access to risk plans. At the same time, some 60% of beneficiaries had a choice of plans, and one-third had five or more available to them.

Patterns of enrollment differ across urban and rural locales, as well as across different regions in the nation. Enrollment in central urban areas was about 24% in June 1997, about twice the level in outlying urban areas. Urban areas with the greatest share of national enrollment growth tend to be those where Medicare payments are high. Enrollment is generally higher in western states and a few specific southern and eastern states. In fact, five states account for over two-thirds of all enrollees. (For statistics regarding access and enrollment rates, see United States House of Representatives Committee on Ways and Means, 1998 Green Book: Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means. Washington, D.C.: U.S. Government Printing Office, May 19, 1998. Section 2: Medicare.)

No actions taken to date have resolved the underlying arbitrary and flawed AAPCC formula, which is responsible for creating all the disparities in reimbursements to plans and benefits to beneficiaries. The old AAPCC formula, and the new configurations which rely upon the AAPCC, were not based on actuarially sound data. Given the discrimination the current system creates across the country and between beneficiaries enrolled in a national, uniform program, there is no reasonable basis for this formula.

B. THE BALANCED BUDGET ACT

The BBA was Congress' first legislative attempt to comprehensively address the issue; however, the BBA failed to ameliorate the inherent deficiencies and irrationality of the reimbursement system. At present, participating risk plans in Minnesota do not have any incentives to offer non-covered benefits to their beneficiaries. This is because the BBA did nothing to substantially reform the ACR mechanism, nor did it adequately address the disparities in capitation payment rates.

The BBA sought to lessen payment disaparity by de-linking AAPCC updates from local FFS spending. The BBA established a new mechanism for calculating Medicare's monthly payments to HMOs and other managed care and capitated plan providers. A county's Medicare+Choice payment was the higher of three different rates—a floor payment of $367, a minimum annual increase of 2 percent, or a 50/50 blend of local and national rates that was to be fully phased-in by FY 2003.

Initially, many rural counties in Minnesota received significant reimbursement increases under the new floor payments. For example, Watonwan County saw AAPCC reimbursements increase from $251.05 to $367.00 (a 32 percent increase) in 1998, but this is still a far cry from the nearly $800 rate paid to other counties in other states. Unfortunately, these payments were essentially frozen at these new floor levels, as the local/national blend was difficult to implement because of a budget-neutrality provision. (See Appendix B.)

In both 1998 and 1999, none of Minnesota's counties received a local/national blend rate. This outcome resulted from the budget neutrality provision of the BBA, which requires that Medicare+Choice payments not exceed payments that would have been made if payments were based solely on local rates. According to the House Committee on Ways and Means, a budget neutrality adjustment is ''applied as necessary to the blended rates to ensure that the aggregate of payments for all payment areas equals that which would have been made if the payment were based on 100 percent of the areas-specific capitation rates for each payment area. In no case may rates be reduced below the floor or minimum increase amounts for the particular county. In some years, it may not be possible to achieve budget neutrality because no county rate may be reduced below its floor minimum increase. The law makes no provision for achieving budget neutrality after all county rates are at the floor or minimum increase.'' (see 1998 Green Book, supra.) In other words, if awarding each county the maximum rate (among its floor, blend, or minimum update) results in total payments that exceed the budget neutral target, counties which would otherwise receive the blend rate have their rates reduced to meet the target. The net result in 1998 was that Minnesota's urban counties (e.g. Hennepin and Ramsey Counties) received only a 2% increase and fell even further behind the highest reimbursed counties in other states. (see Appendix A.)

In 1999, the budget neutrality provision reduced Medicare+Choice rates for aged beneficiaries in 1,293 counties. These counties would have received blended-rate amounts if sufficient monies were available to fund all counties at the maximum of the floor, blend, or minimum update. Consequently, as a result of the budget neutrality provision, the gap between high and middle level AAPCC counties, contrary to Congressional intent, actually grew in the first year of BBA. Two years after enactment of the BBA, counties in Minnesota were still 21 percent below the national average reimbursement level for Medicare+Choice.

