have come to view remedies, like back pay for workers fired because of union activity as a routine cost of doing business, well worth it to get rid of organizing leaders and derail workers' organizing efforts.'' We need to put teeth into our ability to enforce the legal rights that are already on the books.

Third, as part of efforts to discourage organizing, employers are able today to drag out election campaigns, giving themselves more time in some cases to harass workers through methods such as those I have described. Their hope may be that the climate of fear and intimidation will encourage workers to vote against the union seeking certification. While just across our border in Canada, elections take place on average within a week of the filing of a petition, here in the United States, it takes on average 80 days between petition and certification. That is an enormous amount of time for workers to live in fear of casting a vote to help empower their voice in the workplace.

Finally, there is a growing problem of employers refusing to bargain with their employees even after a union has been duly certified. Achieving so-called ''first contracts'' can often be as harrowing as the organizing effort itself.

I want to be clear. Most employers do not take advantage of their workers in this way. Indeed, in tens of thousands of workplaces across the country, employers are working together with employees and their unions, to create safe, healthy, productive, and rewarding work environments. I applaud the efforts these employers and workers are making.

Unfortunately, however, this is not universally the case. All too frequently employers are disempowering workers and undermining their rights to organize, join, and belong to a union. That is why, that I say this is one of the most urgent civil and human rights issues of the new millennium. Civil rights and human rights is fundamentally about protecting the dignity and well-being of the less empowered against excesses of the more powerful. Nothing could be more important to protecting workers' rights to advocate for themselves and their families than securing a meaningful right to organize.

The Right-to-Organize Act of 2001 is a first step in tackling some of the most serious barriers to workers' ability to unionize. In particular, the Act would do the following:

First, it would amend the National Labor Relations Act to provide equal time to labor organizations to provide information about union representation. Under this proposal the employer would trigger the equal time provision by expressing opinions on union representation during work hours or at the work site. Once the triggering actions occur, then the union would be entitled to equal time to use the same media used by the employer to distribute information and be allowed access to the work site to communicate with employees.

Second, it would toughen penalties for wrongful discharge violations. In particular, it would require the National Labor Relations Board to award back pay equal to 3 times the employee's wages when the Board finds that an employee is discharged as a result of an unfair labor practice. It also would allow employees to file civil actions to recover punitive damages when they have been discharged as a result of an unfair labor practice.

Third, it would require expedited elections in cases where a super majority of workers have signed union recognition cards designating a union as the employee's labor organizations. In particular, it would require elections within 14 days after receipt of signed union recognition cards from 60 percent of the employees.

Fourth, the bill would put in place mediation and arbitration procedures to help employers and employees reach mutually agreeable first-contract collective bargaining agreements. It would require mediation if the parties cannot reach agreement on their own after 60 days. Should the parties not reach agreement 30 days after a mediator is selected, then either party could call in the Federal Mediation and Conciliation Service for binding arbitration. In this way both parties would have incentives to reach genuine agreement without allowing either side to hold the other hostage indefinitely to unrealistic proposals.

The need for these reforms is urgent, not only for workers who seek to join together and bargain collectively, but for all Americans. Indeed, one of the most important things we can do to raise the standard of living and quality

of life for working Americans, raise wages and benefits, improve health and safety in the workplace, and give average Americans more control over their lives is to enforce their right to organize, join, and belong to a union.

When workers join together to fight for job security, for dignity, for economic justice and for a fair share of America's prosperity, it is not a struggle merely for their own benefit. The gains of unionized workers on basic bread-and-butter issues are key to the economic security of all working families. Upholding the right to organize is a way to advance important social objectives, higher wages, better benefits, more pension coverage, more worker training, more health insurance coverage, and safer work places, for all Americans without drawing on any additional government resources.

The right to organize is one of the most important civil and human rights causes of the new millennium. I urge my colleagues to join me in helping to restore that right to its proper place.

By Mr. ROCKEFELLER (for himself, Mr. DORGAN, and Mr. BURNS):

S. 1103. A bill to amend title 49, United States Code, to enhance competition among and between rail carriers in order to ensure efficient rail service and reasonable rail rates in any case in which there is an absence of effective competition, and for other purposes; to the Committee on Commerce Science, and Transportation.

Mr. ROCKEFELLER. Mr. President, I am happy today to join with my colleagues Senator DORGAN and Senator BURNS, in introducing the Rail Competition Act of 2001. Very simply, the purpose of this legislation is to encourage a bare minimum of competitive practices among participants in the freight rail industry, which has undergone unprecedented concentration in recent years, to the detriment of virtually all rail customers.

This legislation is a renewed effort on the part of my colleagues and me to address an issue that has amazed and shocked us for years. The monopoly power of the railroads places pervasive burdens on so many industries important to our states and to the national economy. No other industry in this country wields as much power over its customers as the railroad industry, and no other industry has as close an ally in the agency charged with its oversight as the railroad industry has with the Surface Transportation Board, known by the abbreviation STB. In fact, no other formerly regulated industry in this country continues to maintain this level of market dominance over its customers and essential infrastructure.

Shippers of bulk commodities, like coal from mines in West Virginia and grain from the Plains states, must routinely deal with shipments that move more slowly, and at rates much higher than would normally be charged in a truly competitive market. Every company that ships its product by rail has a trove of horror stories regarding how high prices and poor service attributable to the lack of meaningful competition in the freight rail industry has affected their ability to compete in their own industries. I know this because these companies have been telling me the same types of stories since I came to Congress.

I know that other members of Congress have heard the stories, too. As many of my colleagues will remember, the point was driven home last year when more than 280 CEOs from companies covering the broadest possible spectrum of the American economy wrote to Senators MCCAIN and HOLLINGS asking them to do something to insert real competition in the freight rail industry. For the record, the STB has also heard the complaints. However, the Board's focus has been the railroads' still-weak financial health, rather than the continued service problems that are its root cause.

I want to give my colleagues an example from an industry that is very important to my State and the rest of the Nation, the chemical industry. Throughout the country, approximately 80 percent of individual chemical operations are ''captive'' to one railroad, meaning they are served by only one railroad, and are subject to whatever pricing scheme the railroad chooses to use. In my home State of West Virginia, where the chemical industry is one of the pillars of the State's economy, 100 percent of chemical plants are captive. Some might be tempted to just write this off as the cost of doing business, but let me impart another view: These plants produce bulk chemicals that other companies buy and turn into countless products in use in every home and business in America.

Make no mistake, while the immediate beneficiary of this legislation will be the Rail Shipper who will have the opportunity to operate with the confidence that they are getting a fair deal the true beneficiary of this legislation is the retail shopper. Every purchase of every product that began its life in a chemical plant will be cheaper when that chemical plant receives competitive rail service because of this bill. Every ingredient in your families' dinners will go down in price when the shippers of agricultural commodities see their costs go down because this bill has produced efficiencies that benefit both shipper and railroad. Every time you flip the switch, and the lights turn on at a lower kilowatt-per-hour rate, it will happen because utilities throughout the nation have a more reliable and inexpensive supply of coal because of the Railroad Competition Act of 2001.

Congress deregulated the railroad industry with the passage of the Staggers Rail Act in 1980. Many of the predicted results of deregulation came to pass in relatively short order. The major freight railroads, which were in pretty bad financial shape at the end of the 1970's, put their fiscal houses in order. In the course of these improvements, some weaker railroads were swallowed up by stronger corporations. Our Nation's rail network, which was extensive but inefficient in some respects, became more streamlined. Unfortunately, some of the benefits of competition that Congress was led to expect most notably improved service at lower cost have simply not materialized for many shippers in several parts of the country.

Indeed, rather than improving over time, the situation has grown steadily worse. The second half of the 1990's saw an unprecedented spate of railroad mergers, to the point now that the more than 50 Class I railroads in existence when I entered the United States Senate has dwindled to only six with four railroads carrying a staggeringly high percentage of the freight.

STB has considered these mergers to be ''in the public interest,'' and I will not dispute the possibility that some of them may have been. I tend to believe that the notion that fueled many of the mergers was that somehow financially weak corporations with poor track records of service could be transformed overnight into efficient, businesslike railroads providing good service at lower costs. Meanwhile, rail shippers had to contend with newly merged railroads with monopoly power that did not seem to care any more about customer service than the separate companies that preceded them.

