The House met at 9 a.m. and was called to order by the Speaker pro tempore (Mr. SCHROCK).

DESERGASATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC.,
I hereby appoint the Honorable EDWARD L. SCHROCK to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

MORNING HOUR DEBATES

The SPEAKER pro tempore. Pursuant to the order of the House of January 23, 2002, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning hour debates. The Chair will alternate recognition between the parties, with each party limited to not to exceed 25 minutes, and each Member, except the majority leader, the minority leader, or the minority whip, limited to not to exceed 5 minutes, but in no event shall debate extend beyond 9:50 a.m.

The Chair recognizes the gentleman from Texas (Mr. DOGGETT) for 5 minutes.

TOBACCO SMUGGLING ERADICATION ACT OF 2002

Mr. DOGGETT. Mr. Speaker, this week, with the support of over 60 of our colleagues, I am introducing major law enforcement legislation both to prevent crime and to promote the health of Americans and people around the world.

The Tobacco Smuggling Eradication Act seeks to slow illicit trafficking in tobacco, the world’s most widely smuggled legal consumer product.

Across America this year alone some 17 States have already approved cigarette tax hikes. Increasing the price of cigarettes is one of the most effective ways of discouraging children from a lifetime of nicotine addiction. While each tax increase advances public health, it also increases the incentives for smuggling cheaper, “tax-free” black market tobacco.

At a time of tight budgets, State and Federal authorities in the United States are suffering losses of more than $1.5 billion each year in evaded cigarette taxes. By cracking down on smuggling, we can collect this much-needed revenue. With prices rising as high as $7 a pack in New York City, the need is even greater to stop those who offer smokers a nicotine hit without a tax hit.

The same incentives that exist here in America exist around the world when American tobacco is exported—from Canada to Iraq, from China to Colombia. Of all cigarettes manufactured within the United States for export, it is estimated that from one in three to one in four of those cigarettes will be sold illegally without collection of taxes.

Internal tobacco company documents indicate that big tobacco companies themselves know that their cigarettes are sold to distributors and agents who will smuggle them illegally. In too many cases they have carefully overseen and even directed the actions of smuggling intermediaries, ensuring that customers have access to these lower black market prices.

The health consequences of smuggling are severe because the number of nicotine-addicted children and poor increases dramatically with the availability of cheap tobacco. The World Bank reports that within the next two decades, tobacco will become the single biggest cause of premature death worldwide accounting for 10 million deaths each year. That is the equivalent of 70 jet planes crashing every single day, and 70 percent of these deaths will occur in developing countries that are least able to fend off the giant tobacco companies and protect their families.

These are unique individuals who will choke to death with emphysema, wither away with lung cancer, or suffer the severe pain of a heart attack. If urgent action is not taken, tobacco will soon end even more lives than the combined total of all to be killed by AIDS, tuberculosis, maternal deaths in childbirth, automobile accidents, homicides, and suicides.

In preparing this bill, I have worked closely with Federal and State authorities to develop measures that will help them better crack down on tobacco tax evaders. This bill will enable law enforcement officials to share information with foreign countries about international smuggling and authorize new tools to combat smuggling within the US.

To prevent diversion, this bill requires that packages of tobacco products be labeled to facilitate tracing them and verifying their manufacturing source. Packages for export must also clearly be labeled for export to prevent illegal reentry. Additionally, this bill will close the distribution chain and prevent transfers from the legal market by requiring retailers and wholesalers to maintain documents that law enforcement needs to monitor tobacco shipments.

Essential Action and other public interest groups indicated in a briefing paper by the Framework Convention on Tobacco Control Alliance that requiring wholesalers, manufacturers and import-export business to be licensed would be one of the “most effective interventions against large-scale smuggling.” With the additional permitting requirements in this bill, the US would meet this objective.

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.
While, unfortunately, the Bush Administration has been largely an obstacle rather than a force for constructive international action to address nicotine addiction, I am pleased that next week in New York City, the United States will host the International Conference on Illicit Tobacco Trade. I encourage the Administration to actively support this Tobacco-Smuggling Eradication Act, which the American Lung Association and a number of other major public health groups have said “makes the war on drugs a matter of law enforcement, health policy and international leadership.”

We must act now to stop the smuggling and stop the mugging of the world’s children through nicotine addiction promoted by big tobacco companies.

COMBATTING CHRONIC WASTING DISEASE

The SPEAKER pro tempore. Pursuant to the order of the House of January 23, 2002, the gentleman from Wisconsin (Mr. GREEN) is recognized during morning hour debates for 5 minutes.

Mr. GREEN of Wisconsin. Mr. Speaker, needless to say, Americans are concerned with lots of issues these days, including the issue that my good friend on the other side of the aisle just raised.

Mr. Speaker, I take to the floor to raise an issue that I think in calmer times would be front page news. Mr. Speaker, what if I told the Members there was a complex and infectious agent out there that was so little understood that science is not quite sure how to categorize it? And if I told Members that this agent, called a prion, is very hard to kill: not killed by burying, not killed by heating, not killed by disinfectant? What if I told the Members further that the disease it carries is 100 percent fatal to the deer and elk that it attacks? There is no cure, there is no treatment. We do not know how it is spread, and we do know it is a cousin to mad cow disease. We do not know what they really need, are enough testing facilities to tell them whether their deer are safe. It is that simple, Mr. Speaker. We are falling short.

Federal officials have decided against allowing private labs to test for chronic wasting disease, only State and Federal labs. But that raises real problems. For example, the State lab in Wisconsin will only be able to handle 15,000 to 30,000 cases per year. If all goes well, by September there may be as many as 11 State labs throughout the entire country, and if all goes well, their capacity for testing may be perhaps 500,000 per year.

But Mr. Speaker, each year in Wisconsin alone from 500,000 deer hunters will take to the woods. They will bag in a good year as many as 400,000 deer in Wisconsin alone. That means our testing capacity will be dangerously short. We need more testing to reassure our hunters. We need more testing to diagnose the extent of the epidemic. Mr. Speaker, I am convinced this is a health crisis, it is an environmental crisis, and I know it is an economic crisis for States like mine, States like Wisconsin.

This morning, I call on the administration to do everything possible to increase testing capacity now. That means increasing the number of public labs that do testing. That means reconsidering this ban on not working with private labs. We must leave no stone unturned, because the consequences of inaction are simply too high.

Mr. Speaker, as I began, I said that Members probably have not heard much about chronic wasting disease because of everything else that is going on. I fear that Members will hear an awful lot about it in the years ahead. We have to act now. We have to increase testing. It is the right thing to do. It is the safe thing to do.

HEALTH CARE IN LOS ANGELES COUNTY

The SPEAKER pro tempore. Pursuant to the order of the House of January 23, 2002, the gentlewoman from California (Ms. SOLIS) is recognized during morning hour debates for 5 minutes.

Ms. SOLIS. Mr. Speaker, I rise today to talk about an urgent issue facing the people I represent in Los Angeles, California, in the great county of Los Angeles. Nearly 3 million people in Los Angeles lack adequate health care insurance. At least 215,000 of those people live in communities that I represent in the San Gabriel Valley in east Los Angeles.

Unfortunately, individuals without health insurance are more likely to be the victims of serious health conditions and put off getting needed care. In L.A. County, our system of public hospitals and county clinics works together to provide health care to those who cannot afford health care because they are either uninsured or underinsured. Our clinics offer vital services that provide prenatal care, asthma treatment, diabetes screening, and HIV prevention.

Without these vital clinics, thousands of uninsured patients would have no health care or safety net for their families. Unfortunately, in L.A. County’s health care system, we are now faced with major budget cuts that are threatening to close dozens of our health clinics.

The crisis is a result of a combination of factors: an increase in the number of uninsured patients, declining State revenues, and Federal payments that simply do not match our need. L.A. County has the highest proportion in the Nation of indigent patients relying on the county health care system, with more than 600,000 people a year waiting to receive some kind of treatment at our county facilities.

I am very concerned about the county’s budget cuts because they will have a devastating impact on those people that reside in my community. Clinics, for example, in the city of Alhambra and in Azusa are scheduled to be closed in the future.

Alhambra Health Center receives over 22,000 visits a year. In the city of Azusa, the health care center receives over 21,000 visits a year. These are families struggling with high unemployment rates. In fact, in my district alone in the city of South El Monte, we have one of the highest unemployment rates in the country: 11 percent.

Where will the young mother who needs to have her baby’s hearing checked go? What should we tell the working father who needs a place to get his diabetes treatment screened? Who will take care of the elderly woman who has problems with arthritis? Since L.A. County’s health care system is so large, any downturn will have a ripple effect throughout California and the rest of the country.

It is time for the Federal Government to step up to the plate and do its part to help the residents of L.A. County. Both the Congress and the administration must continue to work together. The Center for Medicaid and Medicare services here in Washington, D.C., has the highest per capita State revenues, and Federal payments known as the Medicaid Upper Payment Limit, Payments under the Upper Payment Limit, also known as the UPL, help safety net hospitals like L.A. County by providing over $120 million each year.

Unfortunately, CMS decided this past January that they would change the
rules on UPL. This change would devastate California. We could potentially lose up to $300 million in Medicaid funding this year. CMS says the change in UPL is necessary because States were abusing the Upper Payment Limit by using these monies for nonhealth-related purposes. But this is not how it works. In California, those monies were used in the health care delivery system, and it is simply unreasonable to punish California, to punish our uninsured patients, for the mistakes that other States have made.

I want to remind my colleagues that now is the time to work together in a bipartisan fashion, and I hope we can agree that these important Upper Payment Limits need to continue at an agreed-upon rate. It is simply unfair to play politics with people’s lives and health care services. We in Congress have an important role to play in Federal health care efforts.

Right now, funding for another Federal program, known as the Disproportionate Share Hospital program, or DSH, is also scheduled to be cut. Cuts in the DSH program will cost California and L.A. County potentially over a billion dollars. This would ruin our safety net.

Fortunately, the support for stopping the DSH cliff is bipartisan. Many in this Congress are working together to ensure that hospitals that serve indigent patients get the help they need in our community immediately. I know our Republican and Democratic leadership have pledged to stop what they call the “DSH cliff.” I urge my colleagues to work together to resolve this matter. Patients in our county are counting on us here in the Congress to take care of this problem.

I also want to bring to Members’ attention another issue that is of great concern to us in L.A. County, and we call this “the waiver.” It is known here in Washington as the Medicaid 1115 waiver. This waiver allows L.A. County to operate its health care system in a unique way that is designed to serve patients better and saves the Federal Government money.

I would ask that we also renew our efforts to provide full support for DSH funding.

Mr. Speaker, as Los Angeles County faces new realities in our health care system, including a rising uninsured rate, the County has begun to renegotiate its waiver with the Federal government.

I hope that my colleagues at CMS will look favorably at the County’s efforts to renegotiate the waiver. The County is taking serious steps to reconfigure its health care system, but we can’t do it alone. We need the partnership of the federal government. Without it I fear we will force thousands of Los Angelinos who depend on our emergency care services to forgo urgently needed health care.

We can’t afford to sit idly by while patients in Los Angeles County face a health care crisis, we simply must do more.

CONGRATULATING MIAMI CHILDREN’S HOSPITAL ON ITS RECOGNITION AS ONE OF AMERICA’S BEST HOSPITALS

The SPEAKER pro tempore. Pursuant to the order of the House of January 23, 2002, the gentleman from Florida (Ms. ROS-LEHTINEN) is recognized during morning hour debates for 5 minutes.

Ms. ROS-LEHTINEN. Mr. Speaker, I am proud to congratulate Miami Children’s Hospital for recently having been recognized among America’s best hospitals by U.S. News and World Report. “We are here for our children” is the motto of Miami Children’s Hospital, and this principle is demonstrated every day by always seeking innovative ways to better serve the children of south Florida.

A recent groundbreaking celebrated the hospital’s new expansion efforts to renovate its medical campus. These include a radiology expansion, an ambulatory care building, a heliostop, and a hurricane-proof encapsulation.

Based on the work of the man, Ambassador David Walters, Miami Children’s Hospital is indeed building on a dream. Under the leadership of its President and CEO, Thomas Rozek, it is demonstrating a never-ending commitment to children and its pioneering achievements in pediatric care.

Mr. Speaker, I ask my colleagues to join me in congratulating Miami Children’s Hospital for this prestigious achievement and recognition.

CORPORATE GREED

The SPEAKER pro tempore. Pursuant to the order of the House of January 23, 2002, the gentleman from Ohio (Mr. BROWN) is recognized during morning hour debates for 5 minutes.

Mr. BROWN of Ohio. Mr. Speaker, the Bush administration has very close ties to the prescription drug industry. In and of itself, that might not be a problem. Part of any administration’s job is to support American industry, so long as it coincides with the best interests of the American people.

That is, unfortunately, where the Bush administration runs into problems. The best interests of the American people should outweigh the interests of industry, but too often with this administration, the drug industry prevails at the expense of American consumers.

Last year, for instance, prescription drug costs increased 17 percent, while the inflation rate was only 1.6 percent. Rising drug costs fueled double-digit increases in health insurance premiums. Rises in drug costs are putting State budgets in the red. Rising drug costs are bankrupting seniors on fixed incomes.

The Bush administration’s response to this situation? They recently released a “study” arguing that American consumers must continue to pay the highest prices in the world for prescription drugs. If we do not, the study said, medical research and development will dry up. This study is available online at www.hhs.gov.