Essentially, these variations in reimbursements have created a two-tiered system of health care delivery, which is the foundation of the plaintiffs' lawsuit against the federal government. As the lawsuit rightly contends, these payment imbalances have created a geographical class system of Medicare benefits where beneficiaries in high cost areas receive extra benefits at no additional cost, while beneficiaries in low cost areas are denied these benefits.

IV. CONCLUSION

For the forgoing reasons, the undersigned *amici curiae* respectfully request this Court to deny Defendants' Motion to Dismiss.

HONORING FATHER CARL VOGEL OF TEXAS

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 29, 2000

Mr. HALL of Texas. Mr. Speaker, today I recognize the 50 years of ministry that Father Carl Vogel has given to the Catholic community in Texas. Since 1984, he has been with the St. Michael Parish in McKinney, which is part of the Fourth Congressional District of Texas. Father Vogel celebrated his 50th anniversary of ordination with a Mass on May 28 at St. Michael, followed by a reception attended by his devoted parishioners and many friends.

A list of credentials and milestones of Father Vogel's career would not begin to describe the many ways in which this man has served his parish—embracing not only the trials and troubles of his parishioners, but their joys as well. He is the ever-constant protector and confidant that people seek out in their pastor. He is faithful to the teachings of the church and faithful to his parish, and his service has been imbued with a characteristic sense of humor that has endeared him to all those who know him.

In addition to the May 28 celebration at St. Michael, other celebrations were planned at the Holy Family Mission in Van Alstyne, Texas, where Father Vogel is also pastor, and at Christ the King Church in Dallas, where he celebrated his solemn Mass in 1950.

Father Vogel grew up in the Oak Cliff section of Dallas and attended Blessed Sacrament Church and Our Lady of Good Counsel School. After his graduation from St. Joseph High School, he enrolled in college to study journalism. The calling to the priesthood prevailed, however, and he followed that call at St. John's Seminary in Little Rock, Arkansas. Father Vogel served as a military chaplain for nearly three decades and was a chaplain for the Armed Forces during the Cuban Missile Crisis of the early 1960s. Prior to his assignment at St. Michael, Father Vogel served at Our Lady of Victory in Paris, Good Shepherd in Garland, St. Patrick in Denison, St. Cecilia in Dallas and St. Patrick and St. Rita parishes in Fort Worth.

Mr. Speaker, it is an honor for me to pay tribute to this beloved priest from the Fourth District of Texas. Father Carl Vogel has devoted his life to the ministry. He has helped countless souls in his care and is loved and respected by so many who have known him and whose lives he has blessed. I know and love Father Vogel. I have changed schedules many times just to get to appear with him at public ceremonies. His prayers sustain me and all those who hear him. His devotion to his calling for 50 years warrants our recognition and appreciation today, so as we adjourn, let us do so in honor of Father Carl Vogel.

NARCOTIC DRUGS

HON. MARK E. SOUDER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 29, 2000

Mr. SOUDER. Mr. Speaker, I rise on behalf of the countless mothers, fathers, families, and individuals whose lives have been devastated by illegal drugs to introduce legislation to federally nullify movements in the states to legalize the use of narcotic drugs illegal under federal law.

It is undisputed that narcotic drugs devastate our families and rot our communities literally to the core through addiction and crime. Earlier this week, we passed the Commerce/Justice/State Appropriations bill that provided literally hundreds of millions of our tax dollars to fight drugs and drug-related crime, and we are finalizing action on $1.3 billion in assistance to our allies in Colombia, where agents of the Colombian National Police are dying in numbers to keep them off of our streets in America.

Directly defying our efforts as a Congress and a nation, a small group of well-funded activists have engaged in deceptive, back door, efforts that pretend to legalize drugs under state law that are banned under federal law. These activists hide behind the myth of so-called ''medical'' use of marijuana and other drugs, despite the facts that there is no scientific proof that smoked marijuana provides any real medical relief, and that the active ingredient in marijuana is available in pill form.