Before I complete my remarks, I want to address what I predict will be some of the rhetoric bandied about by the railroad industry. This bill is not an attempt to re-regulate the industry. When Congress passed the Staggers Rail Act in 1980, it did not do so with only the financial health of the railroads in mind. The Interstate Commerce Commission, and its successor agency, the STB, were supposed to maintain competition in the rail industry. Both agencies have failed miserably to contain the anti-competitive behavior of the railroads. My cosponsors and I only seek to require railroads to quote a price for a portion of a route on which they carry a company's products. This bill does not seek to give the STB more regulatory authority over the railroads, it only serves to remind the Board of the procompetitive responsibilities authorized by Congress in the Staggers Act.

Likewise, we do not offer this bill to hasten the demise of the industry. The companies that have come to us time and again for help in getting competitive rail service absolutely need a strong railroad industry. Their products, for the most part, cannot be moved efficiently via trucks or barges. The competition that will be fostered by this legislation is intended to help the railroads as much as it is intended to help shippers. Some may dispute the fundamental economic logic of this, to

which I respond: Giving the railroads relatively unfettered regional monopolies with the right to engage in anti-competitive behavior has not produced the strong railroad industry the Staggers Act sought to produce. At the very least, perhaps it is time to give competition a chance to succeed.

Mr. DORGAN. Mr. President, I rise today to speak about a bill, the Railroad Competition Act of 2001, which, along with Senator BURNS and Senator ROCKEFELLER I hope will introduce a bit of competition and better service in our railroad industry. The truth is that our rail system is completely broken, deregulation has only led to a system dominated by regional monopolies and both shippers and consumers are paying the price.

Since the supposed deregulation of the rail industry in 1980, the number of major Class I railroads has been allowed to decline from approximately 42 to only four major U.S. railroads today. Four mega-railroads overwhelmingly dominate railroad traffic, generating 95 percent of the gross ton-miles and 94 percent of the revenues, controlling 90 percent of all U.S. coal movement; 70 percent of all grain movement and 88 percent of all originated chemical movement. This drastic level of consolidation has left rail customers with only two major carriers operating in the East and two in the West, and has far exceeded the industry's need to minimize unit operating costs.

But consolidation has not happened in a vacuum. Over the years, regulators have systematically adopted polices that so narrowly interpret the pro-competitive provisions of the 1980 statute that railroads are essentially protected from ever having to compete with each other. As a consequence rail users have no power to choose among carriers either in terminal areas where switching infrastructure makes such choices feasible, nor can rail users even get a rate quoted to them over a ''bottleneck'' segment of the monopoly system.

The negative results of this approach have been astonishing. In North Dakota it costs $2,300 to move one rail car of wheat to Minneapolis (approx. 400 miles). Yet for a similar 400 mile move between Minneapolis and Chicago, it costs only $310 to deliver that car. And move that same car another 600 miles to St. Louis, Missouri and it costs only $610 per car. Looking at it another way—An elevator in Minot, North Dakota pays $2.99 to the farmer for a bushel of wheat. The cost to ship that wheat to the West coast on the BNSF is $1.30 per bushel. At that rate, rail transportation consumes 43 percent of the value of that wheat. Not only is that totally unfair to the captive farmer, but in the long run it is unsustainable.

How has this happened? Since the deregulation of the railroad industry, it has been the responsibility of the Interstate Commerce Commission, later renamed, the Surface Transportation Board, to make sure that the pro-competitive intent of the law was being upheld. It is the STBs charge to protect captive shippers through ''regulated competition.''

That clearly hasn't happened. In 1999 the GAO reported on how complicated it is for a shipper to get rate relief under the ''regulated competition'' approach at the STB. The GAO found that this process takes up to 500 days to decide, and costs hundreds of thousands of dollars. Hundreds of thousands of dollars and about approximately two years—that's hardly a rate relief process. But it's about the only relief shippers have under the law.

The Railroad Competition Act of 2001 will reaffirm the strong role the STB should play in protecting shippers by: jump-starting competition by requiring railroads to quote a rate on any given segment; facilitating terminal access and the ability to transfer goods among railroads in terminal areas; simplifying the market dominance test; eliminating the annual revenue adequacy test; bolstering rail access by making the rate relief process cheaper, faster and easier through a streamlined arbitration process, and requiring the railroads to file monthly service performance reports with the Department of Transportation, similar to what we require of the airline industry, so that rail customers have access to the information then need to make good railroad and transportation choices.

All Americans, whether they are farmers who need to ship their crops to market, businesses shipping factory goods, or consumers that buy the finished product, deserve to have a rail transportation system with prices that are fair. It is time for Congress to stand up for farmers, businesses, and consumers by making it very clear that the STB has to be a more aggressive defender of competition and reasonable rates.

By Mr. GRAHAM (for himself, Mr. MURKOWSKI, Mr. GRAMM, Mr. NICKLES, Mr. THOMPSON, Mr. KYL, Mr. HAGEL, Mr. ROBERTS, and Mr. CHAFEE):

S. 1104. A bill to establish objectives for negotiating, and procedures for, implementing certain trade agreements; to the Committee on Finance.

Mr. GRAHAM. Mr. President, I rise today with Senator MURKOWSKI and our cosponsors to introduce the Trade Promotion Authority Act of 2001. We have stepped forward because we believe that international trade is essential to increase opportunities for U.S. producers, to support U.S. jobs, and to provide economic opportunities for trading partners who need development.

Last month the Administration release its 2001 International Trade Agenda, which outlined the President's principles for renewed trade promotion authority, TPA. At the same time, I was working with a group of pro-trade Democrats to identify our key priorities. What we discovered is that our two sets of principles had much in common.

Over the last few weeks, Senator MURKOWSKI and I have worked together to translate those two sets of principles into legislative language.

The trade debate has been virtually deadlocked for years, with voices from the ''end zones'' taking center-stage. In our view, this bill represents the basic architecture of a bipartisan bill on what we believe is the ''50 yard line.'' We also look forward to the contribution that others will make before this bill is signed into law.

The fact that we introduced this bill with bipartisan support is particularly significant because this is not just a set of ideas that happened to be popular with both Democrats and Republicans. This bill took real compromise on both sides.

For my part, my contributions to this bill were based on the trade principles developed by New Democrats led by CAL DOOLEY in the House and several of my colleagues in the Senate. The New Democrat trade principles we released in May are fully incorporated into this bill.

What we introduce today is not a trade agreement. Trade promotion authority is an authorization to the President to begin negotiations. Details of a trade bill will be developed through the process established by the grant of TPA. At the end of that process, Congress will review the result of those negotiations and grant approval or disapproval to the result.

Trade promotion authority puts the will of Congress behind our trade negotiator, but it cannot and should not mandate a specific result from negotiations. We must leave it to our negotiators to reach the most favorable agreement they can.

A trade promotion authority bill is a way for Congress to communicate its negotiating priorities. Some of the priorities we put forward in this bill include: negotiating objectives on labor and environment that receive the same priority as commercial negotiating objectives; a new negotiating objective on information technologies to reduce trade barriers on high technology products, enhance and facilitate barriers-free e-commerce, and provide the same rights and protections for the electronic delivery of products as are offered to products delivered physically; adoption of measures in trade agreements to ensure proper implementation, full compliance and appropriate enforcement mechanisms that are timely and transparent; and a stronger process for continuous Congressional involvement in the process before, during, and at the close of negotiations so that the will of Congress is fully expressed in the final agreement.

I have been concerned by the views expressed by some Members that it may be better to delay consideration of TPA until next year. This would be a ''major league'' mistake. There is a real price to be paid for delay.

One hundred years ago the U.S. took an isolationist position with respect to our economic relations with Latin America. The result of this was that the Nations of Latin America adopted European technical standards. This has been a handicap to the U.S. economic position in Latin America ever since.

We now are in danger of repeating this mistake. The best way to avoid doing so is to negotiate and enter trade agreement with nations so that American standards become the norm and American businesses and workers can benefit.

Nothing is likely to occur in the next 12 to 24 months that will make reaching a consensus on trade promotion authority more likely. In fact just the opposite is true.

The best way to move forward is to put TPA in perspective. It seems the debate on this issue moves quickly to being a referendum on whether trade and globalization are good or bad. That, frankly, is not the question. We can't walk away from globalization and we can't shut the door to international commerce. We can't put the genie back in the bottle.

What we can do is try to shape these economic forces and define a trade agenda that addresses our priorities. The real question is, ''can the United States have more influence in the trade arena with TPA or without it.''

I am convinced that we will give the President a stronger negotiating position, and get the country a better result, if we pass a grant of trade promotion authority as soon as possible. That is not to say that I advocate giving the President a blank check to cash as he pleases. It also does not mean that I believe in a ''free trade utopia'' either.