It could just as easily, however, appear at www.phrma.org, the drug industry association’s Web site. Members of Congress have many questions about how closely aligned the administration is with the drug industry, this study makes it clear they are in lockstep.

I wonder, Mr. Speaker, if it is any coincidence that this study comes out of the Department of Health and Human Services’ Planning Office, which is managed by a former employee of, you guessed it, the drug industry.

This study says the best bet for American consumers is the status quo. If we do anything about price, this study, the administration, or the drug industry, and it all, unfortunately, seems like the same thing too often, if we do anything about price, the administration says, we will be responsible in this country for keeping research and development in the drug industry.

It is a pretty difficult sell to claim this when we consider that the drug industry has topped, or in terms of profitability, it has been the most profitable industry in the United States for the last 10 years. The running, return on price, return on sales, return on equity. While the overall profits of Fortune 500 companies declined 53 percent last year, the top 10 drugmakers increased profits by 33 percent last year.

Drug companies spend twice as much on marketing and administration as they do on research and development. U.S. tax dollars fund almost half of the research that the drug industry does, but American consumers are supposed to be so grateful that they are supposed to gratefully pay twice for that R&D. We are supposed to thank the drug industry for charging us prices two and three and four times what prices are in every other country in the world.

To explain this, look what happened last month. Last month, the drug industry wrote a prescription drug coverage bill for the Republican leadership that was introduced in the Committee on Energy and Commerce to give a prescription drug plan for Americans. The drug industry wrote the bill.

The Republicans started a hearing. The Republicans, as we were marking up the drug industry bill sponsored by Republicans, our committee recessed at 5 o’clock so Members of the committee, Republican Members of the committee, could go off to a fundraiser underwritten by the drug companies, chaired by the CEO of GlaxoSmithKline, a British drug company, who gave $250,000. The next morning, the Republicans and all of us met again to work on this drug bill. Every pro-consumer amendment was defeated by the drug industry and by the Republicans.

After this bill then passed the committee and passed the House of Representatives, the drug industry spent,
through a group called United Seniors Association, but paid by the drug industry, spent $3 million on an ad campaign thanking those Republican Members for passing it and thanking them for their concern for America's seniors. So the drug industry wrote the bill, the Republicans passed the bill, the drug industry gave money to the Republicans while the bill was being passed, and then the drug industry ran TV ads thanking the Republican Members and congratulating them on a job well done.

The Bush administration then, no surprise here, followed suit by claiming that seniors' best hope for drug coverage is the Republican bill.

Now, why is this? Why should the drug industry have this kind of influence here? Well, over the last 12 years, the drug industry's lobbying expenditures have increased 800 percent. In the 2000 election cycle, the drug industry contributed $26 million to candidates running for office, the overwhelming majority of which to Republicans. The industry contributed $255,000 to the Bush-Cheney inaugural. So far in this election cycle, the drug industry has contributed $14.6 million in political donations, the vast majority of which to Republicans. This may explain, Mr. Speaker, why the administration is working so hard for the drug industry, but it begs the question: Is what is good for the drug industry in the best interests of the American people?

DEPARTMENT OF HOMELAND SECURITY, WHO NEEDS IT?

The SPEAKER pro tempore. Pursuant to the order of the House of January 23, 2002, the gentleman from Texas (Mr. PAUL) is recognized during morning hour debates for 5 minutes.

Mr. PAUL. Mr. Speaker, the Department of Homeland Security, who needs it? Mr. Speaker, everyone agrees the 9-11 tragedy revealed a problem that exists in our domestic security and dramatized our vulnerability to outside attacks. Most agree that the existing bureaucracy was inept. The CIA, the FBI, the INS, and Customs failed to protect us.

It was not a lack of information that caused this failure; they had plenty. But they failed to analyze, communicate, and use the information to our advantage.

The flawed foreign policy of interventionism that we have followed for decades significantly contributed to the attacks. Warnings had been sounded by the more astute that our meddling in the affairs of others would come to no good. Instead, we labored in our inability to defend our own cities, while spending hundreds of billions of dollars providing more defense for others than for ourselves. In the aftermath, we were even forced to ask other countries to patrol our airways to provide security for us.

A clear understanding of private property and an owner's responsibility to protect it has been seriously undermined. This was especially true for the airline industry. The benefit of gun ownership and second amendment protections were prohibited. The government was given the responsibility for airline safety through FAA rules and regulations, not the airlines.

The solution now being proposed is a giant new Federal department, and it is the only solution we are being offered, and one which I am certain will lead to tens of billions of dollars of new spending.

What is being done about the lack of emphasis on private property ownership? The security services are federalized. The airlines are bailed out and given guaranteed insurance against all threats. We have made the airline industry a public utility that gets to keep its profits and pass on its losses to the taxpayers, like Amtrak and the post office. Instead of more ownership responsibility, we get more government control.

Is the first amendment revitalized, and are owners permitted to defend their property, their passengers, and personnel? No, no hint of it, unless you are El Al airlines, which enjoys this right, while I'm prohibited to defend the Saudis.

Has anything been done to limit immigration from countries placed on the terrorist list? Hardly. Have we done anything to slow up immigration of individuals with Saudi passports? No, oil is too important to offend the Saudis.

Yet, we have done plenty to undermine the liberties and privacy of all Americans through legislation such as the PATRIOT Act. A program is being planned to use millions of Americans to spy on their neighbors, an idea appropriate for a totalitarian society. Regardless of any assurances, we all know that the national ID card will soon be instituted.

Who believes for a moment that the military will not be used to enforce civil law in the near future? Posse comitatus will be repealed by executive order or by law, and liberty, the Constitution, and the Republic will suffer another major setback.

Unfortunately, foreign policy will not change, and those who suggest that it be strictly designed for American security will be shouted down for their lack of patriotism. Instead, war fever will build until the warmongers get their wish to off end the Saudis, making us even a greater target of those who despise us for our bellicose control of the world.

A new department is hardly what we need. That is more of the same, and will surely not solve our problems. It will, however, further undermine our liberties and hasten the day of our national bankruptcy.

A common sense improvement to homeland security would allow the DOT to provide protection, not a huge, new, massive department. We need to bring our troops home, including our Coast Guard; close down the base in Saudi Arabia; stop expanding our presence in the Muslim portion of the former Soviet Union; and stop taking sides in the long, ongoing war in the Middle East.

If we did these few things, we would provide a lot more security and protect our liberties a lot better than any new department ever will, and it will cost a lot less.

THE INFLUENCE OF THE DRUG INDUSTRY ON THE WHITE HOUSE AND ON CONGRESS

The SPEAKER pro tempore. Pursuant to the order of the House of January 23, 2002, the gentleman from New Jersey (Mr. PALLONE) is recognized during morning hour debates for 5 minutes.

Mr. PALLONE. Mr. Speaker, more information comes out every day about the influence of the drug industry, both on the White House and on Congress, in terms of what it is a prescription drug plan we pass here in the House and in the other body, which is currently debating the bill.

I do not bring up the information about the links between the prescription drug industry and the desire to defame them, but only because I am very concerned that their amount of influence that they exert here basically skews the dialogue and what we pass in a way that is not beneficial to the average American.

The bottom line is that Democrats in the House a few weeks ago, when the Republicans passed the prescription drug bill, were very critical of the Republican bill because it was basically giving money to private insurers in the hope that they would offer drug-only policies to senior citizens.

There was nothing in the Republican prescription drug bill that passed the House that would guarantee a prescription drug benefit for seniors. There was no guarantee, and there was no absolutely effort on the Republican part to address the issue of price, which is the main problem most Americans face now, that the price of drug continues to rise.

What Democrats said then and continue to say is that we need a prescription drug benefit under Medicare that guarantees the plan a benefit, a generous benefit. 80 percent of the cost paid for by the Federal Government, terms of what we were able to get in the prescription drug plan we pass here in the House and in the other body, which is currently debating the bill.

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of the influence of the prescription drug industry. They wanted a bill that provided a subsidy to the private insurance companies and not a Medicare benefit, and the prescription drug industry wanted to make sure that there was nothing in the Republican bill that would reduce prices.

I say that because more and more information comes out on a daily basis about the influence of the prescription drug industry. Soon after the House passed the Republican bill, the President released a study by the Department of Health and Human Services that basically said that the only way to go was to give money to private insurers; that a Medicare benefit and a program that controlled cost would actually hurt research and development of new drugs.

This was in The Washington Post on Thursday, July 11. It said, “The Bush administration plans to issue a study today suggesting that any new prescription drug coverage for older Americans must rely on the private sector to provide it, warning that too much government regulation could hinder access to promising new therapies. The report described effective drug therapies, and said that cost containment efforts would fail.”

The bottom line is, who put out this report? We find out that the former vice president of policy for PHRMA, the prescription drug trade group, is in charge of Secretary Thompson’s planning department. This is the same department that generated this study warning that a drug benefit delivered through Medicare would devastate R&D and harm seniors.

It is simply not true. It is because of the influence of the prescription drug industry, and even the policymakers in the White House that used to work for them, that now we have both the industry and the advertisements paid for by the prescription drug industry and the people at the White House coming out and saying, go to the private sector; do not do a Medicare benefit, do not control costs.

Now, by contrast to that prejudiced, if you will, study that came out from the White House, and essentially from former PHRMA people, Families USA did a report just last week issued on July 17. Their report showed that U.S. drug companies that market the 50 most prescribed drugs to seniors spent almost 2½ times as much on marketing, advertising and administration as they spend on research and development in 2001.

The report essentially debunks President Bush’s recent assertion through that study of HHS, and the drug companies’ claims, that rising and fast-rising drug prices are needed to support R&D. So if we look at the facts, we find out that it is not that the brand name drug companies need more money because doing to do more R&D and come up with better drugs, it is because they are spending so much on marketing and advertising and administration, and also paying their CEOs very high salaries. That is the reason why they want the higher drug prices. We must point this out on a regular basis.

— RECESS —

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the Chair declares the House in recess until 10 a.m.

Accordingly, (at 9 o’clock and 54 minutes a.m.), the House stood in recess until 10 a.m.

□ 1000

— AFTER RECESS —

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. Jeff Miller of Florida) at 10 a.m.

— PRAYER —

Captain Jeff Struecker, Chaplain, 3rd Battalion, 504th Parachute Infantry Regiment, 82nd Airborne Division, Ft. Bragg, North Carolina, offered the following prayer:

Almighty God and Father of my Savior, I lift up to You these men and women that You have selected to serve this great Nation. I pray that You would etch onto the souls of every man and woman here the awesome sense of responsibility for the office that they hold and the weight of that thought would drive them to their knees, every morning seeking Your leadership, as they lead this Nation, especially right now with America’s sons and daughters at war.

I pray that You would also balance that serious sense of responsibility with the pleasure of knowing that they are serving as Your appointed leaders in the greatest Nation on Earth.

Father, finally I pray that You will protect those men and women who are right now involved with this war on terrorism. Give them Your peace, give them Your presence, give them Your protection. I pray. Amen.

— THE JOURNAL —

The SPEAKER pro tempore. The Chair has examined the Journal of the last day’s proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. McNULTY. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker’s approval of the Journal.

The SPEAKER pro tempore. The question is on the Speaker’s approval of the Journal.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. McNULTY. Mr. Speaker, I object to the ayes appearing to have it.

The question is on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8, rule XX, further proceedings on this question will be postponed.

The point of no quorum is considered withdrawn.

— PLEDGE OF ALLEGIANCE —

The SPEAKER pro tempore. Will the gentleman from New York (Mr. McNULTY) come forward and lead the House in the Pledge of Allegiance.

Mr. McNULTY 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.

— INTRODUCTION OF CAPTAIN JEFF STRUECKER AS GUEST CHAPLAIN —

Mr. COLLINS asked and was given permission to address the House for 1 minute.

Mr. COLLINS. Mr. Speaker, I am honored to introduce Captain Jeff Struecker, Chaplain, United States Army, 3rd Battalion, 504th Parachute Infantry Regiment, 82nd Airborne Division, Ft. Bragg, North Carolina. Chaplain Jeff Struecker was born in Fort Dodge, Iowa. He entered the Army as an enlisted soldier in September, 1987. He attended basic training, AIT, airborne school, and the Ranger Indoctrination Program at Fort Benning, Georgia.

His combat experience includes participation in Operation Just Cause in Panama, Operation Iris Gold in Kuwait, and Operation Gothic Serpent, UNOSOM Two, Mogadishu, Somalia.

Mr. Speaker, Captain Struecker served in the United States Army as an enlisted soldier until April of 2000. Afterwards he entered the Chaplain Officer Basic Course. While serving in Mogadishu, Somalia, Sergeant Struecker was involved in a 17-hour firefight which was later portrayed in the book and movie “Black Hawk Down.” As a teenager, Jeff Struecker accepted Christ as his Savior. His faith was strengthened in Mogadishu as Captain Struecker recounted, and I quote, “In the middle of that firefight, I had to decide whether I believed what I say I believe. And when I finally answered that question, my faith became so strong, it gave me the strength to fight for the rest of the night.”

Captain Struecker has received many awards and citations for his bravery, including the Bronze Star with the V device. He and his wife, Dawn, reside in Lindon, North Carolina, with their five children, Aaron, Jacob, Joseph, Abigail, and Lydia.