Increasingly, however, they have abandoned even this pretense, and made clear that their goal is the legalization or decriminalization of narcotic drugs.

One activist called it the ''leaky bucket strategy . . . legalize it in one area, and sooner or later it will trickle down into the others.'' The bucket is now leaking faster.

The Governor of Hawaii just signed into law state legislation that purports to allow the ''medical'' use of marijuana, even though it's still illegal under federal law. Five states have enacted laws by ballot initiative that purport to allow so-called ''medical'' use of marijuana under state laws: Alaska, California, Maine, Oregon and Washington. In furtherance of that strategy, pro-drug activists are now attempting to pass ballot initiatives for the November elections in six states to virtually decriminalize marijuana by removing criminal penalties for its use in Alaska, Arizona, California, Colorado, Massachusetts, and Michigan.

These initiatives have already given us such Alice-in-Wonderland moments as the ''nation's first bed and breakfast inn catering to medical marijuana users'' in Santa Cruz, California. This ''establishment'' was featured in People magazine with a smiling couple holding marijuana plants in front of their home, which is said to contain cannabis-themed tiles on the sidewalk, and hemp curtains and towels. That really sounds like a ''medical'' facility to me. We've also seen the bizarre decision by the Oakland City Council to declare a ''public health emergency'' after a court closed the city's medical marijuana club, and the issuance of photo ID cards supposedly allowing marijuana use by the Arcata, California police chief.

But this is all an illusion—states can't permit marijuana use, because it's illegal under federal law. The legalization initiatives mislead the public into breaking federal law and directly counter congressional policies against drug use and the provisions of the federal Controlled Substances Act. Today, I am introducing legislation to stop this charade once and for all, with the support of my colleagues on the Speaker's drug task force and others, including Task Force Co-Chair MCCOLLUM, Chairman MICA of the Drug Policy Subcommittee, Chairman GILMAN, Mr. SESSIONS, Mr. NORWOOD, Mr. MYRICK, Mr. FOLEY and Mr. BAKER.

Federal law is ordinarily assumed to preempt contrary state laws. However, the Federal Controlled Substances Act does not contain an express preemption clause, and currently has language stating that the intent of Congress is not to occupy the entire field of regulation of narcotic drugs. In light of the state initiatives, federal courts could potentially interpret the language of state efforts to regulate narcotics as legally harmonious and proper. In fact, one federal district judge has already argued in non-binding language that Congress intended federal law to regulate drug trafficking, and not ''medical'' marijuana use.

My bill will remove any potential loophole or ambiguity by clearly declaring that it is the intent of Congress for federal law to supersede any and all laws of states and local governments purporting to authorize the use, growing, manufacture, distribution or importation of any controlled substance which differs from the provisions of the Controlled Substances Act and the Controlled Substances Import and Export Act. It would also expressly declare such state and local enactments as null and void. If enacted, the bill would decisively prohibit federal and state judges from giving any effect to drug legalization initiatives and legislation, and send an equally clear message that Congress will not tolerate backdoor efforts to legalize narcotic drugs.

Mr. Speaker, this bill is not my bill—it belongs to our mothers, fathers, families and our communities. It has strong support from numerous community groups and coalitions, narcotics activists, and tireless anti-drug advocates, who have worked closely with my office in drafting this bill. I would particularly like to acknowledge and thank Joyce Nalepka of America Cares, who first raised this important issue with me. I look forward to working with the anti-drug community to pass this legislation, and I urge my colleagues to join me in supporting and passing it.

[From People Magazine, June 12, 2000]

JOINT VENTURE—WHEN POT'S PRESCRIBED, THE HIGH WAY LEADS TO THE COMPASSION FLOWER INN

At the Compassion Flower Inn in Santa Cruz, Calif., there are smokers—and there are smokers. Cigarette smokers are banished to the front porch. Smokers, on the other hand, may feel they've died and gone to pot. Cannabisthemed tiles adorn the sidewalk outside. Curtains, linens and towels are made of hemp. And . . . say, what is that funny smell, anyway?