I recognize there will be issues with our trading partners and that everyone doesn't always play by the rules. The way to address concerns with our trading partners is at the negotiating table. That makes it all the more important for us to have a strong negotiating position, and TPA is central to that.

We encourage others to contribute specific suggestions to enhance the bill's ability to contribute to its principle objective of opening markets to U.S. goods, creating new and better jobs for Americans, and allowing the world to benefit from U.S. goods and services.

Only 4 percent of the world's consumers live in the United States. If we want to sell our agriculture products, manufactured goods, and world-class services to the rest of the 96 percent around the world, we have to do it through trade. Trade promotion authority is the best way for the President to negotiate trade agreements that will open markets and improve standards of living at home and abroad.

Mr. MURKOWSKI. Mr. President, I rise today to join my colleague, Senator GRAHAM, in introducing the Trade Promotion Act of 2001. In my six and a half years on the Finance Committee, on which Senator GRAHAM and I both serve, there has always been a strong bi-partisan consensus in favor of open markets and free trade. In introducing the Trade Promotion Act of 2001 today, we continue that spirit.

This is a bill to which many members have contributed. Together, we believe that trade is the single most important catalyst for expanding jobs and opportunities here at home and encouraging economic development abroad.

The United States has always been a trading Nation. We learned the law of comparative advantage very early in our history, and became the wealthiest Nation in history as a direct result. Economic theory tells us that trade between markets expands the opportunities and benefits in both those markets. As far as trade is concerned, the whole is always greater than the sum of its parts. Our Nation's history has been the practical embodiment of this theory. Without trade, this Nation would simply not be the greatest on earth.

Yet no matter how many times we have learned this lesson, we forget it just as many times. Here we are in 2001, facing the same challenges on trade we have faced on countless occasions in the past. The champions of protectionism have become more sophisticated over the years. Still: their arguments are the same old fear-mongering and disinformation they have been peddling for 200 years.

Does trade lead to winners and losers? Yes, that's called competition, the bedrock of our society.

Does economic growth put pressures on underdeveloped societies in labor and environmental areas? Yes, it can. It did in this country too.

But do the short-term pains of competition and other pressures on society outweigh the benefits of trade? No, not now, not ever.

The United States can be leaders on trade or we can be followers. We can either shape the global economy or be shaped by it.

There are 134 free trade agreements in the world today. The United States is party to only 2 of those. To my mind, that is a shameful record. We have done a disservice to our farmers, fishermen, businesses and the working men and women of this country.

I recognize there are those who are concerned about the broader impacts of globalization. To them I say: you can't influence the outcome unless you are in the game.

Does government have a role in easing the plight of firms and individuals negatively affected by trade? Absolutely. Sound economic policy should ease the transition of individuals and their companies to more competitive areas.

Can the United States help other countries overcome short-term labor and environmental problems resulting from rapid growth? No question at all. Through technology and other means we have many tools to help the developing world.

But the only way to address these problems is for the United States to exercise leadership on trade. Without Trade Promotion Authority, such leadership will be impossible.

Senator GRAHAM and I and our colleagues believe the Graham-Murkowski Trade Promotion Act of 2001 is the right vehicle to provide those leadership tools.

By Mr. THOMAS (for himself and Mr. ENZI):

S. 1105. A bill to provide for the expeditious completion of the acquisition of State of Wyoming lands within the boundaries of Grand Teton National Park, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. THOMAS. Mr. President, I am pleased to introduce a bill today to authorize the exchange of State lands inside Grand Teton National Park.

Grand Teton National Park was established by Congress on February 29, 1929, to protect the natural resources of the Teton range and recognize the Jackson area's unique beauty. On March 15, 1943, President Franklin Delano Roosevelt established the Jackson Hole National Monument adjacent to the park. Congress expanded the Park on September 14, 1950, by including a portion of the lands from the Jackson Hole National Monument. The park currently encompasses approximately 310,000 acres of wilderness and has some of the most amazing mountain scenery anywhere in our country. This park has become an extremely important element of the National Park system, drawing almost 2.7 million visitors in 1999.

When Wyoming became a State in 1890, sections of land were set aside for school revenue purposes. All income from these lands—rents, grazing fees, sales or other sources—is placed in a special trust fund for the benefit of students in the State. The establishment of these sections predates the creation of most national parks or monuments within our State boundaries, creating several state inholdings on federal land. The legislation I am introducing today would allow the Federal Government to remove the state school trust lands from Grand Teton National Park and allow the State to capture fair value for this property to benefit Wyoming school children.

This bill, entitled the ''Grand Teton National Park Land Exchange Act,'' identifies approximately 1406 acres of State lands and mineral interests within the boundaries of Grand Teton National Park for exchange for Federal assets. These Federal assets could include mineral royalties, appropriated dollars, federal lands or combination of any of these elements.

The bill also identifies an appraisal process for the state and federal government to determine a fair value of the state property located within the

park boundaries. Ninety days after the bill is signed into law, the land would be valued by one of the following methods: (1) the Interior Secretary and Governor would mutually agree on a qualified appraiser to conduct the appraisal of the State lands in the park; (2) if there is no agreement about the appraiser, the Interior Secretary and Governor would each designate a qualified appraiser. The two designated appraisers would select a third appraiser to perform the appraisal with the advice and assistance of the designated appraisers.

If the Interior Secretary and Governor cannot agree on the evaluations of the State lands 180 days after the date of enactment, the Governor may petition the U.S. Court of Federal Claims to determine the final value. One-hundred-eighty days after the State land value is determined, the Interior Secretary, in consultation with the Governor, shall exchange Federal assets of equal value for the State lands.

The management of our public lands and natural resources is often complicated and requires the coordination of many individuals to accomplish desired objectives. When western folks discuss Federal land issues, we do not often have an opportunity to identify proposals that capture this type of consensus and enjoy the support from a wide array of interests; however, this land exchange offers just such a unique prospect.

This legislation is needed to improve the management of Grand Teton National Park, by protecting the future of these unique lands against development pressures and allow the State of Wyoming to access their assets to address public school funding needs.

This bill enjoys the support of many different groups including the National Park Service, the Wyoming Governor, State officials, as well as folks from the local community. It is my hope that the Senate will seize this opportunity to improve upon efforts to provide services to the American public.

By Mr. DOMENICI:

S. 1106. A bill to provide a tax credit for the production of oil or gas from deposits held in trust for, or held with restrictions against alienation by, Indian tribes and Indian individuals; to the Committee on Finance.

Mr. DOMENICI. Mr. President, today I am proud to introduce legislation that would provide a Federal tax credit for oil and natural gas produced from Indian lands. This legislation will serve two important purposes. It will provide an immediate boost to tribal economies, and it will provide additional domestic sources of energy to ease our growing energy crisis.

Even though Indian lands offer a fertile source of oil and natural gas, many disincentives to exploration and production exist. For example, the Supreme Court permits the double taxation of oil and natural gas produced from tribal lands, which unfairly subjects producers to both State and tribal taxation. Furthermore, tribal economies are not sufficiently diversified to allow for tribal tax incentives for oil and natural gas development. Finally, Congress has enacted innumerable incentives for energy development on Federal lands, which has made production from this land far more profitable. As a result, Indian lands are too often overlooked as a source of domestic energy.

This legislation would remedy these disadvantages by providing Federal tax credits for oil and natural gas production on tribal lands. These tax credits would be available to both the tribe as royalty owner and the producer. Tribes would benefit in two ways: they could broaden their tax base from substantially increased oil and gas production; and they could market their share of the tax credit to generate additional revenue. These additional revenues would allow tribes to strengthen their infrastructure and improve the vital services that they provide to their citizens.

Unfortunately, the recent economic prosperity has not been extended to many Indian tribes. This is the reason why these tax incentives are so crucial. They will provide a much-needed shot in the arm to tribal economic development and will compensate for the discriminatory double taxation that hinders energy production. In recent years, many people have criticized the growth of the gaming industry on reservations. However, these critics have failed to suggest viable alternatives for tribal economic development. This legislation would supply strong opportunity for entrepreneurship in a vital national industry and would bring many more tribes into the economic mainstream.

Finally, this legislation would have the added benefit of creating an additional source of domestic energy. In our efforts to craft a comprehensive energy policy for the United States, we have been searching for additional sources of domestic energy. In this search, we must not overlook tribal oil and gas production. America's energy supply is a patchwork of various domestic and international sources, and the addition of tribal lands will only strengthen the seams of this patchwork and decrease our risky reliance on foreign sources.