Mr. Speaker, it is a pleasure to have Chaplain Jeff Struecker as Chaplain today in the United States House of Representatives.
The collapse of WorldCom has serious implications for not only those that work for that company but also the many people and organizations who invested millions in that company. The California Public Employees Retirement System, CALPERS, which provides retirement and health benefit services to 1.3 million public employees and nearly 2,500 employers, has estimated a loss at $333 million because of the collapse of WorldCom.

It is time for President Bush and the Republican majority in the House to stand up for workers and provide restitution to the employees who lost their life savings and their pension funds.

Ms. SHIMKUS asked and was given permission to address the House for 1 minute and to revise and extend her remarks.

CORPORATE ACCOUNTABILITY AND THE ECONOMY

Mr. SHIMKUS. Mr. Speaker, I would like to also welcome Captain Struecker by saying “Airborne All the Way” and “Rangers Lead the Way.”

Mr. Speaker, I rise to talk about a provision in the energy bill that would greatly impact my district. Both the House and Senate versions of this energy bill contain a provision that would allow small oil refiners of 75,000 barrels a day or less 75 percent expensing of capital cost associated with complying with EPA’s heavy duty diesel regulations.

The Premcor Wood River Refinery, located just outside my district, recently announced that it would be closing its doors, laying off over 300 employees because the cost to comply with these regulations is too high. This year the refinery capacity in Illinois will be at 889,000 barrels a day, which is 150,000 barrels less than 2 years ago. Combine that with the fact that no new refinery has been built in the U.S. in 25 years and that the number of refineries has been cut in half in the last 20 years and the problem only worsens. This creates an even tighter supply. A small fire or mechanical problem that forces a refinery to shut down for even a day has a drastic impact on the price of gasoline.

Illinois has faced job loss and unstable gas prices as we wait for Congress to pass an energy bill that provides relief for the small independent refineries of our country. Mr. Speaker, it is time to send an energy bill to the President.
discipline that is rooted in Chinese culture and based on beliefs in truthfulness, benevolence and forbearance.

Since its introduction in 1992, it quickly spread by word of mouth throughout China and is now practiced in over 50 countries in the world. With government estimates of as many as 100 million practicing Falun Gong, China’s President Zemin outlawed the peaceful practice in July 1999. Since 1999, over 400 practitioners in mainland China have been killed and thousands have been forced into labor and concentration camps, mental institutions and reeducation centers.

Yesterday’s debate of House Concurrent Resolution 188 was a step in the right direction, but I urge my colleagues to show their support to Falun Gong practitioners visiting Washington, D.C. this week.

Let us show them that religious persecution will not be tolerated in this country, or any other country of the world.

PREPARING FOR NEW CHALLENGES FOR AMERICA

(Mr. GIBBONS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GIBBONS. Mr. Speaker, this week legislation creating the new Homeland Security Department will come before this Chamber for consideration. It will mark perhaps the most historic congressional debate in decades. The last time Congress considered such a considerable reorganization of the Federal Government was back in 1947 under the Truman administration. Now we must once again reorganize the Federal Government to better meet the new challenges that our country faces.

Mr. Speaker, I have been quite impressed with the commitment of both this House and of the administration to move forward expeditiously with a plan to create an efficient and effective Department of Homeland Security.

I have been greatly concerned over turf wars between agencies and among our congressional committees, yet our committees have worked together in a true bipartisan fashion for the people of America.

I look forward to our debate on the Homeland Security Department, and am confident that our work will enable our Nation to be better prepared for the new challenges it faces in the 21st century.

FINDING A CURE FOR LOU GEHRIG’s DISEASE

(Mr. WILSON of South Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILSON. Mr. Speaker, every day in America 15 people are diagnosed with Lou Gehrig’s disease, amounting to more than 5,000 people each year. The average life expectancy for people with this disease is only 2 to 5 years from the time of diagnosis.

Lou Gehrig’s disease, or ALS, is a fatal illness that attacks nerve cells and pathways in the brain and spinal cord. When these nerve cells die, a person loses muscle control. People with advanced stages of the disease can be totally paralyzed, yet their minds remain sharp and alert.

However, there is hope. Recent advances allow people with Lou Gehrig’s disease to live longer lives. New breakthroughs have occurred, due in large part to the efforts of the ALS Association. The association provides the largest private source of funding for researching the cause, and ultimately, the cure for Lou Gehrig’s disease.

I commend the efforts of the Carolinas Chapter of the ALS Association and Executive Director Jerry Dawson for their commitment and dedication in caring for those with Lou Gehrig’s disease in both North Carolina and South Carolina. Their efforts today will bring us closer to finding a cure tomorrow for Lou Gehrig’s disease.

STOPPING PARTIAL-BIRTH Abortions

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, this week we are debating a bill to ban partial-birth abortion. We will hear a lot of perspectives in this debate, but I think there is one perspective we may not hear, and that is the baby’s perspective.

I have an article from the Journal of the American Medical Association that might help us understand just what the baby goes through in a partial-birth abortion. The article is written by Dr. Sprang and Dr. Neerhof of Northwestern University Medical School.

They say in their article, ‘The centers necessary for pain perception develop early in the second trimester.’ Mr. Speaker, most partial-birth abortions happen in the second and third trimesters. Dr. Sprang and Dr. Neerhof say the vasculature, the walls of partial-birth abortions are performed on near-viable babies. They say, ‘When infants of similar gestational ages are delivered, pain management is an important part of the care rendered to them in the intensive care nursery. But in a partial-birth abortion, pain management is not provided for the fetus, who is literally within inches of being delivered.’

Mr. Speaker, killing children by painfully stabbing them in the back of the head and sucking out their brains is wrong. It is up to us to stop it.

UNITED NATIONS POPULATION FUND AND ABORTION

(Mr. PENCE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PENCE. Mr. Speaker, the common accusation in Washington, D.C. is that as a result of UNFPA’s complicity with China’s antilife program more women are targeted for forced abortions.

APPLAUDING PRESIDENT BUSH FOR REDIRECTING UNFPA FUNDING TO PROTECT HUMAN RIGHTS

(Mr. SMITH of New Jersey asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH. Mr. Speaker, President Bush has provided hope to oppressed women everywhere, especially in China, promising them that the United States will no longer subsidize those who engage in forced abortion and other coercive population control programs.

For over 20 years, Mr. Speaker, the U.N. Population Fund (UNFPA) has enabled facilitated, and shamelessly whitewashed terrible crimes against humanity, especially crimes against women, and the United States will now no longer have any part in subsidizing them. In refusing to fund the UNFPA, Mr. Speaker, President Bush has told the American people that he would not permit taxpayer dollars to be used to fund abortion.

Yesterday the President, as has been his word with the American people, the President once again was a man as good as his word. The State Department announced that UNFPA funding would be denied in its entirety and diverted to other children’s services at the United Nations.

This institution gave more than $34 million to the United Nations Family Planning Fund, despite overwhelming evidence presented before House committees and the House Permanent Select Committee on Intelligence that China was engaged in forced and coercive abortion practices. I rise today to extol the President of the United States for being a man as good as his word, for standing with the American people in their fundamental belief in the dignity and the sanctity of human life.
Mr. Speaker, tens of millions of children have been slaughtered and their mothers have been robbed by the state of their children. The UNFPA for over 20 years has aggressively defended the indefensible, this barbaric policy that makes brothers and sisters illegal and makes women the victims of population control cadres.

This whitewashing of crimes against humanity must end. My hope is that other parliaments around the world, will take a good long second look at the one child per couple policy in China, and cease their enabling of this violation against women.

Thank you President Bush.

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**JOURNAL VOTE**

The SPEAKER pro tempore (Mr. JEFF MILLER of Florida). Pursuant to clause 8 of rule XX, the pending business is the question of agreeing to the Speaker's approval of the Journal.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MCNULTY. Mr. Speaker, I object to the record as read because of the quorum not being a quorum and the Speaker pro tempore not being present.

The SPEAKER pro tempore. Evidently a quorum is not present.

Mr. Speaker, pursuant to the previous order of the House, I call up the joint resolution (H. J. Res. 101) disapproving the extension of the waiver authority contained in section 402(c) of the Trade Act of 1974 with respect to Vietnam, and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The text of H. J. Res. 101 is as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress does not approve the extension of the authority contained in section 402(c) of the Trade Act of 1974 recommended by the President to the Congress on June 3, 2002, with respect to Vietnam.

The SPEAKER pro tempore (Mr. JEFF MILLER of Florida). Pursuant to the order of the House of Monday, July 22, 2002, the gentleman of California (Mr. THOMAS) and a Member in support of the joint resolution each will control 30 minutes.

Is there a Member in support of the joint resolution?

Mr. MCNULTY. Mr. Speaker, I claim the time in support of the joint resolution.

The SPEAKER pro tempore. The gentleman from New York (Mr. McNulty) will control 30 minutes.

The Chair recognizes the gentleman from California (Mr. THOMAS).
of the Subcommittee on Trade on the Committee on Ways and Means and that he be permitted to yield that time as he sees fit.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker: I rise in opposition to House Joint Resolution 101, a resolution to disapprove the Jackson-Vanik waiver for Vietnam.

Mr. Speaker, I yield the remainder of my time to the gentleman from Illinois (Mr. CRANE), the chairman of the Subcommittee on Trade and ask unanimous consent that he be allowed to control the time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. THOMAS. Mr. Speaker, I reserve the balance of my time.

Mr. MCNULTY. Mr. Speaker, I ask unanimous consent that half my time be yielded to the gentleman from California (Mr. ROHRABACHER) and that he be permitted to allocate that time as he sees fit and that, further, I be permitted to yield the time that I have remaining.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. Speaker, I rise in strong opposition to House Joint Resolution 101.

Mr. Speaker, I rise in opposition to H.J. Res. 101 and in support of extending Vietnam’s Jackson-Vanik waiver. Failure to extend the waiver so soon after the U.S. Vietnam bilateral trade agreement entered into, of course, would send terribly mixed diplomatic signals and would undermine the economic and political reforms now gaining momentum in Vietnam.

The completion of the BTA as a significant accomplishment and December 10, 2001, may very well be the most important date in U.S.-Vietnam relations since the end of the Vietnam War. The agreement is the most comprehensive trade agreement ever signed by Vietnam and constitutes a market access system that offers access in goods, trade in services, intellectual property protection, and investment.

Because the BTA is now in force, the Jackson-Vanik waiver provides U.S. firms an unprecedented opportunity to export and to do business in Vietnam. The Jackson-Vanik waiver also enables U.S. exporters doing business in Vietnam to have access to U.S. trade financing programs, provided that Vietnam meet the relevant program criteria.

I visited Vietnam last year and saw firsthand the enormous potential that Vietnam offers. Over half of the population is under the age of 25 and the literacy rate is over 90 percent. The Vietnamese people have a solid work ethic, an entrepreneurial spirit, and a strong commitment to education. Continued engagement between the United States and Vietnamese Governments and its peoples will help this potential flourish.

On emigration, the central issue for the Jackson-Vanik waiver, more than 500,000 Vietnamese citizens have entered the United States under the Orderly Departure program. And as a result of steps taken by Vietnam to streamline its emigration process, only a small number of refugee applicants remain to be processed under both the Orderly Departure and the Resettlement for Vietnamese Returnees programs.

Extending Vietnam’s waiver will give reformers within the Vietnamese government much-needed support to continue within economic and political reforms. I ask my colleagues not to take away the best vehicle for the United States to continue to pressure the Vietnamese for progress on issues of importance to us. Therefore, I urge a “no” vote on H.J. Res. 101.

Mr. Speaker, I reserve the balance of my time.

Mr. LEVIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today to oppose this resolution. The waiver that is the subject of the resolution yesterday is a continuation in the process of engaging with Vietnam and pressuring it. The waiver this year will continue the availability of export-related financing from OPIC, Ex-Im Bank, and the Department of Agriculture, financing that is important to American businesses, their workers and farmers seeking to export and to do business in Vietnam.

In addition, expanding upon prior years’ Jackson-Vanik waivers, this waiver will continue normal trade relations status for Vietnam.

Vietnam sparks deep emotions, and very understandably. Our relationship with Vietnam is a complicated one. The war left deep and enduring impacts on our nations and upon our people. Although for many years we pursued a policy of isolation of Vietnam, we have been following in recent years a path of engagement and pressuring. As mentioned, in 1996 we lifted the trade embargo. In 1998 we opened an embassy. In 1998 the President first waived the Jackson-Vanik prohibitions. Last year, as mentioned, Congress approved the U.S. Vietnam bilateral trade agreement. That agreement has been successful in some important respects, increasing trade both imports and exports.

Notably the government of Vietnam has continued to cooperate in helping to locate U.S. servicemen and women missing in Vietnam. Just last year, nine Vietnamese citizens died helping in the search for U.S. POWs and MIAs.

Our continuing engagement with Vietnam has been critical in helping to secure Vietnam’s assistance with these efforts.

And as also mentioned, there has been further improvement in terms of emigration. Unfortunately, the Government of Vietnam has not made similar movements to improve its human rights record. The most recent State Department human rights report indicates Vietnam’s already poor human rights record has gone downward. Additionally, Vietnam still has to make major progress in respecting and enforcing core internationally recognized labor rights.