The five-bedroom bed-and-breakfast, just a stoner's throw from the beach, exists as a safe—and perfectly legal—haven for people who smoke marijuana for medical reasons. ''Motel 6 guests probably smoke it quietly in their rooms,'' says Andrea Tischler, 57, who with her partner, Maria Mallek-Tischler, 46, opened the inn in a restored Victorian in April. ''This is more out of the closet.''

Guests who show up hoping to be provided with marijuana go away disappointed; the Compassion Flower is strictly BYOP. And, as required by California law, a doctor's note is also necessary. Tischler, who grew up in Chicago, and German-born Mallek-Tischler, a couple since 1979, have been pot-legalization activists since the 1980s in San Francisco. ''We had a lot of friends with AIDS,'' says Tischler. ''They were taking AZT, and marijuana seemed to bolster their appetite.''

Out in the sunshine-soaked ''toking area,'' a new arrival, Scott Byer, 53, of Clearlake, Calif., who smokes to ease spinal pain, has taken out a small porcelain pipe and is filling it. He doesn't even have his room key yet.

A GREAT AMERICAN POINT OF LIGHT, EILEEN D. COOKE

HON. MAJOR R. OWENS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 29, 2000

Mr. OWENS. Mr. Speaker, Eileen D. Cooke was first and foremost a librarian, a member of the profession that knows where to find the information about any phenomenon known to human kind. She started her career as a bookmobile librarian for the Minneapolis Public Library. She concluded her career as a well-known Washington lobbyist. Mr. Speaker, I rise to mourn the loss of Eileen Cooke and to salute her as a great American Point of Light.

As a result of Eileen Cooke's efforts the library profession moved into the mainstream of the political process. She demanded that the federal government recognize and respect libraries as universal institutions in our democratic society which deserve greater and more consistent support. Her years as Director of the ALA Washington Office were marked by increases in federal funds for libraries, new initiatives in legislation, and opportunities for library participation in a wide range of federal assistance programs. As a Congressman who is also a professional librarian I became a partner with Ms. Cooke in the drive to achieve priority status for libraries in the overall effort to accomplish a better educated America.

With indefatigable optimism Eileen Cooke worked with Members of Congress, staff assistants, educational and cultural organizations, and all others who supported education and libraries. She brought to ALA and library services greater visibility and understanding. Her exceptional leadership skills enabled her to develop and maintain a small but dedicated, energetic and productive staff. She left a cadre of experienced and skillful followers as a potent and enduring legacy.

After joining the ALA Washington Office, she lectured at several of the library schools and spoke at many of the annual conferences of the state library associations. She served on the boards of several Washington-based organizations; was the first woman president of the Joint Council on Educational Telecommunications; served on the Board of Visitors of the School of Library and Information Service Satellite Consortium; and on the Advisory Council of the Home and School Institute, Inc.

During her tenure in Washington, Eileen Cooke worked on every major piece of library legislation and helped prepare witnesses to testify before Congress. This includes, among other issues, the Library Services and Construction Act, the Higher Education Act, the Elementary and Secondary Education Act, the Medical Library Assistance Act, Copyright Revision Act, the National Commission on Libraries and Information Science, both bills calling for a White House Conference on Library and Information Services, as well as the various annual appropriations bills to fund these programs.

On the occasion of her retirement, former ALA President and Director of the District of Columbia Public Library, Hardy Franklin, described Eileen Cooke as a ''51st State Senator on Capitol Hill.'' She was a fighter capable of hard-nose analysis but always focused and deliberative. She was a coalition builder who won both fear and admiration from her adversaries. Above all she had vision and could see far ahead of the government decision-makers. She understood the nature of the coming ''Information Superhighway'' and could predict the vital role of libraries and librarians as the traffic signals on this expressway into the cyber-civilization of the future.

Mr. Speaker, the work of Eileen D. Cooke benefits all Americans. She has won the right to be celebrated and saluted as a Great American Point-of-Light.