Therefore, I am proud today to introduce this legislation to boost the production of oil and natural gas on Indian lands and to strengthen our domestic energy supply.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 117—HONORING JOHN J. DOWNING, BRIAN FAHEY, AND HARRY FORD, WHO LOST THEIR LIVES IN THE COURSE OF DUTY AS FIREFIGHTERS

Mrs. CLINTON (for herself, and Mr. SCHUMER) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 117

Whereas on June 17, 2001, 350 firefighters and numerous police officers responded to a 911 call that sent them to Long Island General Supply Company in Queens, New York;

Whereas a fire and an explosion in a 2-story building had turned the 128-year-old, family-owned store into a heap of broken bricks, twisted metal, and shattered glass;

Whereas all those who responded to the scene served without reservation and with their personal safety on the line;

Whereas 2 civilians and dozens of firefighters were injured by the blaze, including firefighters Joseph Vosilla and Brendan Manning who were severely injured;

Whereas John J. Downing of Ladder Company 163, an 11-year veteran of the department and resident of Port Jefferson Station, and a husband and father of 2, lost his life in the fire;

Whereas Brian Fahey of Rescue Company 4, a 14-year veteran of the department and resident of East Rockaway, and a husband and father of 3, lost his life in the fire; and

Whereas Harry Ford of Rescue Company 4, a 27-year veteran of the department from Long Beach, and a husband and father of 3, lost his life in the fire: Now, therefore, be it

Resolved, That the Senate—

(1) honors John J. Downing, Brian Fahey, and Harry Ford, who lost their lives in the course of duty as firefighters, and recognizes them for their bravery and sacrifice;

(2) extends its deepest sympathies to the families of these 3 brave heroes; and

(3) pledges its support and to continue to work on behalf of all of the Nation's firefighters who risk their lives every day to ensure the safety of all Americans.

SENATE CONCURRENT RESOLUTION 55—HONORING THE 19 UNITED STATES SERVICEMEN WHO DIED IN THE TERRORIST BOMBING OF THE KHOBAR TOWERS IN SAUDI ARABIA ON JUNE 25, 1996

Mr. BOND (for himself, Mrs. HUTCHISON, Mr. DEWINE, and Mr. LIEBERMAN) submitted the following concurrent resolution; which was referred to the Committee on Armed Services:

S. CON. RES. 55

Whereas June 25, 2001, marks the fifth anniversary of the tragic terrorist bombing of the Khobar Towers in Saudi Arabia;

Whereas this act of senseless violence took the lives of 19 brave United States servicemen, and wounded 500 others;

Whereas these nineteen men killed while serving their country were Captain Christopher Adams, Sergeant Daniel Cafourek, Sergeant Millard Campbell, Sergeant Earl Cartrette, Jr., Sergeant Patrick Fennig, Captain Leland Haun, Sergeant Michael Heiser, Sergeant Kevin Johnson, Sergeant Ronald

King, Sergeant Kendall Kitson, Jr., Airman First Class Christopher Lester, Airman First Class Brent Marthaler, Airman First Class Brian McVeigh, Airman First Class Peter Morgera, Sergeant Thanh Nguyen, Airman First Class Joseph Rimkus, Senior Airman Jeremy Taylor, Airman First Class Justin Wood, and Airman First Class Joshua Woody;

Whereas those guilty of this attack have yet to be brought to justice;

Whereas the families of these brave servicemen still mourn their loss and await the day when those guilty of this act are brought to justice; and

Whereas terrorism remains a constant and ever-present threat around the world: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress, on the occasion of the fifth anniversary of the terrorist bombing of the Khobar Towers in Saudi Arabia, recognizes the sacrifice of the 19 servicemen who died in that attack, and calls upon every American to pause and pay tribute to these brave soldiers and to remain ever vigilant for signs which may warn of a terrorist attack.

SENATE CONCURRENT RESOLUTION 56—EXPRESSING THE SENSE OF CONGRESS THAT A COMMEMORATIVE POSTAGE STAMP SHOULD BE ISSUED BY THE UNITED STATES POSTAL SERVICE HONORING THE MEMBERS OF THE ARMED FORCES WHO HAVE BEEN AWARDED THE PURPLE HEART

Ms. SNOWE submitted the following concurrent resolution; which was referred to the Committee on Governmental Affairs:

S. CON. RES. 56

Whereas the Order of the Purple Heart for Military Merit, commonly known as the Purple Heart, is the oldest military decoration in the world in present use;

Whereas the Purple Heart is awarded in the name of the President of the United States to members of the Armed Forces who are wounded in conflict with an enemy force or while held by an enemy force as a prisoner of war, and posthumously to the next of kin of members of the Armed Forces who are killed in conflict with an enemy force or who die of a wound received in conflict with an enemy force;

Whereas the Purple Heart was established on August 7, 1782, during the Revolutionary War, when General George Washington issued an order establishing the Honorary Badge of Distinction, otherwise known as the Badge of Military Merit or the Decoration of the Purple Heart;

Whereas the award of the Purple Heart ceased with the end of the Revolutionary War, but was revived out of respect for the memory and military achievements of George Washington in 1932, the year marking the 200th anniversary of his birth; and

Whereas the issuance of a postage stamp commemorating the members of the Armed Forces who have been awarded the Purple Heart is a fitting tribute both to those members and to the memory of George Washington: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) the United States Postal Service should issue a postage stamp commemorating the members of the Armed Forces who have been awarded the Purple Heart; and

(2) the Citizens' Stamp Advisory Committee should recommend to the Postmaster General that such a stamp be issued not later than 1 year after the adoption of this resolution.

Ms. SNOWE. Mr. President. I rise today to submit a concurrent resolution to express the sense of Congress that a commemorative postage stamp should be issued by the United States Postal Service honoring the members of the Armed Forces that have been awarded the Purple Heart.

The Purple Heart, our nation's oldest military decoration, was originated by General George Washington in 1782 to recognize ''instances of unusual gallantry.'' Referred to then as the Badge of Military Merit, the decoration was awarded only three times during the Revolutionary War.

Following the war, the general order authorizing the ''Badge'' was misfiled for over 150 years until the War Department reactivated the decoration in 1932. The Army's then Adjutant General, Douglas MacArthur, succeeded in having the medal re-instituted in its modern form—to recognize the sacrifice our service members make when they go into harm's way.

Both literally and figuratively, the Purple Heart is the world's most costly decoration. However, the 19 separate steps necessary to make the medal pale in comparison to the actions and heroics that so often lead to its award. The Department of Defense does not track the number of Purple Hearts awarded, but we do know that just over 500,000 of the veterans and military personnel that have received the medal are still living. And we also know that every single recipient served this country in one form or another; a good number of the awardees even made the ultimate sacrifice—giving their lives for the liberty and freedoms that we all enjoy and often take for granted.

I am sure you will agree that these sacrifices deserve our respect and remembrance. This resolution, to express the sense of the Congress that a postage stamp honoring Purple Heart recipients should be issued by the U.S. Postal Service, is a fitting place to start. I urge my colleagues to support this effort to recognize those brave service members.

AMENDMENTS SUBMITTED AND PROPOSED

SA 813. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; which was ordered to lie on the table.

SA 814. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1052, supra; which was ordered to lie on the table.

SA 815. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1052, supra; which was ordered to lie on the table.

SA 816. Mr. BOND proposed an amendment to the bill S. 1052, supra.

SA 817. Mr. ALLARD (for himself, Mr. BOND, Mr. SANTORUM, and Mr. NICKLES) proposed an amendment to the bill S. 1052, supra.

SA 818. Mr. KYL (for himself, Mr. NELSON of Nebraska, and Mr. NICKLES) proposed an amendment to the bill S. 1052, supra.

TEXT OF AMENDMENTS

SA 813. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; which was ordered to lie on the table; as follows:

At the end of the bill, add the following

TITLE ____—HUMAN GERMLINE GENE MODIFICATION

SEC. 01. SHORT TITLE.

This title may be cited as the ''Human Germline Gene Modification Prohibition Act of 2001''.

SEC. 02. FINDINGS.

Congress makes the following findings:

(1) Human Germline gene modification is not needed to save lives, or alleviate suffering, of existing people. Its target population is ''prospective people'' who have not been conceived.

(2) The cultural impact of treating humans as biologically perfectible artifacts would be entirely negative. People who fall short of some technically achievable ideal would be seen as ''damaged goods'', while the standards for what is genetically desirable will be those of the society's economically and politically dominant groups. This will only increase prejudices and discrimination in a society where too many such prejudices already exist.

(3) There is no way to be accountable to those in future generations who are harmed or stigmatized by wrongful or unsuccessful human germline modifications of themselves or their ancestors.