The Memorandum of Understanding that was signed during the Clinton administration has been implemented to some extent, but there is still a long way to go. Vietnam continues to deny its workers, as mentioned, the fundamental right to associate freely. And the recent State Department report indicates that child labor and prison...
labor continue to be wide spread in Vietnam.

Last year, when we approved the bilateral trade agreement with Vietnam, I stated that we would watch closely eventual negotiations of the textile and apparel agreement, and that any such negotiations must include labor provisions similar to the positive incentives included in the Cambodia agreement.

Negotiations on this agreement have begun, but there still is no firm commitment by the administration, our administration, to include positive incentive labor provisions, and though this issue is not yet ripe, while we vote today, I want to convey to the administration and to the government of Vietnam that if the core labor standards issue is ignored in the textile and apparel agreement, it will have serious repercussions for future Jackson-Vanik and NTR waivers.

Last week, I expressed this to the distinguished ambassador from Vietnam. So here we have another resolution. The vast majority of us voted against it. There is no reason to change our position this year. To do so would hurt our relations with Vietnam. It would hurt our efforts to fully account for U.S. POWs and MIAs, an important issue indeed, and I think it would undercut important reform efforts in Vietnam.

I think on balance the best procedure, the best approach is to continue what we started some years ago, continuing to vote to engage and pressure Vietnam, and therefore, I encourage my colleagues to oppose this resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. ROHRABACHER. Mr. Speaker, I yield myself such time as I may consume.

After hearing the gentleman from Michigan's (Mr. LEVIN) description of how human rights has not been improved and how things are still just as repressive, it seems to me that he has just provided enough arguments for us to say why we are doing the same old policy if it is not working and the Vietnamese, that the Vietnamese Communist have just signed another agreement, as my friend, the gentleman from Illinois (Mr. CRANE) has just said, big deals, have signed agreements for 20 years and broken all of them.

This is no reason we should continue on a path that has kept the Vietnamese people in chains and in slavery and in abject poverty.

During the last 12 months, despite the Presidential waiver that we are debating today, the Communist regime has actually increased its brutal repression as the gentleman from Michigan (Mr. LEVIN) suggested in his comments. Religious clergy, advocates of democratic leaders and members of the tribes in the central highlands, these are the people who were the most loyal to American forces during the war. All have been victimized, and the victimization continues at a higher pace.

By voting yes on H.J. Res. 101, thus denying normal trade relations for Vietnam, we send a message to the gang of thugs that run Vietnam that we are watching, and for all not just make agreements but start some real political reform. Let us see something happening rather than just talk before we normalize relations with them.

Only this will allow the Vietnamese people to enjoy some prosperity, some peace and some liberty, but they have been denied this by the regime that holds them in its grip.

The sad truth is that there will be no democracy, no human rights and none of these other things that we hold dear in the United States, no prosperity, no freedom for these people in Vietnam unless their own government starts to reform, and it has not done so under the rules that we have been playing with them. We continue to see them as we treat free governments, which is insane.

Hanoi has recently, in fact, initiated a new campaign of censorship. They have even outlawed the watching of HBO's "Satellite TV." They have tried to block CNN, and we? Are these things we are going to treat them like we do democratic societies? The primary cause for the fact that their country is making any headway economically is their lack of democracy and freedom and the totalitarian communist dictatorship that we are talking about.

If we wish Vietnam to succeed, we have got to do more than just wink and nod when they make another agreement, yet they will then violate again and again.

What we are talking about today, by the way, is not whether or not we should engage with Vietnam. It is not whether we should isolate Vietnam. It is one thing and one thing only, and that is, whether or not those businessmen who are free already to sell their products or to build their factories, whether or not those businessmen for the United States will be subsidized by the American taxpayers in building factories, manufacturing units in Vietnam. In order to exploit their slave labor, their labor that is not permitted to join a union, is not permitted to quit their jobs.

This is what this debate is all about. The debate is not about whether we can sell our products. American businessmen can sell the products and will continue to or can build factories at their own risk, but is whether, as the gentleman from Michigan (Mr. LEVIN) calls it, financing will be available. What we are talking about is financing that is subsidized by the American taxpayer through international and national financial institutions like the Export-Import Bank.

There is no rule whatsoever we should be financing the building of factories, even in democratic societies overseas, but for countries like Communist China, Vietnam, this is a sin not only against their people because we are permitting a few people here to exploit their labor, but it is a sin against our people because we are putting them out of work. So let us not ignore the central issue today.

Two central issues remain in Vietnam. One is support for American businessmen to build factories and put our own people out of work, and let us not ignore that. We will see if that even comes up on the other side during the debate. While extending these subsidies has not made Vietnam any freer in these last few years, it has not been going in the right direction. If it had been, we would be able to report all of this stuff.

Instead, what we see are American businessmen who are leaving Vietnam. These are the guys who do not have the subsidies because of the level of corruption and repression that goes along with a Communist dictatorship. In that country, trade data, for example, required a State secret. Journalists and public officials continue to be jailed on charges of treason for merely discussing trade and economic issues. In fact, the Communist regime has imprisoned business executives locally and has penalized American corporations simply for criticizing the government or when their company has been too successful outside of the corrupt system.

I urge my colleagues to stand up for American values and international freedom by voting yes on H.J. Res. 101. Why subsidize the building of factories in Communist Vietnam, costing jobs at home and putting our people out of work to help a Communist regime.

This globalist dream is not just a nightmare for America. It demoralizes those around the world who believe in liberty and justice and see America as their only hope.

Mr. Speaker, I reserve the balance of my time.

Mr. CRANE. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. HOUGHTON).

Mr. HOUGHTON. Mr. Speaker, there are just a couple of comments I make.

This is all very confusing, sort of a double or triple negative, do we oppose an opposition? Actually, I oppose the disapproval of the extension of the waiver, which means we will continue our relationships with Vietnam.

The identity was somehow a gentleman from New York (Mr. McNULTY) and I am terribly sorry about the situation with his brother, but there are others of us who had members of our family in not only that war, but other wars have had the same situation, and I understand what the gentleman from California (Mr. ROHRABACHER) is saying, but the same arguments could be used with Russia.

Mr. McNULTY. Mr. Speaker, will the gentleman yield?

Mr. HOUGHTON. I yield to the gentleman from New York.

Mr. McNULTY. Mr. Speaker, I think the gentleman is incorrect. I do not
think we have the same situation because in prior wars a period of time went by after the last possible remains removable realistically recoverable were found. We did not have the situation where we were being blocked from going to certain areas of the country to search for remains. We did not have a situation where three weeks prior to voting on normalizing relations, we found new American remains. I do not think the situation is the same at all.

Mr. Speaker, I understand what the gentleman is saying, but there are others of us who have been in other wars and have other members of our families and there are still situations there which are still to be clarified.

All I was saying is that I identify with the gentleman, and I am sorry about that situation because I know how meaningful it is to him and how poignant those memories are, but others of us have those same type of things.

The only thing I am saying is, very briefly, that if we are going to look forward rather than back, we must reach out to other people in this world, including our former enemies, and I think it is high time that we kept those relations going, and therefore, I would strongly oppose the disapproval in H.J. Res. 101.

Mr. McNULTY. Mr. Speaker, I yield 5 minutes to the gentlewoman from California (Ms. SANCHEZ).

Ms. SANCHEZ. Mr. Speaker, today I rise as a strong supporter and as a co-sponsor of House Joint Resolution 101, which disapproves the extension of the Jackson-Vanik waiver authority for Vietnam. We have already heard a couple of comments about human rights issues and how in Vietnam they have not improved, and that is true. We have also heard about our missing in action and the fact that we have had more problems recently in trying to get facts and remains out of Vietnam. The passage of the Bilateral Trade Agreement visa, the Jackson-Vanik waiver is really about immigration and family reunification and visas between countries.

What we basically say is if Vietnam is doing a good job in helping us to reunify our families, to send families over to Vietnam and vice versa, if they are cooperating with us in a good way, to have that happen, then we waive Jackson-Vanik and we give them some special trade provisions like letters of credit for the workings of OPEC, some programs through the Department of Agriculture.

The fact of the matter is that Vietnam is not doing a good job in helping us with immigration, with visas, with families. Do I know that? I represent the largest group of Vietnamese outside of Vietnam in the world. So about 65 percent of immigration visas, family visits with respect to Vietnam in this country, those requests go through my office in Garden Grove, California.

We know what it is like to have to deal with that government. We know that when people here who are now U.S. citizens go to Vietnam to visit their families, that they are asking for additional moneys, that they cannot get their visas to come, that their families cannot get their exit visas. A country where, on a normal basis, on which and historically, they make like they make $300 or $400 a year, when they ask somebody for an exit visa and they tell them it costs $2,000 in order to get it, well, how are they supposed to do that? How are we supposed to do that?

If we approve for a family member to come to the United States, but they cannot get their exit visa because the government of Vietnam says, oh, we need $2,000 from that person, then they are not helping with reunifying these families, and that is what this waiver is about. If they are doing a good job on that, we are going to give these extra things to help with the trade.

Trade with Vietnam is important. We approved it once for it, but we approved it as a country over a year ago, and I believe that as we work with Vietnam and as we have more business going on that, hopefully human rights might get better in Vietnam. They have not so far. It has gotten worse, we cannot take a look at the State Department records, and if we are interested in what is going on with the whole issue of human rights, just this afternoon at 3 p.m., a Human Rights Caucus will hold a hearing on the conditions in Vietnam with respect to human rights. They have not gotten any better.

The reality is that even one of the people who submitted written information to us for this hearing this afternoon was arrested just last week, probably for having spoken up and sent us information about what is going on in that country. We have not heard from him. We cannot find him. This is what happens. There is no freedom of the press in Vietnam. There is no collective bargaining when a person is working. They cannot assembly. They cannot even assemble for church purposes to do a procession through town to talk about things. They are not allowed to do that.

There is no freedom and human rights in Vietnam, and we need to stop that and that is what we will discuss this afternoon.

Today, in this Chamber for my colleagues, this vote is about whether they are helping us to bring families together and they are not. They are not doing a good job.
a new office in Hanoi, and Social Accountability International, will continue to work with the Vietnamese to expand labor protections and upgrade labor standards.

By our own standards and those recognized by the ILO itself, because free unions are the measure of true worker democracy, in Vietnam, in Cambodia, in Mexico and, for that matter, in much of the United States where labor organizing is often inadequately protected by current law, from which we would like to have these political reforms as well as liberalization of the economic system.

Mr. Speaker, I rise in opposition to this joint resolution and ask others to do so as well.

Mr. ROHRABACHER. Mr. Speaker, how much time remains?

The SPEAKER pro tempore (Mr. FOSSIELLA). The gentleman from Illinois (Mr. CRANE) has 9½ minutes remaining. Mr. ROHRABACHER has 9 minutes remaining, the gentleman from New York (Mr. McNULTY) has 6½ minutes remaining, and the gentleman from Michigan (Mr. LEVIN) has 7 minutes remaining.

Mr. ROHRABACHER. Mr. Speaker, I yield myself 2 minutes.

As this debate goes on, let me again stress what we are talking about, and I do agree with my colleague, the gentleman from California (Ms. SANCHEZ), that the legal essence of what is being talked about today is whether or not we should grant normal trade relations and whether or not, and this should be based on emigration policy.

As she said, even in the emigration area, the Communist dictatorship in Vietnam has not measured up to what it should and, in fact, I cannot believe, and I am sure she agrees, that those Vietnamese who are being victimized by this current dictatorship, that this extortion is not going on without the knowledge of the dictatorship, without the acknowledgment and probably the profiteering of the very people that we want to make this great relationship with.

Then the debate about whether or not we should have a good relationship with the Vietnamese people. It is what kind of relationship we will have with the government of Vietnam, a government which is a Communist dictatorship, which arrests anyone who speaks up against it, a government that extorts, as we have heard on the floor today, extorts money from would-be immigrants, a government that plays games and continues to play games with our POWs and the bodies of our brave soldiers and airmen and Marines from 20 years ago.

What type of relationship do we want to have with them? How do we want to treat them the way we do Italy, England, or even Thailand, even more democratic governments? I do not think so. I think we should have free trade and good relations with the people of the world and the governments of the world, if they have a free and democratic government. We should have free and open trade. But if those governments are dictatorships that terrorize their own populations, we should not have the same type of trade relations. We should not have a Jackson-Vanik waiver.

Mr. Speaker, I reserve the balance of my time.

Mr. COYNE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Michigan (Mr. LEVIN) for a response to the extension of the Jackson-Vanik waiver for Vietnam. It has been 8 years since we ended our trade embargo and began the process of normalizing relations with Vietnam. Over these few years, good progress has been made. Of 1,200,000 Vietnam POWs and MIAs, to its movement to open trade with the world, to its progress on human rights, Vietnam has moved in the right direction. Vietnam is not there yet, but Vietnam is moving in the right direction.

Mr. Speaker, Mr. Speaker, H.J. Resolution 101 is the wrong direction for us to take today. Who is hurt if we pass this resolution? We are. It is the wrong direction for U.S. farmers and manufacturers. Mr. Speaker, I have a level playing field when they compete with their European or Japanese counterparts in Vietnam. It is the wrong direction for our joint efforts with the Vietnamese to account for the last remains of our soldiers and to answer, finally, the questions of their loved ones here. And it is the wrong direction for our efforts to influence the Vietnam people, 65 percent of whom were not even born before the war was waged.

