

Immigrants give America an entrepreneurial edge. In 1995 12 percent of the "Inc." 500—a compilation of the fastest growing corporations in America—were started by immigrants. They also give us an edge in innovation. Immigrants make up nearly a third of all Ph.D.'s involved with research and development in science and engineering—the basis for innovation and economic growth.

Immigrants also fill needed roles, particularly in the engineering field. The CATO Institute reports that over 40 percent of our engineering Ph.D.'s are foreign-born, yet the unemployment rate in that field is only 1.7 percent. Clearly there is a gap in engineering in America that is being filled by immigrants.

I am pleased, then, Mr. President, that we did not close the door on immigrants seeking to come to this country to make a contribution and seek a better life. And I hope we will continue to keep the door open, so that we may live up to our heritage as a nation of immigrants, and so that we may continue to prosper.

Finally, Mr. President, abusive class action lawsuits have caused significant harm to high technology companies, as they have to much of the American economy. Some suits, alleging malfeasance on the part of company directors, have been brought within hours after a drop in a company's stock price.

Not long ago, this body successfully overrode the President's veto of legislation to reform securities litigation in this country. That bill will provide that discovery be stayed whenever a motion to dismiss is pending in a securities action. Discovery costs have been estimated to account for 80 percent of the costs of defending a lawsuit in this kind of action, and that is too much, particularly when the suit may be dismissed as without merit.

The bill also would create a modified system of proportionate liability, such that each codefendant in a securities action is generally responsible for only the share of damages that defendant caused. This should prevent companies from being joined to a lawsuit solely because of their deep pockets.

In addition, under this legislation, plaintiffs now must state facts with particularity, and state facts that give rise to a strong inference of intent on the part of the defendant. This should end the too-common practice of filing cases on the basis of few or no hard, relevant facts.

Finally, the bill contains a safe harbor provision protecting forward-looking predictive statements from liability.

Mr. President, we must go further, particularly in the area of legal reform, to protect our hi-tech industry from unwarranted interference. S. 1260, which I have cosponsored, would limit the conduct of securities class actions under State law. But even this is not enough.

Hi-tech and other companies are hit with all sorts of abusive lawsuits, not

just securities litigation. That is why I am working for broader litigation reforms. I offered an amendment last Congress that would have expanded the joint and several liability provision of the product liability bill to cover all civil lawsuits. I also have introduced my own bill to protect small businesses from frivolous lawsuits. And I am working with Senator McCONNELL to provide needed reforms to our civil justice system. It is my belief that we can make substantial progress in this area in the near future.

Finally, Mr. President, I would just like to note that, while antitrust laws must apply to new industries as they have to the old, we should not allow antitrust laws to become an excuse for excessive regulation. Hi-tech is a dynamic sphere of economic activity. Over-zealous Government regulation from Washington, by whatever means, will only hurt consumers, producers and workers. I think most hi-tech CEOs would agree that producers and consumers in the free market economy—not bureaucrats and politicians in Washington—should determine winners and losers in the high tech industry.

Frivolous lawsuits, unnecessary regulation and onerous taxation. Mr. President, all these actions threaten our high technology, information age industry. It is my hope that we can work together to lessen the chance that they will be imposed on an industry that is central to our economic well-being.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona [Mr. KYL], is recognized.

UNANIMOUS-CONSENT AGREEMENT

Mr. KYL. Mr. President, I realize that the debate on the Labor-HHS conference report is supposed to begin at 1 o'clock.

I ask unanimous consent that Senator FAIRCLOTH and I each have 10 minutes as in morning business, subject to only Senator SPECTER changing that if he needs to during the course of our presentations. And, Mr. President, in addition, I ask that the Senator from Minnesota, Mr. GRAMS, have 5 minutes following Senator FAIRCLOTH.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

MEDICARE BENEFICIARY FREEDOM TO CONTRACT ACT

Mr. KYL. Mr. President, I wanted to give a report to my colleagues on the status of the Medicare Beneficiary Freedom To Contract Act, the so-called Medicare private contracting issue, which has been before both the Senate and House for several weeks now following the adoption of the Balanced Budget Act, which contained in it a provision which makes it much more difficult for physicians to serve pa-

tients who want to contract outside of Medicare.

Let me briefly tell you what the problem is, the legislative status, and the resolution—at least as of now—that we have been able to accomplish.

The issue is whether or not physicians can serve both Medicare patients and people under private contracts who are 65 years of age. Once a person turns 65, of course, they are eligible for Medicare, and most of the services they can obtain are paid for by Medicare. But occasionally, either there is a service that is not covered by Medicare, or even sometimes services that are covered by Medicare that a patient would prefer to obtain from a physician outside of the Medicare Program.

For example, a constituent of mine had a condition that required the aid of a specialist in her small community. There were none available, except one person who was no longer taking Medicare patients. By the way, Mr. President, this is a common situation, because Medicare, especially for specialists, does not reimburse even up to their level of costs. So while many physicians don't want to dump their existing Medicare patient load and they want to continue to serve those patients they have been serving for a long time, they are not anxious to take on new Medicare patients. In this case, she went to the physician. He said he would be happy to take care of her, but he wasn't taking anymore Medicare patients. Her response was, "Well, I will just pay you directly. You bill me, and I will pay you. That way Medicare will save some money, and I will get the treatment I need, and you won't have to take new Medicare patients." He found that the Federal Government would have deemed that to be a violation of law and, therefore, he would have been precluded from providing the services.

It was in response to that kind of a problem that we created a piece of legislation that would allow patients who are 65 years of age to have the right to go to the physician of their choice and to be treated outside of the Medicare Program, if that is their choice. We passed that legislation here in the Senate. It became part of the Balanced Budget Act. And, before the act was finalized, the President indicated his desire to veto that legislation if that provision were retained. As a result, some changes were made, the most important of which was to add a provision to the act which makes it virtually impossible for patients to actually have the benefit of that freedom of choice. The provision was that a physician providing such services had to opt out of all Medicare treatment 2 years in advance.

In other words, patients still had the right to go to a physician. But any physician that provided those services could not provide any Medicare services for a period of 2 years. That meant that it was virtually impossible then for physicians to serve these particular patients.