(4) The negative effects of human germline manipulation would not be fully known for generations, if ever, meaning that countless people will have been exposed to harm probably often fatal as the result of only a few instances of germline manipulations.

(5) All people have the right to have been conceived, gestated, and born without genetic manipulation.

SEC. 03. PROHIBITION ON HUMAN GERMLINE GENE MODIFICATION.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 15, the following:

''CHAPTER 16—GERMLINE GENE MODIFICATION

''§ 301. Definitions

''In this chapter:

(1) HUMAN GERMLINE GENE MODIFICATION.—The term 'human germline gene modification' means the introduction of DNA into any human cell (including human eggs, sperm, fertilized eggs, (ie. embryos, or any early cells that will differentiate into gametes or can be manipulated to do so) that can result in a change which can be passed on to future individuals, including DNA from any source, and in any form, such as nuclei, chromosomes, nuclear, mitochondrial, and synthetic DNA. The term does not include any modification of cells that are not a part

of or are not used to construct human embryos.

''(2) HUMAN HAPLOID CELL.—The term 'haploid cell' means a cell that contains only a single copy of each of the human chromosomes, such as eggs, sperm, and their precursors; the haploid number in a human cell is 23.

''(3) SOMATIC CELL.—The term 'somatic cell' means a diploid cell (having two sets of the chromosomes of almost all body cells) obtained or derived from a living or deceased human body at any stage of development; its diploid number is 46. Somatic cells are diploid cells that are not precursors of either eggs or sperm. A genetic modification of somatic cells is therefore not germline genetic modification.

''§ 302. Prohibition on germline gene modification

''(a) IN GENERAL.—It shall be unlawful for any person or entity, public or private, in or affecting interstate commerce—

''(1) to perform or attempt to perform human germline gene modification;

''(2) to participate in an attempt to perform human germline gene modification; or

''(3) to ship or receive the product of human germline gene modification for any purpose.

''(b) IMPORTATION.—It shall be unlawful for any person or entity, public or private, to import the product of human germline gene modification for any purpose.

''(c) PENALTIES—

''(1) IN GENERAL.—Any person or entity that is convicted of violating any provision of this section shall be fined under this section or imprisoned not more than 10 years, or both.

''(2) CIVIL PENALTY.—Any person or entity that is convicted of violating any provision of this section shall be subject to, in the case of a violation that involves the derivation of a pecuniary gain, a civil penalty of not less than $1,000,000 and not more than an amount equal to the amount of the gross gain multiplied by 2, if that amount is greater than $1,000,000.

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 15 the following:

''16. Germline Gene Modification ..... 301''.

SA 814. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; which was ordered to lie on the table; as follows:

On page 179, after line 14, add the following:

SEC. ___. DEFINITION OF BORN-ALIVE INFANT.

(a) IN GENERAL.—Chapter 1 of title 1, United States Code, is amended by adding at the end the following:

''§ 8. 'Person', 'human being', 'child', and 'individual' as including born-alive infant

''(a) In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the words 'person', 'human being', 'child', and 'individual', shall include every infant member of the species homo sapiens who is born alive at any stage of development.

''(b) As used in this section, the term 'born alive', with respect to a member of the species homo sapiens, means the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, caesarean section, or induced abortion.

''(c) Nothing in this section shall be construed to affirm, deny, expand, or contract any legal status or legal right applicable to any member of the species homo sapiens at any point prior to being born alive as defined in this section.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1 of title 1, United States Code, is amended by adding at the end the following new item:

''8. 'Person', 'human being', 'child', and 'individual' as including born-alive infant.''.

SA 815. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE ___—FAIR CARE FOR THE UNINSURED

Subtitle A—Refundable Credit for Health Insurance Coverage

SEC. ___01. REFUNDABLE CREDIT FOR HEALTH INSURANCE COVERAGE.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 35 as section 36 and by inserting after section 34 the following new section:

''SEC. 35. HEALTH INSURANCE COSTS.

''(a) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle an amount equal to the amount paid during the taxable year for qualified health insurance for the taxpayer, his spouse, and dependents.

''(b) LIMITATIONS.—

''(1) IN GENERAL.—The amount allowed as a credit under subsection (a) to the taxpayer for the taxable year shall not exceed the sum of the monthly limitations for coverage months during such taxable year for each individual referred to in subsection (a) for whom the taxpayer paid during the taxable year any amount for coverage under qualified health insurance.

''(2) MONTHLY LIMITATION.—

''(A) IN GENERAL.—The monthly limitation for an individual for each coverage month of such individual during the taxable year is the amount equal to 1/12 of—

''(i) $1,000 if such individual is the taxpayer,

''(ii) $1,000 if—

''(I) such individual is the spouse of the taxpayer,

''(II) the taxpayer and such spouse are married as of the first day of such month, and

''(III) the taxpayer files a joint return for the taxable year, and

''(iii) $500 if such individual is an individual for whom a deduction under section 151(c) is allowable to the taxpayer for such taxable year.

''(B) LIMITATION TO 2 DEPENDENTS.—Not more than 2 individuals may be taken into account by the taxpayer under subparagraph (A)(iii).

''(C) SPECIAL RULE FOR MARRIED INDIVIDUALS.—In the case of an individual—

''(i) who is married (within the meaning of section 7703) as of the close of the taxable year but does not file a joint return for such year, and

''(ii) who does not live apart from such individual's spouse at all times during the taxable year,

the limitation imposed by subparagraph (B) shall be divided equally between the individual and the individual's spouse unless they agree on a different division.

''(3) COVERAGE MONTH.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'coverage month' means, with respect to an individual, any month if—

''(i) as of the first day of such month such individual is covered by qualified health insurance, and

''(ii) the premium for coverage under such insurance for such month is paid by the taxpayer.

''(B) EMPLOYER-SUBSIDIZED COVERAGE.—

''(i) IN GENERAL.—Such term shall not include any month for which such individual is eligible to participate in any subsidized health plan (within the meaning of section 162(l)(2)) maintained by any employer of the taxpayer or of the spouse of the taxpayer.

''(ii) PREMIUMS TO NONSUBSIDIZED PLANS.—If an employer of the taxpayer or the spouse of the taxpayer maintains a health plan which is not a subsidized health plan (as so defined) and which constitutes qualified health insurance, employee contributions to the plan shall be treated as amounts paid for qualified health insurance.

''(C) CAFETERIA PLAN AND FLEXIBLE SPENDING ACCOUNT BENEFICIARIES.—Such term shall not include any month during a taxable year if any amount is not includible in the gross income of the taxpayer for such year under section 106 with respect to—

''(i) a benefit chosen under a cafeteria plan (as defined in section 125(d)), or

''(ii) a benefit provided under a flexible spending or similar arrangement.

''(D) MEDICARE AND MEDICAID.—Such term shall not include any month with respect to an individual if, as of the first day of such month, such individual—

''(i) is entitled to any benefits under title XVIII of the Social Security Act, or

''(ii) is a participant in the program under title XIX or XXI of such Act.

''(E) CERTAIN OTHER COVERAGE.—Such term shall not include any month during a taxable year with respect to an individual if, at any time during such year, any benefit is provided to such individual under—

''(i) chapter 89 of title 5, United States Code,

''(ii) chapter 55 of title 10, United States Code,

''(iii) chapter 17 of title 38, United States Code, or

''(iv) any medical care program under the Indian Health Care Improvement Act.

''(F) PRISONERS.—Such term shall not include any month with respect to an individual if, as of the first day of such month, such individual is imprisoned under Federal, State, or local authority.

''(G) INSUFFICIENT PRESENCE IN UNITED STATES.—Such term shall not include any month during a taxable year with respect to an individual if such individual is present in the United States on fewer than 183 days during such year (determined in accordance with section 7701(b)(7)).

''(4) COORDINATION WITH DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—In the case of a taxpayer who is eligible to deduct any amount under section 162(l) for the taxable year, this section

shall apply only if the taxpayer elects not to claim any amount as a deduction under such section for such year.

''(c) QUALIFIED HEALTH INSURANCE.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified health insurance' means insurance which constitutes medical care as defined in section 213(d) without regard to—

''(A) paragraph (1)(C) thereof, and

''(B) so much of paragraph (1)(D) thereof as relates to qualified long-term care insurance contracts.

''(2) EXCLUSION OF CERTAIN OTHER CONTRACTS.—Such term shall not include insurance if a substantial portion of its benefits are excepted benefits (as defined in section 9832(c)).