Let us not turn the clock back on Vietnam. Let us continue to work with them, and in so doing teach the youthful Vietnamese the values of democracy, the principles of capitalism, and the merits of a free and open society.

Mr. LEVIN. Mr. Speaker, I yield 3 minutes to a very distinguished colleague, the gentleman from Illinois (Mr. EVANS).

Mr. EVANS. Mr. Speaker, I thank the gentleman for yielding me this time, and I urge my colleagues to oppose the resolution disapproving the extension of the Jackson-Vanik waiver for Vietnam. Last year, seven Americans of this task force, along with nine Vietnamese, lost their lives in a helicopter crash on the way to a recovery mission. We should not forget these American heroes, or soldiers, who gave their open and cooperative mission. They had believed was their highest duty and honor. If we pass this resolution of disapproval, we would be hindering this mission. The only way to carry this out is to be in Vietnam. Maintaining that presence means government to government relations with Vietnam. Passing this resolution would send the wrong signal to the Vietnamese, not to mention the brave Americans who are still searching, as we meet here today, in the rice paddies and mountains of Vietnam.

This is the fifth year that this House will vote on a resolution of disapproval. Since we first voted on this, the House has each time, with growing and overwhelming support, voted down this resolution. Last year’s passage of the Bilateral Trade Agreement, we are truly embracing a successful policy that will advance our Nation’s interests and goals of achieving a more open and cooperative relationship in Vietnam.

Let us stay the course. Please vote against this resolution.

Mr. CRANE. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Maryland (Mr. GILCHREST).

Mr. GILCHREST. Mr. Speaker, I thank the gentleman for yielding me this time.

I rise in support of America’s continued trade with Vietnam. In the 1970s, the French moved into Southeast Asia, particularly Vietnam, isolated that country, demeaned the people and took away their dignity. That lasted until 1949. The Japanese moved in, isolated Vietnam, demeaned the population, and took away their dignity. In 1949, the French moved back in and did the same thing. So for well over a century the Vietnamese were isolated from the rest of the world, could not form a national government, had no trade, had no expertise or skill to understand the nature of a nation having its own sovereignty. Knew nothing about World War II which we fought to have a nation determine its own destiny, and there has been trouble in the 1950s and in the 1960s and the 1970s, and then the United States finally decided that in order to help the
Vietnamese gain some dignity, to have a sense of the international community, they needed the skills, the expertise, and, yes, the hope, and so what we have been doing over the last so many years is expanding the horizon for the Vietnamese people so they have what it takes to change their government from the inside while we make strong attempts to change their government from the outside, especially through the requirements of the trading agreements. Take the trading agreements away, and they will be in a completely different position. Now, the Vietnamese people go back to that isolation. They go back to the demeaning effects of what communism can do when no one reaches in to wrestle that juggernaut.

So what this debate is about is we understand, we know the nature of the government of Vietnam, and I have been back to Vietnam after I served there in the 1960s, and, yes, I have sat at a table with the same people who fought against me in the same region at the same time and they said, “We are communists,” and I said, “You would be better off giving your people some sense of freedom, freedom of the press, freedom of assembly, freedom to bargain, et cetera. So we know the government and we are working with the government to pull them out of that mindset because communism does not work, but we cannot give up on the people as well. And the way we get into the coming deal with the Vietnamese people to give them hope, to give them dignity, to give them the skills that are necessary to rise up out of the problems that exist there is through the requirements in trade.

Mr. ROHRABACHER. Mr. Speaker, I yield 3 minutes to the gentleman from Virginia (Mr. WOLF) who has been involved personally in almost every human rights fight in the Congress since I got here 14 years ago and whom I deeply respect. □

Mr. WOLF. Mr. Speaker, I rise today to support the legislation that disapproves granting Vietnam normal trade relations, and I appreciate the faithfulness of the gentleman from California (Mr. ROHRABACHER) on this issue.

The government of Vietnam is a gross violator and abuser of human rights. It persecutes all faiths, Buddhists, Roman Catholics and Protestants. The State Department’s most recent annual report on international religious freedom cites that “police routinely arrest and detain persons based on their religious beliefs and practices. Groups of Protestant Christians who worshipped in house churches in ethnic minority areas were subjected to detention by local officials who broke up unsanctioned religious meetings. Authorities also imprisoned persons for practicing religion illegally by using provisions of the penal code that allow for jail terms of up to 3 years for abusing freedom of speech, press or religion.” There are an estimated 2 dozen religious prisoners today as we debate this resolution.

According to the State Department’s report on religious international freedom, Pastor Ly, a Roman Catholic priest, Father Ly, has been in prison for several years and it is almost like nobody knows who Father Ly is, because he testified at a hearing held by the U.S. Commission on International Religious Freedom. Vietnam persecutes believers. It abuses those who fought alongside those in the United States. This Congress and this administration want to now give them normal trade relations. Vietnam should not get normal trade relations until its human rights record substantially improves.

Furthermore, there are now 348 detainees from Vietnam in U.S. custody, violent prisoners that are in United States prisons. These are Vietnamese prisoners who have finished their term, are released Vietnamese government will not take them back. They will not take them back. I believe that we should press the State Department and the Department of Justice, and the U.S. Ambassador in Vietnam ought to be speaking out on this issue. The silence coming out of our embassy in Vietnam is deafening. The silence is deafening.

Mr. Speaker, Members who vote to grant Vietnam normal trade relations in the belief that engagement and trade will improve Vietnam’s records ought to speak out. Anyone who votes for this, speaking out publicly to the Vietnamese government, will help raise attention to the human rights problems and put pressure on the Vietnamese to stop persecuting Catholics, Protestants, and Buddhists.

Mr. LEVIN. Mr. Speaker, I yield 3 minutes to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Speaker, I thank the gentleman for yielding me this time to speak against this resolution.

Mr. Speaker, I would begin by agreeing with my colleague from Virginia that people on both sides of the aisle have a responsibility to speak out on the continuing problems with human rights abuse, particularly religious freedom in Vietnam. I noted my colleague from Michigan had a very balanced statement in terms of looking at the snapshot.

This year’s annual vote to disapprove the President’s waiver comes less than a year after the historic vote to approve normal trade relations. We have seen solid progress and accomplishments since 1996 in my tenure in the House. Progress has not just been in economic opportunity for American companies in Vietnam and doing business in Vietnam, although those are important, particularly given these troubled economic times, we have seen progress in terms of the growing prosperity of the Vietnamese people, an 8 percent increase in per capita income in just this last year alone, and a tenfold increase in private firms that are doing business in Vietnam. We have seen progress in assuring continued progress and repatriating the remains of hundreds of Americans missing in action. This was there 2 years ago with President Clinton and watched men and women from both countries working to make sure that we are answering these questions.

More has been done in this war than any other war in American history. We have made progress in assuring the rights of Vietnamese returnees seeking to resettle in their homeland, and of Vietnamese citizens seeking to emigrate from Vietnam to the United States.

Yes, the human rights record is a dark spot, but revoking normal trade relations with Vietnam is not going to accelerate progress. Even the uneven progress in the course of this last year, we voted that most of the benchmarks have in fact been met. I have done as the gentleman from Virginia (Mr. WOLF) has suggested, when I have been in Vietnam, I have called and given the opportunity to press the Vietnamese and the opportunity for Vietnamese to practice their faith. That is going to be critical for Vietnam to be fully accepted into the family of nations.

But the fact is this is a government in transition. The old guard took over a year to figure out that they could accept yes for an answer and approve the bilateral trade agreement. Mr. Speaker, I have experienced first-hand the warmth of the Vietnamese people, 80 percent of whom were mere children or were not even born during the Vietnam War. I have seen their eagerness to embrace American innovation and American values. I strongly urge that we continue with our progress by rejecting this resolution today.

Mr. McNULTY. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Speaker, I rise in strong support of H.J. Res. 101, disapproving the extension of the waiver authority in section 402(c) of the Trade Act of 1974 with respect to Vietnam.

I am proud to represent a community in Santa Clara County that has been greatly enriched by the contributions of its Vietnamese American residents. For many years now, first an immigration attorney, a local elected official, and now as a Member of Congress, I have worked closely with these Americans on two issues close to their hearts and to mine, immigration and human rights.

Quite a few of my constituents came to San Jose as refugees, escaping an oppressive political regime. That is why I value their knowledge, experience and support, and that is why I believe their unique perspective on the U.S. relationship with Vietnam deserves deference.

While we are constantly told that the government of Vietnam is making
progress in the area of human rights, I continue to hear about political persecution and unwarranted detentions from my friends in the Vietnamese community. Later today, the Human Rights Caucus will be holding a hearing on freedom of expression in Vietnam.

Article 69 of the Vietnamese constitution recognizes freedom of opinion, expression and association for all its citizens, but the Vietnamese people are denied these privileges daily. Vietnamese citizens continue to send sensor mail, telephone calls and e-mail. Freedom of the press is a joke. While 500 papers exist in Vietnam, not one is privately owned. All radio and television stations are state-owned.

Amnesty International and Human Rights Watch have detailed cases, and their list of abuses is long. The U.S. State Department and humanitarian groups have reported that the Vietnam human rights situation has actually worsened since 2000, especially with regard to ethnic minorities like the Montagnards. There are reports of harassment of prominent dissidents in Vietnam, and Hanoi still implements strict control over the press.

If we are making such great strides towards human rights, then why are we continuing to hear that those who try to express themselves freely are routinely detained?

I believe in free trade. I have voted for trade agreements, but I believe that the situation in Vietnam is different. Here we have a clear opportunity to change the course of this Nation's behavior in exchange for trade. If we insist on human rights, Vietnam will comply in order to obtain a trade relationship with America. I ask my colleagues to support H.J. Res. 101. Stand up to the communists in Vietnam. Insist on human rights in Vietnam in exchange for free trade.

Mr. Speaker, I yield 2 minutes to the gentleman from Arizona (Mr. Kolbe).

Mr. KOLBE. Mr. Speaker, I thank the gentleman for yielding me this time. I rise in opposition to this resolution that would overturn the waiver of Jackson-Vanik for Vietnam.

Mr. Speaker, it is clear to me that economic engagement with Vietnam is critical. It is critical if we are going to have progress on the economic and political front. This kind of engagement that we have today promotes economic growth. It promotes the reduction of poverty in that country, and those certainly are goals that we are seeking to achieve around the world. As it encourages economic freedom in the country, it also encourages improvements in human rights and political pluralism.

I think of two other countries in that region that have had similar kinds of histories, Taiwan and South Korea. Both of those countries did not have good records on human rights. They did not have expressions of support for human rights or political freedom and political pluralism. But today those are flourishing democracies, and they are flourishing because of the economic progress that has been made in those countries. The same can be said of Vietnam.

I was in Vietnam just a year ago. It has been since my last visit, and the changes which have taken place are very, very dramatic in Vietnam. This is a country that is clearly on the edge of making huge progress economically; and as it does, I think one can predict with absolute certainty that the changes in progress on the political front as well.

If we were to revoke normal trade relations with this country, it means that we isolate the country politically. As we do that, we give them reason not to move towards more openness, more freedom and pluralism. It is not in our interest, economically or politically, from our national security standpoint, to isolate Vietnam. It is in our interest to integrate it into the trading system and the economic integration of Southeast Asia.

Mr. Speaker, I hope that this resolution will be defeated and that we will continue to grant normal trade relations with Vietnam.

Mr. Speaker, this has nothing to do with isolating Vietnam, and everybody in this debate should understand that. It has nothing to do with my last visits or not America should be able to sell their products in Vietnam. People can sell whether we grant them this waiver or normal trade relations status. They can still go over and build factories and sell products. We certainly are not going to isolate Vietnam.

What this is about, in essence, unless Vietnam gets this normal trade relations, gets this Presidential waiver, what is happening, American businessmen will be denied subsidies given to them by the international and our national financial institutions. They will be denied the subsidies for their investment in building factories in Vietnam. That is what is really going on here. Yet no one else addresses that. I mentioned that in the beginning. None of the other Members participating in the debate say that.

Let us address this. Why should we be subsidizing with our tax dollars the building of factories in Vietnam, a country that has not done anything for us, a country that is not a free country, a country that does not have a right to the rule of law, does not have a right to a right to quid pro quo, does not have a right to complaint or unionize, does not have any competition, we are going to have slave labor basically over there manufacturing in companies and in plants that have been built by the American taxpayers' subsidy.

Mr. Speaker, that is what this is all about. That is wrong in communist China. It is wrong in Vietnam. It is wrong in China. It is not wrong that we do not do business in China. It has not opened up the society. And for 8 years it has not opened up the society in Vietnam. This is profiteering at the expense of slave labor. This is wrong. That is the central issue at hand.

They have been playing games with us about our POWs. Let me just suggest this. Last year during this debate I remember as our former colleague, Mr. Peterson was here, and when I said the Vietnamese had not been forthcoming with the records on the prisoners where they held our POWs during the war, the word was spread, oh, no, they have given us all of the records, and that came from Mr. Peterson, who was then our ambassador. Guess what, after the debate I talked to him, oh, no, he had been mistaken. They have not given us those records.

They have not been forthcoming on that, and we have seen no progress on human rights. We should not be giving them credits and subsidizing our businessmen to build factories there.

Mr. Speaker, I reserve the balance of my time.

Mr. McNulty. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Ms. Jackson-Lee).