''(d) ARCHER MSA CONTRIBUTIONS.—

''(1) IN GENERAL.—If a deduction would (but for paragraph (2)) be allowed under section 220 to the taxpayer for a payment for the taxable year to the Archer MSA of an individual, subsection (a) shall be applied by treating such payment as a payment for qualified health insurance for such individual.

''(2) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under section 220 for that portion of the payments otherwise allowable as a deduction under section 220 for the taxable year which is equal to the amount of credit allowed for such taxable year by reason of this subsection.

''(e) SPECIAL RULES.—

''(1) COORDINATION WITH MEDICAL EXPENSE DEDUCTION.—The amount which would (but for this paragraph) be taken into account by the taxpayer under section 213 for the taxable year shall be reduced by the credit (if any) allowed by this section to the taxpayer for such year.

''(2) DENIAL OF CREDIT TO DEPENDENTS.—No credit shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

''(3) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2002, each dollar amount contained in subsection (b)(2)(A) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2001' for 'calendar year 1992' in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of $50 ($25 in the case of the dollar amount in subsection (b)(2)(A)(iii)).''

(b) INFORMATION REPORTING.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 of such Code (relating to information concerning transactions with other persons) is amended by inserting after section 6050S the following new section:

''SEC. 6050T. RETURNS RELATING TO PAYMENTS FOR QUALIFIED HEALTH INSURANCE.

''(a) IN GENERAL.—Any person who, in connection with a trade or business conducted by such person, receives payments during any calendar year from any individual for coverage of such individual or any other individual under creditable health insurance, shall make the return described in subsection (b) (at such time as the Secretary may by regulations prescribe) with respect to each individual from whom such payments were received.

''(b) FORM AND MANNER OF RETURNS.—A return is described in this subsection if such return—

''(1) is in such form as the Secretary may prescribe, and

''(2) contains—

''(A) the name, address, and TIN of the individual from whom payments described in subsection (a) were received,

''(B) the name, address, and TIN of each individual who was provided by such person with coverage under creditable health insurance by reason of such payments and the period of such coverage, and

''(C) such other information as the Secretary may reasonably prescribe.

''(c) CREDITABLE HEALTH INSURANCE.—For purposes of this section, the term 'creditable health insurance' means qualified health insurance (as defined in section 35(c)) other than—

''(1) insurance under a subsidized group health plan maintained by an employer, or

''(2) to the extent provided in regulations prescribed by the Secretary, any other insurance covering an individual if no credit is allowable under section 35 with respect to such coverage.

''(d) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required under subsection (b)(2)(A) to be set forth in such return a written statement showing—

''(1) the name and address of the person required to make such return and the phone number of the information contact for such person,

''(2) the aggregate amount of payments described in subsection (a) received by the person required to make such return from the individual to whom the statement is required to be furnished, and

''(3) the information required under subsection (b)(2)(B) with respect to such payments.

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) is required to be made.

''(e) RETURNS WHICH WOULD BE REQUIRED TO BE MADE BY 2 OR MORE PERSONS.—Except to the extent provided in regulations prescribed by the Secretary, in the case of any amount received by any person on behalf of another person, only the person first receiving such amount shall be required to make the return under subsection (a).''.

(2) ASSESSABLE PENALTIES.—

(A) Subparagraph (B) of section 6724(d)(1) of such Code (relating to definitions) is amended by redesignating clauses (xi) through (xvii) as clauses (xii) through (xviii), respectively, and by inserting after clause (x) the following new clause:

''(xi) section 6050T (relating to returns relating to payments for qualified health insurance),''.

(B) Paragraph (2) of section 6724(d) of such Code is amended by striking ''or'' at the end of the next to last subparagraph, by striking the period at the end of the last subparagraph and inserting '', or'', and by adding at the end the following new subparagraph:

''(BB) section 6050T(d) (relating to returns relating to payments for qualified health insurance).''.

(3) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 of such Code is amended by inserting after the item relating to section 6050S the following new item:

''Sec. 6050T. Returns relating to payments for qualified health insurance.''.

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period '', or from section 35 of such Code''.

(2) The table of sections for subpart C of part IV of subchapter A of chapter 1 of such Code is amended by striking the last item and inserting the following new items:

''Sec. 35. Health insurance costs.

''Sec. 36. Overpayments of taxes.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. ___02. ADVANCE PAYMENT OF CREDIT FOR PURCHASERS OF QUALIFIED HEALTH INSURANCE.

(a) IN GENERAL.—Chapter 77 of the Internal Revenue Code of 1986 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

''SEC. 7527. ADVANCE PAYMENT OF HEALTH INSURANCE CREDIT FOR PURCHASERS OF QUALIFIED HEALTH INSURANCE.

''(a) GENERAL RULE.—In the case of an eligible individual, the Secretary shall make payments to the provider of such individual's qualified health insurance equal to such individual's qualified health insurance credit advance amount with respect to such provider.

''(b) ELIGIBLE INDIVIDUAL.—For purposes of this section, the term 'eligible individual' means any individual—

''(1) who purchases qualified health insurance (as defined in section 35(c)), and

''(2) for whom a qualified health insurance credit eligibility certificate is in effect.

''(c) QUALIFIED HEALTH INSURANCE CREDIT ELIGIBILITY CERTIFICATE.—For purposes of this section, a qualified health insurance credit eligibility certificate is a statement furnished by an individual to the Secretary which—

''(1) certifies that the individual will be eligible to receive the credit provided by section 35 for the taxable year,

''(2) estimates the amount of such credit for such taxable year, and

''(3) provides such other information as the Secretary may require for purposes of this section.

''(d) QUALIFIED HEALTH INSURANCE CREDIT ADVANCE AMOUNT.—For purposes of this section, the term 'qualified health insurance credit advance amount' means, with respect to any provider of qualified health insurance, the Secretary's estimate of the amount of credit allowable under section 35 to the individual for the taxable year which is attributable to the insurance provided to the individual by such provider.

''(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 of such Code is amended by adding at the end the following new item:

''Sec. 7527. Advance payment of health insurance credit for purchasers of qualified health insurance.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2002.

Subtitle B—Assuring Health Insurance Coverage for Uninsurable Individuals

SEC. ___11. ESTABLISHMENT OF HEALTH INSURANCE SAFETY NETS.

(a) IN GENERAL.—

(1) REQUIREMENT.—For years beginning with 2002, each health insurer, health maintenance organization, and health service organization shall be a participant in a health

insurance safety net (in this subtitle referred to as a ''safety net'') established by the State in which it operates.

(2) FUNCTIONS.—Any safety net shall assure, in accordance with this subtitle, the availability of qualified health insurance coverage to uninsurable individuals.

(3) FUNDING.—Any safety net shall be funded by an assessment against health insurers, health service organizations, and health maintenance organizations on a pro rata basis of premiums collected in the State in which the safety net operates. The costs of the assessment may be added by a health insurer, health service organization, or health maintenance organization to the costs of its health insurance or health coverage provided in the State.

(4) GUARANTEED RENEWABLE.—Coverage under a safety net shall be guaranteed renewable except for nonpayment of premiums, material misrepresentation, fraud, medicare eligibility under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), loss of dependent status, or eligibility for other health insurance coverage.

(5) COMPLIANCE WITH NAIC MODEL ACT.—In the case of a State that has not established, as of the date of the enactment of this Act, a high risk pool or other comprehensive health insurance program that assures the availability of qualified health insurance coverage to all eligible individuals residing in the State, a safety net shall be established in accordance with the requirements of the ''Model Health Plan For Uninsurable Individuals Act'' (or the successor model Act), as adopted by the National Association of Insurance Commissioners and as in effect on the date of the safety net's establishment.

(b) DEADLINE.—Safety nets required under subsection (a) shall be established not later than January 1, 2002.

(c) WAIVER.—This subtitle shall not apply in the case of insurers and organizations operating in a State if the State has established a similar comprehensive health insurance program that assures the availability of qualified health insurance coverage to all eligible individuals residing in the State.

(d) RECOMMENDATION FOR COMPLIANCE REQUIREMENT.—Not later than January 1, 2003, the Secretary of Health and Human Services shall submit to Congress a recommendation on appropriate sanctions for States that fail to meet the requirement of subsection (a).

SEC. ___12. UNINSURABLE INDIVIDUALS ELIGIBLE FOR COVERAGE.

(a) UNINSURABLE AND ELIGIBLE INDIVIDUAL DEFINED.—In this subtitle:

(1) UNINSURABLE INDIVIDUAL.—The term ''uninsurable individual'' means, with respect to a State, an eligible individual who presents proof of uninsurability by a private insurer in accordance with subsection (b) or proof of a condition previously recognized as uninsurable by the State.