Ms. JACKSON-LEE. Mr. Speaker, this has nothing to do with historical context? Why do we not remember the Vietnamese people who fought alongside our young men and women for freedom and justice? This is not a trade bill. This is, frankly, rewarding those who continue to punish those hard-working, dedicated freedom fighters in Vietnam and punish their families who are here in the United States, refusing to allow their families to reunite with our own constituents and constituents across this Nation who worked hard every day in our communities and cannot see their family members.

This is not a trade question, because I do believe that it is important for our businesses to have the opportunity to trade exchange between our mutual businesses if it is fairly done, if those who are working are paid fairly in Vietnam, if no slave labor is used, if no human rights violations are used against those in that country.

What kind of morals do we have if we allow trade to be superior to the idea of freedom for the people? We should support this resolution and deny trade until Vietnam understands the real essence of human rights and freedom and justice.

Mr. McNulty. Mr. Speaker, before I recognize my final speaker, I would ask the Speaker to outline the order in which the closing statements will take place.

The SPEAKER pro tempore (Mr. Fossella). The gentleman from Illinois (Mr. Crane) will close, the gentleman from New York (Mr. McNulty) of Michigan (Mr. Levin), and the gentleman from California (Mr. Rohrabacher).
Mr. McNULTY. Mr. Speaker, I suggest that the order will be the reverse of what the Chair just outlined.

Mr. ROHRABACHER. We need the time as well, Mr. Speaker.

The SPEAKER pro tempore. The Chair is designating from the close to the gentleman from California (Mr. EVAN, myself, and then the chairman.

Mr. McNULTY. That is correct. The order of closing, then, will be the gentleman from California (Mr. ROHRABACHER), the gentleman from Michigan (Mr. LEVIN), myself, and then the chairman.

The SPEAKER pro tempore. The gentleman from California is correct. The gentleman from Illinois (Mr. CRANE) has the right to close.

Mr. McNULTY. That is correct. The order of closing, then, will be the gentleman from California (Mr. ROHRABACHER), the gentleman from Michigan (Mr. LEVIN), myself, and then the chairman?

The SPEAKER pro tempore. The gentleman from California is correct. The gentleman from New York (Mr. McNULTY) has 3 minutes remaining, the gentleman from Michigan (Mr. LEVIN) has 2 minutes remaining, and the gentleman from California (Mr. ROHRABACHER) has 1 1/2 minutes remaining.

Mr. McNULTY. Mr. Speaker, I yield 1 minute to the gentleman from Vermont (Mr. SANDERS).

Mr. SANDERS. I thank my friend for yielding me this time.

Mr. Speaker, I understand that the big money interests want us to have a free trade agreement with Vietnam because it works in their interest. How wonderful it is for them to throw American workers out on the street so they can move to Vietnam and China and American workers lose their jobs. The truth is our current trade policy is a disaster. In the last 4 years under NAFTA and MFN with China and trade agreements with Vietnam, we have lost millions of factory jobs. In fact, we have lost 10 percent of our manufacturing base.

In my small State of Vermont, companies cannot compete against cheap imports from this country. Companies are running to China and Vietnam to exploit the people in those countries. It is incomprehensible to me that any Member of this Congress who wants to protect American workers would vote against the amendment of my friend from California.

Mr. ROHRABACHER. Mr. Speaker, there are some true champions of human freedom in this body and none has a stronger voice and has been active as the gentleman from New Jersey (Mr. SMITH) to whom I yield 1 minute.

(M. SMITH of New Jersey asked and was given permission to revise and extend his remarks.)

Mr. SMITH. Mr. New Jersey. Mr. Speaker, I rise in strong support of the gentleman’s resolution.

It seems inconceivable to me that we could be waiving Jackson-Vanik at a time when the Vietnamese Government is paying $100 a head for the return of the Montagnards who have been kidnapping. Dissidents, men and women who have been repressed by this government, are being returned from Cambodia back to this repressive regime. To waive this in the Pollyanna-ish view that somehow human rights are improving is inconceivable to me.

I would also point out to my colleagues that this body passed the Vietnam Human Rights Act, which I introduced, which absolutely last year, and I would say last year, was totally vindicated. The Vietnamese Government has moved Heaven and Earth in the other body to put a hold on that legislation which simply looks for human rights improvements. They have not happened. In my view, we need to step up to the plate and say, despite the expectations that might have been there, they have not been realized. Human rights continue to be trashed.

I again rise in strong support of the gentleman’s resolution.

Mr. Speaker, I submit the following letter for inclusion in the CONGRESSIONAL RECORD:

COMMISSION ASKS SECRETARY POWELL TO RAISE RELIGIOUS FREEDOM ISSUES WITH VIETNAM AT ASEAN MEETING

WASHINGTON, July 23—The U.S. Commission on International Religious Freedom, a federal agency advising the Administration and Congress, last week wrote Secretary of State Colin L. Powell, asking him to raise religious freedom issues with Vietnamese officials during the ASEAN Regional Forum at the end of this month. The text of the letter follows:

DEAR SECRETARY POWELL: I am writing on behalf of the U.S. Commission on International Religious Freedom (Commission) which urges you to raise prominently the protection of religious freedom in Vietnam during your upcoming participation at the ASEAN Regional Forum, in light of these conditions, the Commission urges you to raise these issues in subsequent discussions with Vietnamese officials during your attendance at the ASEAN Regional Forum. In particular, we hope you will inquire about the confinement of Mr. Quang, Mr. Do, and Mr. Liem, and the imprisonment of Mr. Ly.

Furthermore, we wish to draw your attention to the following recommendations, first set out in our 2001 Annual Report, which we urge you to press the Vietnamese government to take the following steps:

(1) Release from imprisonment, detention, house arrest, or intimidating surveillance persons who are so restricted due to their religious identities or activities.

(2) Permit full access to religious leaders by U.S. diplomatic personnel and government officials, the U.S. Commission on International Religious Freedom, and international human rights organizations. The Commission urges you to seek a visit by the UN Special Rapporteur on Freedom of Religion.

(3) Establish the freedom to engage in religious activities (including the freedom for members of religious groups to select their own leaders, worship publicly, express and advocate religious beliefs, and distribute religious literature) outside state-controlled religious organizations and eliminate controls on the activities of officially registered organizations. Allow religious communities to conduct educational, charitable, and humanitarian activities, in accordance with the UN Declaration on the Elimination of All Forms of Intolerance and Discrimination.

(4) Permit religious groups to gather for observance of religious holidays.

(5) Return confiscated religious properties.

(6) Permit domestic Vietnamese religious organizations and individuals to interact with foreign organizations and individuals, permit domestic Vietnamese religious and other non-governmental organizations to distribute their own and donated aid.

(7) Support exchange programs between the U.S. and Vietnamese religious communities and U.S. and Vietnamese religious and other non-governmental organizations concerned with religious freedom in Vietnam.

In light of these conditions, the Commission urges you to raise these issues in subsequent discussions with Vietnamese officials during your attendance at the ASEAN Regional Forum. In particular, we hope you will inquire about the confinement of Mr. Quang, Mr. Do, and Mr. Liem, and the imprisonment of Mr. Ly.

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In light of these conditions, the Commission urges you to raise these issues in subsequent discussions with Vietnamese officials during your attendance at the ASEAN Regional Forum. In particular, we hope you will inquire about the confinement of Mr. Quang, Mr. Do, and Mr. Liem, and the imprisonment of Mr. Ly.
Rights Working Group, and that it should encourage the Vietnamese government to join the working group by establishing a national working group. The Commission urges you to assist in helping engage officials of the ASEAN working group in serious discussions about the promotion of human rights, including religious freedom, among ASEAN states. Moreover, I urge you to impress upon Vietnamese officials that the establishment of a national working group by their government would be an important sign of Vietnam’s commitment to protecting religious freedom and other human rights.

Thank you for your consideration of the Commission’s recommendations. We should be grateful if you would share with us the findings and achievements of your visit upon your return.

Respectfully,

FELICE GAER, Chair.

Mr. ROHRABACHER. Mr. Speaker, I yield myself the balance of my time.

We have heard over and over again that there has been progress made in Vietnam, but there has been no progress, obviously no progress, on human rights. They have gone in the opposite direction. We have heard there has been progress in POWs. That is not true. I reaffirm that they have never given the reports that we have been begging for for the records for the places where they kept our POWs so we could determine how many POWs were kept afterwards. And there is never an excuse because of the lack of human rights in Vietnam for us to subsidize the building of factories with American tax dollars, putting our own people out of work in a Communist dictatorship.

I call on my colleagues to support my resolution in denying this waiver of normal trade relations with this Communist dictatorship. Let us not throw our people out of work to give the chance for subsidized loans to our big businessmen to build factories in Vietnam.

Mr. LEVIN. Mr. Speaker, I yield myself the balance of my time.

Trade is rarely a matter of a single dimension. I always resist the arguments that pretend or assume that trade is all one way or all the other. There are usually considerations on all sides of the trade equation. I do not think trade by itself is a guarantee of political freedom. There has to be pressure on governments. It depends on the situation, it also has stronger engagement in most circumstances as well as pressure. That is what this discussion today is all about.

We have spent, many of us, a lot of time with former Ambassador Pete Peterson. He has assured us that Vietnam is not the same place today as it was 10 or 15 or 20 years ago. It is moving some steps forward, and it is also at times moving backwards. Our job is to help it keep moving in the right direction.

Mr. Speaker, the best day if it succeeds would be only to subsidies. It would revoke the bilateral trade agreement that was passed here by a very substantial margin just last year. I think those who voted in favor of that bilateral trade agreement have no reason today to change their vote. Those who have voted against this resolution in the past have no reason to change their vote. We will see in the future what happens, for example, with the textile agreement, and I have already made clear the position of many of us. But today we should remain on the course of both engagement and pressure.

I urge opposition to this resolution.

Mr. McNULTY. Mr. Speaker, I yield myself the balance of my time.

I thank Chuck Henley, Ron Cima, and Boyd Sponaugle of the Office of the Secretary of Defense for all of the latest information which they have supplied to me with regard to our MIAs. I am grateful to them and all of those who are helping to bring our MIAs home.

Mr. Speaker, we heard a lot about priorities today. I try to keep priorities straight. Part of that is remembering that had it not been for all of the men and women who wore the uniform of the United States military through the years, some of whom are present in this Chamber right now, I would not be here as a representative of going around bragging, as I often do, about how we live in the freest and most open democracy on the face of the Earth.

Freedom is not free. We have paid a tremendous price for it. That is why I try to keep those laws. I go by remembering with deepest gratitude all of those who, like my brother Bill and tens of thousands of others through the years, gave their lives in service to this country. And it’s why I’m thankful for people like J. Leo O’Brien, whose funeral I attended yesterday. Leo was part of what we call the greatest generation—those who served in World War II. Leo served, put his life on the line for all of us, for our families, and for all the Americans who were already home and rendered outstanding service in the community. He then raised a beautiful family to carry on in his fine tradition. That is what America is all about. Veterans are the reason why, when I get up in the morning, the first two things I do are to thank God for my life and then veterans for my way of life.

And so, Mr. Speaker, of behalf of all the Americans missing in action in Vietnam and their families, I support this resolution.

Mr. Speaker, I yield back the balance of my time.

Mr. CRANE. Mr. Speaker, I yield myself the balance of my time.

In response to some of the arguments that have come up earlier, I would like to make just a couple of observations, one dealing with the Overseas Private Investment Corporation. It is charging user fees historically, and it is a U.S. government agency. It is not a subsidy at no net cost to U.S. taxpayers, OPIC has earned a net profit in each year of operations, $125 million in fiscal year 2001, and its reserves currently stand at more than $4 billion. OPIC projects have also generated $64 billion in U.S. exports and created nearly 250,000 American jobs. OPIC projects are carefully screened for their U.S. employment effects. OPIC does not support any projects that might harm the U.S. economy, or that would result in the loss of U.S. jobs.

It is imperative that we continue Vietnam’s Jackson-Vanik waiver. It is in the United States’ interest to have an economically healthy Vietnam that is treated with a globality of nations. Vietnam is currently negotiating its accession to the World Trade Organization; and I fully support that effort, provided it is based on commercially sound terms. The BTA and its implementation offer an important road map for Vietnam to follow to help achieve that goal.

Although Vietnam has far to go in improving human rights for its people, withdrawing the Jackson-Vanik waiver would eliminate our ability to influence its policies. I urge my colleagues to defeat this resolution.

Mr. LAFLAMME, Mr. Speaker, I rise in opposition to H.J. Res. 101, the resolution of disapproval of the President’s waiver of the Jackson-Vanik amendment for Vietnam.

On June 3, 2002, President Bush notified Congress of his intention to issue a limited Jackson-Vanik waiver for trade relations with Vietnam for another year. I agree with the President’s action and believe that it is in our national interest to continue a policy of engagement with Vietnam.

Since the early 1990s, the United States has taken various steps to improve relations with Vietnam. In 1994, President Clinton lifted the U.S. trade embargo on Vietnam in recognition of the progress made in accounting for prisoners of war and servicemen missing in action. In 1995, President Clinton established diplomatic relations with Vietnam.

Last year trade between the United States and Vietnam totaled $1 billion. While such trade is not large relative to our total trade with the rest of the world, it is significant for Vietnam and is an important degree of engagement with a country that was once our enemy.

Last fall, Congress enacted legislation that ratified a U.S.-Vietnam bilateral trade agreement and extended normal trade relations to Vietnam. As in the case of China and some other countries, an annual review of Vietnam’s trade status is required by the Jackson-Vanik amendment to the 1974 Trade Act. With this resolution adopted, Vietnam could not receive U.S. government credits, or credit or investment guarantees, such as those provided by the Overseas Private Investment Corporation (OPIC), the Export-Import Bank and the U.S. Agriculture Department. In addition, imports from Vietnam would be subject to much higher tariffs and duties. These measures, which we grant to countries with which we have normal trade relations, would severely damage our trade with Vietnam.

The trade fostered by normal trade relations with Vietnam, relations that require a Jackson-Vanik waiver, are necessary for the United States to more effectively push for reform in Vietnam. As a result of the normalizing of
trade and diplomatic relations with Vietnam. Hanoi has made major progress on freedom of emigration, including helping with last year’s resettlement of 3,000 former boat people held in refugee camps throughout Asia. In addition, Vietnam has steadily improved cooperation in locating U.S. servicemen missing in action. Finally, the Vietnamese government did everything to prevent travel and communication between stop movement of people and in the hamlets highlands with police posted on the roads to travel bans had been instituted throughout the Highlands. Montagnards arriving at the freedom of movement throughout the Central provinces of Montagnards refugees to Cambodia, the U.S. Department of State deny MFN to any country with a nonmarket economy. According to the Country Commercial Report for Vietnam, the Vietnamese government did everything to prevent our war time allies from praying?

Mr. Speaker, it is obvious that Vietnam does not meet the human rights and economic conditions set forth by Jackson-Vanik. Let’s not reward a dictatorship that does not cooperate with us in helping to find our missing servicemen, refuses to permit our wartime allies to leave and uses trade to enrich and enforce its repressive regime. Accordingly, I urge my colleagues to support H.J. Res. 101.

Mr. CRANE, Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate has expired. Pursuant to the order of the House of Monday, July 22, 2002, the joint resolution is considered read for amendment and the previous question is ordered.

The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the joint resolution.

The question is on the passage of the joint resolution. The SPEAKER pro tempore announced that the ayes appeared to have it.

Mr. McNulty, Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered. The SPEAKER pro tempore. The aye vote is objected to under clause 6 of the rules. The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

GENERAL LEAVE

Mr. CRANE, Mr. Speaker. I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks and to include extraneous material on H.J. Res. 101.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Any Record votes on postponed questions will be taken later today.

IMPROVING ACCESS TO LONG-TERM CARE ACT OF 2002

Mr. HAYWORTH. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4946) to amend the Internal Revenue Code to provide health care incentives related to long-term care, as amended.

The Clerk read as follows:

H.R. 4946

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

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) Short Title.—This Act may be cited as the “Improving Access to Long-Term Care Act of 2002”.

(b) Amendment of 1986 Code.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. DEDUCTION FOR PREMIUMS ON QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of subchapter A of chapter 1 of title 26 (relating to additional itemized deductions) is amended by redesignating section 223 as section 224 and by inserting after section 223 the following new subsection:

"SEC. 223. PREMIUMS ON QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS.

"(a) IN GENERAL.—In the case of an individual, there shall be allowed as a deduction an amount equal to the applicable percentage of the annual premiums paid during any taxable year of the individual for a qualified long-term care insurance contract (as defined in section 7702B of the Internal Revenue Code).

"(b) APPLICABLE PERCENTAGE.—For purposes of subsection (a), the applicable percentage shall be determined in accordance with the following table:

<table>
<thead>
<tr>
<th>Year</th>
<th>The applicable percentage is</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003, 2004, and 2005</td>
<td>100%</td>
</tr>
<tr>
<td>2006 and 2007</td>
<td>80%</td>
</tr>
<tr>
<td>2008 and 2009</td>
<td>60%</td>
</tr>
<tr>
<td>2010 and 2011</td>
<td>40%</td>
</tr>
<tr>
<td>2012 and thereafter</td>
<td>20%</td>
</tr>
</tbody>
</table>

"(c) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—"(1) IN GENERAL.—If the modified adjusted gross income of the taxpayer for the taxable year exceeds $20,000 (twice the preceding dollar amount, as adjusted under paragraph (2), in the case of a joint return) the amount which would (but for this subsection) be allowed as a deduction under this section shall be reduced by the smaller of—

"(i) an amount equal to 50 percent of the taxpayer’s adjusted gross income for the taxable year, or

"(ii) the amount which would (but for this subsection) be allowed as a deduction under section 223(b)(1) paid during the taxable year of the taxpayer for coverage for the taxpayer, the spouse, and the spouse’s parents.

"(2) ADJUSTMENTS FOR INFLATION.—"(A) IN GENERAL.—In the case of a taxable year beginning after December 31, 2003, the first $20,000 amount contained in paragraph (1) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f) of the applicable calendar year in which the taxable year begins, determined by substituting ‘‘calendar year 2002’’ for ‘‘calendar year 1992’’ in subparagraph (B) thereof.

"(B) Rounding.—If any amount as adjusted under subparagraph (A) is not a multiple of
$1,000, such amount shall be rounded to the nearest multiple of $1,000 (or if such amount is a multiple of $500, such amount shall be rounded to the next highest multiple of $500).

"(3) MODIFIED ADJUSTED GROSS INCOME.—

For purposes of paragraph (1), the term ‘modified adjusted gross income’ means adjusted gross income determined—

‘‘(A) by striking sections for part VII of subchapter B of chapter 1 of the internal revenue code of 1986 and inserting ‘‘sections (d) and (e) as subsections (e) and (f), respectively, of section 414 of the internal revenue code of 1986’’,

‘‘(B) by application of sections 86, 135, 137, 219, 221, 222, and 469.

‘‘(C) by striking section 4980B of the internal revenue code of 1986 for such month is paid or incurred by the employer.

‘‘(4) PLANS MAINTAINED BY CERTAIN EMPLOYERS.—

(A) in the case of the plan described in paragraph (1)(A) of this section and sections 911, 931, and 933, and

‘‘(B) after application of sections 86, 135, 137, 219, 221, 222, and 469.

‘‘(5) DEDUCTION BASED ON SUBSIDIZED COVERAGE.—

‘‘(1) In General.—Subsection (a) shall not apply to premiums paid for coverage of any individual other than the taxpayer, any employer of the taxpayer or of the taxpayer’s spouse, and

‘‘(B) 50 percent or more of the cost of any such coverage (determined under section 4980B) for such month is paid or incurred by the employer.

‘‘(2) PLANS MAINTAINED BY CERTAIN EMPLOYERS.—

(A) which is not otherwise described in paragraph (1)(A) of this section shall be treated as described in such paragraph if such plan would be so described if all health plans of persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 were treated as one health plan.

‘‘(e) COORDINATION WITH OTHER DEDUCTIONS.—

(A) in the case of any account under subsection (a) shall not be taken into account in computing the amount allowable under subsection (a) shall not exceed the applicable limitation amount determined in accordance with the following table:

<table>
<thead>
<tr>
<th>Year</th>
<th>The applicable limitation amount is</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003 and 2004</td>
<td>$500</td>
</tr>
<tr>
<td>2005 and 2006</td>
<td>1,000</td>
</tr>
<tr>
<td>2007 and 2008</td>
<td>1,500</td>
</tr>
<tr>
<td>2009 and 2010</td>
<td>2,000</td>
</tr>
<tr>
<td>2011</td>
<td>2,500</td>
</tr>
</tbody>
</table>

‘‘(f) QUALIFIED FAMILY MEMBER.—For purposes of this subsection, the term ‘qualified family member’ means, with respect to any taxable year, any individual—

‘‘(A) who is—

‘‘(i) the spouse of the taxpayer, or

‘‘(ii) a dependant of the taxpayer with respect to whom the taxpayer is entitled to an exemption under section 151(d),

‘‘(B) who is an individual with long-term care needs during any portion of the taxable year, and

‘‘(C) other than an individual described in section 152(a)(9), who, for more than half of such year, had an individual’s principal place of abode the home of the taxpayer and is a member of the taxpayer’s household.

‘‘(4) INDIVIDUALS WITH LONG-TERM CARE NEEDS.—For purposes of this subsection, the term ‘individual with long-term care needs’ means, with respect to any taxable year, an individual who has been certified, during the 12-month period ending on the due date (without extensions) for filing the return of tax for the taxable year (or such other period as the Secretary prescribes), by a physician (as defined in section 151(e)(7) of the Social Security Act) as being, for a period which is at least 180 consecutive days—

‘‘(A) an individual who is unable to perform (with or without the assistance of another individual) at least 2 activities of daily living (as defined in section 7701A(2)(B)) due to a loss of functional capacity, or

‘‘(B) an individual who requires substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment and is unable to perform, without reminding or cuing assistance, at least 1 activity of daily living (as so defined) or to the extent provided in regulations prescribed by the Secretary (in consultation with the Secretary of Health and Human Services), is unable to engage in age appropriate activities.

‘‘(ii) DEDUCTION LIMITATION.—For purposes of this subsection, the term ‘individual with long-term care needs’ means, with respect to any taxable year, an individual who has been certified, during the 12-month period ending on the due date (without extensions) for filing the return of tax for the taxable year (or such other period as the Secretary prescribes), by a physician (as defined in section 151(e)(7) of the Social Security Act) as being, for a period which is at least 180 consecutive days—

‘‘(A) an individual who is unable to perform (with or without the assistance of another individual) at least 2 activities of daily living (as defined in section 7701A(2)(B)) due to a loss of functional capacity, or

‘‘(B) an individual who requires substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment and is unable to perform, without reminding or cuing assistance, at least 1 activity of daily living (as so defined) or to the extent provided in regulations prescribed by the Secretary (in consultation with the Secretary of Health and Human Services), is unable to engage in age appropriate activities.

SEC. 3. ADDITIONAL PERSONAL EXEMPTION FOR DEPENDENTS WITH LONG-TERM CARE NEEDS IN TAXPAYER’s HOME.

(a) IN GENERAL.—(1) The deduction (relating to allowance of deductions for personal exemptions) is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, of section 151 of the internal revenue code of 1986, by striking subsection (a) and inserting the following subsection:

‘‘(1) ADDITIONAL EXEMPTION FOR DEPENDENTS WITH LONG-TERM CARE NEEDS IN TAXPAYER’s HOME.—

‘‘(A) In General.—Except as provided in paragraph (2), an exemption of the exemption amount for each qualified family member of the taxpayer prescribed by the Secretary (in consultation with the Secretary of Health and Human Services) shall be allowed in accordance with this subsection.

‘‘(B) Phase-in.—In the case of taxable years beginning in calendar years before 2012, the amount of the exemption provided under paragraph (1) shall not exceed the applicable exemption amount for each qualified family member unless the taxpayer

Sec. 223. Premiums on qualified long-term care insurance contracts.

Sec. 224. Cross-reference.

Sec. 3. Effective date. The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

Sec. 4. Additional Consumer Protections for Long-Term Care Insurance.

(a) Additional Protections Applicable to Long-Term Care Insurance Subparas. (A) and (B) of section 7702B(h)(12) of the Internal Revenue Code of 1986 (relating to requirements of model regulation and Act) are amended by striking "(11)" and inserting "(11) Model Regulation. The following requirements of the model regulation:

‘‘(1) Section 6A relating to guaranteed renewal or noncancellability, and the requirements of section 6B of the model Act relating to such section 6A.

‘‘(II) Section 6B relating to prohibitions on limitations and exclusions.

‘‘(III) Section 6C relating to extension of benefits.

‘‘(IV) Section 6D relating to continuation or conversion of coverage.

‘‘(V) Section 6E relating to discontinuance and replacement of policies.

‘‘(VI) Section 7 relating to unintentional lapse.

‘‘(VII) Section 8 relating to disclosure, other than section 8F thereof.

‘‘(VIII) Section 11 relating to prohibitions against post-claims underwriting.

‘‘(IX) Section 12 relating to minimum standards.

‘‘(X) Section 13 relating to requirement to offer inflation protection, except that any requirement for a signature on a rejection of inflation protection shall permit the signature to be on an application or on a separate form.

‘‘(XI) Section 25 requiring, but relating to preexisting conditions and pre-eligibility periods in replacement policies or certificates.

The provisions of section 26 relating to contingent nonforfeiture benefits, if the policyholder declines the offer of a nonforfeiture provision described in paragraph (4), apply to such Act. The following requirements of the model Act:

‘‘(1) Section 6C relating to preexisting conditions.

‘‘(II) Section 6D relating to prior hospitalization.

‘‘(III) The provisions of section 8 relating to contingent nonforfeiture benefits, if the policyholder declines the offer of a nonforfeiture provision described in paragraph (4).

‘‘(B) Definitions.—For purposes of this paragraph—

(i) Model Provisions. The terms ‘model regulation’ and ‘model Act’ means the long-term care insurance model regulation, and
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the long-term care insurance model Act, re-
spectively, promulgated by the National As-
sociation of Insurance Commissioners (as ad-
opted as of October 2000).

(2) COVERAGE. — Any provision of the model regu-
lation or model Act listed under clause (i) or (ii) of subparagraph (A) shall be
 treated as including any other provision of such regulation or Act necessary to im-
plement the provision.