(2) ELIGIBLE INDIVIDUAL.—

(A) IN GENERAL.—The term ''eligible individual'' means, with respect to a State, a citizen or national of the United States (or an alien lawfully admitted for permanent residence) who is a resident of the State for at least 90 days and includes any dependent (as defined for purposes of the Internal Revenue Code of 1986) of such a citizen, national, or alien who also is such a resident.

(B) EXCEPTION.—An individual is not an ''eligible individual'' if the individual—

(i) is covered by or eligible for benefits under a State medicaid plan approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.),

(ii) has voluntarily terminated safety net coverage within the past 6 months,

(iii) has received the maximum benefit payable under the safety net,

(iv) is an inmate in a public institution, or

(v) is eligible for other public or private health care programs (including programs that pay for directly, or reimburse, otherwise eligible individuals with premiums charged for safety net coverage).

(b) PROOF OF UNINSURABILITY.—

(1) IN GENERAL.—The proof of uninsurability for an individual shall be in the form of—

(A) a notice of rejection or refusal to issue substantially similar health insurance for health reasons by one insurer; or

(B) a notice of refusal by an insurer to issue substantially similar health insurance except at a rate in excess of the rate applicable to the individual under the safety net plan.

For purposes of this paragraph, the term ''health insurance'' does not include insurance consisting only of stoploss, excess of loss, or reinsurance coverage.

(2) EXCEPTION FOR INDIVIDUALS WITH UNINSURABLE CONDITIONS.—The State shall promulgate a list of medical or health conditions for which an individual shall be eligible for safety net plan coverage without applying for health insurance or establishing proof of uninsurability under paragraph (1). Individuals who can demonstrate the existence or history of any medical or health conditions on such list shall not be required to provide the proof described in paragraph (1). The list shall be effective on the first day of the operation of the safety net plan and may be amended from time to time as may be appropriate.

SEC. ___13. QUALIFIED HEALTH INSURANCE COVERAGE UNDER SAFETY NET.

In this subtitle, the term ''qualified health insurance coverage'' means, with respect to a State, health insurance coverage that provides benefits typical of major medical insurance available in the individual health insurance market in such State.

SEC. ___14. FUNDING OF SAFETY NET.

(a) LIMITATIONS ON PREMIUMS.—

(1) IN GENERAL.—The premium established under a safety net may not exceed 125 percent of the applicable standard risk rate, except as provided in paragraph (2).

(2) SURCHARGE FOR AVOIDABLE HEALTH RISKS.—A safety net may impose a surcharge on premiums for individuals with avoidable high risks, such as smoking.

(b) ADDITIONAL FUNDING.—A safety net shall provide for additional funding through an assessment on all health insurers, health service organizations, and health maintenance organizations in the State through a nonprofit association consisting of all such insurers and organizations doing business in the State on an equitable and pro rata basis consistent with section ___11.

SEC. ___15. ADMINISTRATION.

A safety net in a State shall be administered through a contract with 1 or more insurers or third party administrators operating in the State.

SEC. ___16. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to reimburse States for their costs in administering this subtitle.

SA 816. Mr. BOND proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

On page 179, after line 14, add the following:

SEC. ___. ANNUAL REVIEW.

(a) IN GENERAL.—Not later than 24 months after the general effective date referred to in section 401(a)(1), and annually thereafter for each of the succeeding 4 calendar years (or until a repeal is effective under subsection (b)), the Secretary of Health and Human Services shall request that the Institute of Medicine of the National Academy of Sciences prepare and submit to the appropriate committees of Congress a report concerning the impact of this Act, and the amendments made by this Act, on the number of individuals in the United States with health insurance coverage.

(b) LIMITATION WITH RESPECT TO CERTAIN PLANS.—If the Secretary, in any report submitted under subsection (a), determines that more than 1,000,000 individuals in the United States have lost their health insurance coverage as a result of the enactment of this Act, as compared to the number of individuals with health insurance coverage in the 12-month period preceding the date of enactment of this Act, section 302 of this Act shall be repealed effective on the date that is 12 month after the date on which the report is submitted, and the submission of any further reports under subsection (a) shall not be required.

(c) FUNDING.—From funds appropriated to the Department of Health and Human Services for fiscal years 2003 and 2004, the Secretary of Health and Human Services shall provide for such funding as the Secretary determines necessary for the conduct of the study of the National Academy of Sciences under this section.

SA 817. Mr. ALLARD (for himself, Mr. BOND, Mr. SANTORUM, and Mr. NICKLES) proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

On page 148, between lines 23 and 24, insert the following:

''(D) EXCLUSION OF SMALL EMPLOYERS.—

''(i) IN GENERAL.—Notwithstanding any other provision of this paragraph, in addition to excluding certain physicians, other health care professionals, and certain hospitals from liability under paragraph (1), paragraph (1)(A) does not create any liability on the part of a small employer (or on the part of an employee of such an employer acting within the scope of employment).

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

''(I) that, during the calendar year preceding the calendar year for which a determination under this subparagraph is being made, employed an average of at least 2 but not more than 50 employees on business days; and

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

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

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

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

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

''(II) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the

preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

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

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

''(D) EXCLUSION OF SMALL EMPLOYERS.—

''(i) IN GENERAL.—Notwithstanding any other provision of this paragraph, in addition to excluding certain physicians, other health care professionals, and certain hospitals from liability under paragraph (1), paragraph (1)(A) does not create any liability on the part of a small employer (or on the part of an employee of such an employer acting within the scope of employment).

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

''(I) that, during the calendar year preceding the calendar year for which a determination under this subparagraph is being made, employed an average of at least 2 but not more than 50 employees on business days; and

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

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

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

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

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

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

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

SA 818. Mr. KYL (for himself, Mr. NELSON of Nebraska, and Mr. NICKLES) proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

Beginning on page 35, strike line 20 and all that follows through line 8 on page 36, and insert the following:

(C) NO COVERAGE FOR EXCLUDED BENEFITS.—Nothing in this subsection shall be construed to permit an independent medical reviewer to require that a group health plan, or health insurance issuer offering health insurance coverage in connection with a group health plan, provide coverage for items or services that are specifically excluded or expressly limited under the plan or coverage and that are disclosed under subparagraphs (C) and (D) of section 121(b)(1) and that are not covered regardless of any determination relating to medical necessity and appropriateness, experimental or investigational nature of the treatment, or an evaluation of the medical facts in the case involved.

On page 37, line 16, strike ''and''.

On page 37, line 25, strike the period and insert ''; and''.

On page 37, after line 25, add the following:

''(iii) notwithstanding clause (ii), adhere to the definition used by the plan or issuer of 'medically necessary and appropriate', or 'experimental or investigational' if such definition is the same as either—

''(I) in the case of a plan or coverage that is offered in a State that requires the plan or coverage to use a definition of such term for purposes of health insurance coverage offered to participants, beneficiaries and enrollees in such State, the definition of such term that is required by that State;

''(II) a definition that determines whether the provision of services, drugs, supplies, or equipment—

''(aa) is appropriate to prevent, diagnose, or treat the condition, illness, or injury;

''(bb) is consistent with standards of good medical practice in the United States;

''(cc) is not primarily for the personal comfort or convenience of the patient, the family, or the provider;

''(dd) is not part of or associated with scholastic education or the vocational training of the patient; and

''(ee) in the case of inpatient care, cannot be provided safely on an outpatient basis;

except that this subclause shall not apply beginning on the date that is 1 year after the date on which a definition is promulgated based on a report that is published under subsection (i)(6)(B); or

''(III) the definition of such term that is developed through a negotiated rulemaking process pursuant to subsection (i).

On page 66, between lines 10 and 11, insert the following:

''(i) ESTABLISHMENT OF NEGOTIATED RULEMAKING SAFE HARBOR.—

''(1) IN GENERAL.—The Secretary shall establish, on an expedited basis and using a negotiated rulemaking process under subchapter III of chapter 5 of title 5, United States Code, standards described in subsection (d)(3)(E)(iii)(IV) (relating to the definition of 'medically necessary and appropriate' or 'experimental or investigational') that group health plans and health insurance issuers offering health insurance coverage in connection with group health plans may use when making a determination with respect to a claim for benefits.

''(2) PUBLICATION OF NOTICE.—In carrying out the rulemaking process under paragraph (1), the Secretary shall, not later than November 30, 2002, publish a notice of the establishment of a negotiated rulemaking committee, as provided for under section 564(a) of title 5, United States Code, to develop the standards described in paragraph (1). Such notice shall include a solicitation for public comment on the committee and description of—

''(A) the scope of the committee;

''(B) the interests that may be impacted by the standards;

''(C) the proposed membership of the committee;

''(D) the proposed meeting schedule of the committee; and

''(E) the procedure under which an individual may apply for membership on the committee.

''(3) TARGET DATE FOR PUBLICATION OF RULE.—As part of the notice described in paragraph (2), and for purposes of this subsection, the term 'target date for publication' (as referred to in section 564(a)(5) of title 5, United States Code, means May 15, 2003.

''(4) ABBREVIATED PERIOD FOR SUBMISSION OF COMMENTS.—Notwithstanding section 564(c) of title 5, United States Code, the Secretary shall provide for a period, beginning on the date on which the notice is published under paragraph (2) and ending on December 14, 2002, for the submission of public comments on the committee under this subsection.

''(5) APPOINTMENT OF NEGOTIATED RULEMAKING COMMITTEE AND FACILITATOR.—The Secretary shall carry out the following:

''(A) APPOINTMENT OF COMMITTEE.—Not later than January 10, 2003, appoint the members of the negotiated rulemaking committee under this subsection.

''(B) FACILITATOR.—Not later than January 21, 2002, provide for the nomination of a facilitator under section 566(c) of title 5, United States Code, to carry out the activities described in subsection (d) of such section.

''(C) MEMBERSHIP.—Ensure that the membership of the negotiated rulemaking committee includes at least one individual representing—

''(i) health care consumers;

''(ii) small employers;

''(iii) large employers;

''(iv) physicians;

''(v) hospitals;

''(vi) other health care providers;

''(vii) health insurance issuers;

''(viii) State insurance regulators;

''(ix) health maintenance organizations;

''(x) third-party administrators;

''(xi) the medicare program under title XVIII of the Social Security Act;

''(xii) the medicaid program under title XIX of the Social Security Act;

''(xiii) the Federal Employees Health Benefits Program under chapter 89 of title 5, United States Code;

''(xiv) the Department of Defense;

''(xv) the Department of Veterans' Affairs; and

''(xvi) the Agency for Healthcare Research and Quality.

''(6) FINAL COMMITTEE REPORT.—

''(A) IN GENERAL.—Not later than 1 year after the general effective date referred to in section 401, the committee shall submit to the Secretary a report containing a proposed rule.

''(B) PUBLICATION OF RULE.—If the Secretary receives a report under subparagraph (A), the Secretary shall provide for the publication in the Federal Register, by not later than the date that is 30 days after the date on which such report is received, of the proposed rule.

''(7) FAILURE TO REPORT.—If the committee fails to submit a report as provided for in paragraph (6)(A), the Secretary may promulgate a rule to establish the standards described in subsection (d)(3)(E)(iii)(IV) (relating to the definition of 'medically necessary and appropriate' or 'experimental or investigational') that group health plans and health insurance issuers offering health insurance coverage in connection with group health plans may use when making a determination with respect to a claim for benefits.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on June 26, 2001, to conduct a hearing on

the nomination of Donald E. Powell, of Texas, to be Chairman of the Board of Directors of the Federal Deposit Insurance Corporation.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, June 26, 2001, at 9:30 am on the nominations of Sam Bodman (DOC), Allan Rutter (FRA), Kirk Van Tine (DOT), and Ellen Engleman (DOT).

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, June 26 at 9:30 a.m. to conduct a hearing. The committee will receive testimony on proposed amendments to the Price-Anderson Act (Subtitle A of Title IV of S. 388; Subtitle A of Title I of S. 472; Title IX of S. 597) and nuclear energy production and efficiency incentives (Subtitle C of Title IV of S. 388; and Section 124 of S. 472).

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

COMMITTEE ON FINANCE

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Tuesday, June 26, 2001 to hear testimony on the U.S. Vietnam Bilateral Trade Agreement.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, June 26, 2001 at 2:30 p.m. to hold a nomination hearing as follows:

NOMINEES

Panel 1: The Honorable Margaret DeBardeleben Tutwiler, of Alabama, to be Ambassador to the Kingdom of Morocco.

The Honorable C. David Welch, of Virginia, to be Ambassador to the Arab Republic of Egypt.

The Honorable Daniel C. Kurtzer, of Maryland, to be Ambassador to Israel.

Panel 2: The Honorable Robert D. Blackwill, of Kansas, to be Ambassador to India.

The Honorable Wendy Jean Chamberlin, of Virginia, to be Ambassador to the Islamic Republic of Pakistan.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on June 26, 2001, at 10:30 a.m. in room 485 Russell Senate Building to conduct a Hearing to receive testimony on the goals and priorities of the Great Plains Tribes for the 107th session of the Congress.

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

SUBCOMMITTEE ON THE ADMINISTRATIVE OVERSIGHT AND THE COURTS

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on the Judiciary Subcommittee on the Constitution be authorized to meet to conduct a hearing on ''Should Ideology Matter? Judicial Nominations 2001'' on Tuesday, June 26, 2001 at 10:00 a.m. in SD226. No witness list is available yet.

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

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs be authorized to meet on Tuesday, June 26, 2001, at 10:00 a.m. for a hearing entitled ''Diabetes: Is Sufficient Funding Being Allocated To Fight This Disease?''

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

SUBCOMMITTEE ON STRATEGIC

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Subcommittee on Strategic of the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, June 26, 2001, at 10:00 a.m., in open session to receive testimony on the Department of Energy's fiscal year 2002 budget request for the Office of Environmental Management, in review of the Defense authorization request for fiscal year 2002 and the future years defense program.

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

PRIVILEGE OF THE FLOOR

Mrs. CLINTON. Mr. President, I ask unanimous consent that Dr. Mary Catherine Beach, a legislative fellow in my office, be granted the privilege of the floor for the duration of the debate on S. 1052, the McCain-Edwards-Kennedy Patients' Bill of Rights.

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

ORDERS FOR WEDNESDAY, JUNE 27, 2001

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 9:30 a.m. on Wednesday, June 27. Further, I ask consent that on Wednesday, immediately following the prayer and the pledge, the Journal of Proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of the Patients' Bill of Rights.

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

PROGRAM

Mr. REID. Mr. President, the Senate will convene at 9:30 a.m. and resume consideration of the Patients' Bill of Rights. There is 1 hour of debate on the Allard amendment regarding small employers, followed by a vote in relation to the amendment at approximately 10:30 a.m.

Following the Allard vote, there will be 1 hour of debate on the Nelson-Kyl amendment regarding contracts, followed by a vote in relation to the amendment. Following disposition of the Nelson-Kyl amendment, we expect Senator EDWARDS or his designee to be recognized to offer an amendment regarding medical necessity.

We are going to conclude consideration of Patients' Bill of Rights, I have been told on more than one occasion today by the majority leader, this week. We will also complete the supplemental appropriations bill and the good work that has been done preliminarily by Senators BYRD and STEVENS. This is something we will be able to do without requiring a lot of time. Then we wish to complete the organizational resolution that has been pending for several weeks.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. REID. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate at 8:22 p.m., adjourned until Wednesday, June 27, 2001, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate June 26, 2001:

DEPARTMENT OF TRANSPORTATION

JEFFREY WILLIAM RUNGE, OF NORTH CAROLINA, TO BE ADMINISTRATOR OF THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, VICE SUE BAILEY.

DEPARTMENT OF COMMERCE

NANCY VICTORY, OF VIRGINIA, TO BE ASSISTANT SECRETARY OF COMMERCE FOR COMMUNICATIONS AND INFORMATION, VICE GREGORY ROHDE, RESIGNED.

DEPARTMENT OF THE TREASURY

ROBERT C. BONNER, OF CALIFORNIA, TO BE COMMISSIONER OF CUSTOMS, VICE RAYMOND W. KELLY, RESIGNED.

ROSARIO MARIN, OF CALIFORNIA, TO BE TREASURER OF THE UNITED STATES, VICE MARY ELLEN WITHROW, RESIGNED.

DEPARTMENT OF STATE

ROGER FRANCISCO NORIEGA, OF KANSAS, TO BE PERMANENT REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE ORGANIZATION OF AMERICAN STATES, WITH THE RANK OF AMBASSADOR, VICE LUIS J. LAUREDO.

JEANNE L. PHILLIPS, OF TEXAS, TO BE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, WITH THE RANK OF AMBASSADOR, VICE AMY L. BONDURANT.

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. EARL B. HAILSTON, 0000