(iii) DETERMINATION. — For purposes of this section and section 4980C, the determination of
whether any requirement of a model regu-
lation or the model Act has been met shall
be made by the Secretary.

(b) EXCISE TAX. — Paragraph (1) of section
4980C(c) of the Internal Revenue Code of 1986
(relating to requirements of model provi-
sions) is amended to read as follows:

“(1) REQUIREMENTS OF MODEL PROVISIONS.—

(A) MODEL REGULATION. — The following
requirements of the model regulation must
be met:

(i) Section 9 (relating to required disclo-
sure of rating practices to consumer).

(ii) Section 14 (relating to application for
license).

(iii) Section 15 (relating to reporting re-
quirements), except that the issuer shall also
report at least annually the number of
claims pending during the reporting pe-
riod for each class of business (expressed as a per-
centage of claims denied), other than claims
denied for failure to meet the waiting period
or because of any applicable preexisting con-
dition.

(iv) Section 22 (relating to filing require-
ments for advertising).

(v) Section 24 (relating to standards for mar-
teting, including inaccurate completion of
medical histories, other than paragraphs (1), (6), and (9) of section 23C, except that:

(I) such requirements, no person shall, in selling or offering to sell a qualified
long-term care insurance contract, misrepresent a material fact; and

(II) no such requirements shall include a
requirement to inquire or identify whether a
prospective applicant or enrollee for long-
term care insurance has accident and sick-
ness insurance.

(vi) Section 29 (relating to suitability).

(vii) Section 29 (relating to standard for-
mat outline of coverage).

(viii) Section 2D (relating to requirement to
deliver shopper’s guide).

The requirements referred to in clause (vi)
shall not include portions of the per-
sonal worksheet described in Appendix B of
the model regulation relating to consumer
protection requirements not imposed by sec-
ction 4980C or 7702B.

(B) MODEL ACT. — The following require-
ments of the model Act must be met:

(i) Section 6F (relating to right to re-
turn), except that such section shall also
apply to denials of applications and any re-
fund shall be made within 30 days of the
return or denial.

(ii) Section 6G (relating to outline of cov-
erage).

(iii) Section 6H (relating to requirements for
certificates under group plans).

(iv) Section 6J (relating to policy sum-
mary).

(v) Section 6K (relating to monthly re-
ports on accelerated death benefits).

(vi) Section 7 (relating to incontestability
period).

(C) DEFINITIONS. — For purposes of this
paragraph, the terms ‘‘model regulation’’ and
‘‘model Act’’ have the meanings given such
term by section 7702B(g)(2)(B).’’.

(d) EFFECTIVE DATE. — The amendments
made by this section shall apply to policies
issued after December 31, 2002.

SEC. 5. EXPANSION OF HUMAN CLINICAL TRIALS
QUALIFYING FOR ORPHAN DRUG CREDIT.

(a) IN GENERAL.—Paragraph (2) of section
45C(b) of the Internal Revenue Code of 1986 is
amended by adding at the end the following
new subparagraph:

“(C) TREATMENT OF CERTAIN EXPENSES INCURRED BEFORE DESIGNATION.—For purposes
of subparagraph (A)(i)(I), if a drug is des-
ignated under section 526 of the Federal
Food, Drug, and Cosmetic Act not later than
the due date (including extensions) for filing
the return of tax under this subtitle for the
taxable year in which the application for
such designation was filed, such drug shall be treated as having been des-
ignated on the date that such application
was filed.

(b) EFFECTIVE DATE.—The amendment
made by subsection (a) shall apply to ex-
penses incurred after the date of the enact-
ment of this Act.

SEC. 6. VACCINE TAX TO APPLY TO HEPATITIS A VACCINE.

(a) IN GENERAL.—Paragraph (1) of section
4323(a) (defining taxable vaccine) is amended
by redesigning subparagraphs (I), (J), (K), (L),
and (M) as subparagraphs (J), (K), (L), and
(M), respectively, and by inserting after sub-
paragraph (H) the following new subpara-
graph:

“(I) Any vaccine against hepatitis A.’’

(b) EFFECTIVE DATE.—(I) SALES, ETC.—The amendments made by subsection (a) shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the
date of the enactment of this Act.

(II) DELIVERIES.—For purposes of paragraph (1) and section 4313 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such para-
graph for which delivery is made after such
date, the delivery date shall be considered the sale date.

SEC. 7. ELIGIBILITY FOR ARCHER MSA’S EXTENDED TO ACCOUNT HOLDERS OF MEDICARE+CHOICE MSAS.

(a) IN GENERAL.—Subparagraph (B) of sec-
tion 220(c)(2) of the Internal Revenue Code of
1986 is amended by adding at the end the fol-
lowing new clause:

“(III) MEDICARE+CHOICE MSA’S.—In the case
of an individual who is covered under an
MSA plan (as defined in section 1859(b)(3) of
the Social Security Act) which such indi-
vidual elected under section 1851(a)(2)(B) of
such Act—

(I) such plan shall be treated as a high de-
ductible health plan for purposes of this
section, and

(II) subsection (c)(2)(A) shall be applied by
substituting ‘‘100 percent’’ for ‘‘65 percent’’
with respect to such individual.

(III) with respect to such individual, the
limitation under subsection (d)(1)(A)(ii) shall be
100 percent of the highest annual deduct-
ible limitation under section 1859(b)(3)(B) of
the Social Security Act.

(IV) paragraphs (4), (5), and (7) of sub-
section (b) and paragraph (1)(A)(ii) of this
subsection shall not apply with respect to
such individual, and

(V) the limitation which would (but for
this clause) apply under subsection (b)(1)
with respect to such individual for any tax-
able year shall be reduced (but not below zero
by the amount which would (but for subsection (b)(1)) be applicable in such indi-
vidual’s gross income for the taxable year.

(b) EFFECTIVE DATE.—The amendment
made by subsection (a) shall apply to taxable
dates beginning after December 31, 2002.

The SPEAKER pro tempore. Pursuant
to the rule, the gentleman from Arizona (Mr. HAYWORTH) and the gen-

Mr. HAYWORTH. Mr. Speaker, I
yield myself such time as I may con-
sume.

Mr. Speaker, I rise in support this
morning of this very important meas-
ure, H.R. 4946, the Improving Access to
Long-Term Care Act. The need for
long-term care is expected to grow sub-
stantially in the future, straining both
public and private resources.

Total spending on long-term care
services for people of all ages ap-
proached $138 billion in fiscal year 2000,
nearly $86 billion of which was for pub-
lic programs. As 77 million baby-
boomers approach retirement age, the
need to address long-term care be-
comes ever-more important.

Soaring costs and rising demand
for long-term care services could dele-
te personal savings and exhaust govern-
ment entitlement programs. It is es-
ential that people are encouraged to
plan and take some personal responsi-
bility for their future needs. Therefore,
I am privileged to bring forward this
legislation, the Improving Access to
Long-Term Care Act of 2002 as a crit-
ical first step toward helping in the
emerging long-term care crisis.

First of all, this legislation provides
immediate tax relief to assist individ-
uals in acquiring and maintaining
long-term care for themselves, espe-
sially health care, which is so vital, for
themselves, their spouses and their de-
pendents.

H.R. 4946 would provide an above-the-
line deduction for eligible long-term

care insurance premiums. Under cur-
rent law, individuals may claim an
itemized deduction for the cost of eligi-
ble qualified long-term care insurance
premiums, but only to the extent that
such premiums, combined with the tax-
payer’s additional medical expenses,
exceed 7.5 percent of adjusted gross in-
come.

This bill provides an above-the-line
deduction for a percentage of eligible
long-term care premiums for which the
taxpayer pays at least 50 percent of the
cost of coverage. The deduction is
available for eligible long-term care in-
urance that covers the taxpayer, the
taxpayer’s spouse or the taxpayer’s de-
pendents.

The deduction is available to indivi-
duals with adjusted gross income be-
 tween $20,000 and $40,000, and twice
that amount for married couples filing
a joint return. This legislation will be ad-
justed annually for inflation. This bill
provides targeted relief for those taxpayers who really need it.

Although financing is the corner-
stone of the long-term care issue, we
must also look at supporting family
members. H.R. 4946 provides an addi-
tional personal exemption for home
caregivers. H.R. 4946 would add an addi-
tional personal exemption for family
members. This bill provides immediate tax relief to those
taxpayers who assume the responsibility of providing for the care and support of individuals with long-term care needs.

Under current law, individuals are entitled to a personal exemption deduction. In 2003, for the taxpayer, the taxpayer’s spouse and each dependent. This bill provides the taxpayer with an additional personal exemption for each qualified family member with long-term needs.

The gentleman from Arizona pointed out, three major components to this bill. There is the long-term care tax deduction. It allows individuals with incomes below $40,000, and actually the full benefit is available for individuals up to $20,000, and then phases out by $40,000. It will give them very slowly over 10 years a deduction, and the most value it will provide these people is 7.5 cents on every dollar of long-term care premium they pay.

Now, mind you, you are talking about individuals with $20,000 worth of income. It is questionable whether those people are even buying life insurance. The average amount of life insurance that meets certain consumer protection requirements promulgated by the National Association of Insurance Commissioners, or NAIC. This bill updates the consumer protection provisions to reflect changes made to the Long-Term Care Insurance Model Act by the NAIC. Provisions that support the addition of the additional consumer protection provisions include AARP, the American Council of Life Insurers and the Health Insurance Association of America.

Mr. Speaker, this legislation also includes other various tax provisions concerning health and health care. First, this legislation includes an orphan drug tax credit that would prevent drug manufacturers from delaying the important process of human clinical testing of orphan drugs until the time of Food and Drug Administration approval. This legislation would add any vaccine administered to prevent hepatitis A to the list of taxable vaccines. Finally, this legislation will provide retirees with additional flexibility in obtaining health care for the retirees and their families by permitting those individuals who are Medicare-eligible to make contributions to an Archer Medical Savings Account to also have an Archer Medical Savings Account and allowing employees to make contributions to an Archer MSA on behalf of a Medicare eligible individual.

Mr. Speaker, our Nation is in dire need of comprehensive long-term care reform. By 2040, the number of Americans 61 and older will more than double. Without long-term care reform, these changing demographics will drive spending for Social Security, Medicare and Medicaid to consume nearly 75 percent of all Federal revenue by the year 2030.

The Improving Access to Long-Term Care Act is a first critical step to focus immediate attention on long-term care before the crisis occurs.

Mr. Speaker, I reserve the balance of my time.

Mr. STARK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I hardly know where to begin. This bill is, at best, unnecessary, and, at worst, it is a wasteful expenditure of $5.5 billion, which will accomplish very little except add to the repeated Republican program of giving huge benefits to the wealthy and doing very little for the average American.

This bill is designed to turn a bunch of sow’s ears into silk purses. The goal of expanding the purchase of long-term care insurance sounds like a positive one, if people really believe that long-term care insurance was any good as opposed to the industry today. Very few people are purchasing it. It is a dud in the market.

We are, in this bill, attempting to help or bail out the long-term care insurance industry. But I wonder if that is a good use of the public’s money? We are having trouble finding the money to pay, say, for prescription drugs. Why are we trying to get people to purchase something they do not need?

Mr. Speaker, I believe firmly that we need to do something about the long-term care issue, but we have had precious little debate as to whether private insurance is the right approach.

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Mr. Speaker, I reserve the balance of my time.

Mr. HAYWORTH. Mr. Speaker, I yield myself 30 seconds.

The question comes from the gentleman from California in a very interesting fashion in terms of public policy, why do this? Well, I think it is worth noting that in fiscal year 2000 Medicare and Medicaid provided $82.1 billion, 40 percent of the money, of the $123 billion, spent on long-term care services.

We have a basic question here. If we do not put incentives in for individuals, our public resources will be depleted. It is in that spirit that we offer the legislation.

Mr. HAYWORTH. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. WELLER).

(Mr. WELLER asked and was given permission to revise and extend his remarks.)

Mr. WELLER. Mr. Speaker, I stand here in strong support of legislation that is pro-family and pro-senior, legislation that will help families struggling to find long-term care needs.

Mr. Speaker, if we look at the statistics, only 10 percent of Americans today have long-term care insurance, what some of us would call nursing home insurance. Many would suggest, well, do not worry about it right now; just, when the time comes if you need nursing home care, somebody else will pick up the tab. Well, we have learned how expensive nursing home care is for an average family. When we think about it, one could be a 16-year-old in an average family.

One could be a 16-year-old in an average family. When we think how expensive nursing home care is for an average family, somebody else will likely find long-term care needs.

It is in that spirit that we offer the legislation. It is in that spirit that we offer the legislation. It is pro-family and pro-senior, legislation that we offer a solution that will help families struggling to find long-term care needs.

Mr. Speaker, if we look at the statistics, only 10 percent of Americans today have long-term care insurance, what some of us would call nursing home insurance. Many would suggest, well, do not worry about it right now; just, when the time comes if you need nursing home care, somebody else will pick up the tab. Well, we have learned how expensive nursing home care is for an average family. When we think about it, one could be a 16-year-old in a motorcycle accident and require long-term care if that tragedy were to occur.

This is good legislation. I commend the gentleman from Arizona (Mr. HAYWORTH) for stepping forward to offer a solution that will help families and provide an incentive to purchase long-term care insurance.

It is an above-the-line deduction for eligible, long-term care insurance premiums. When we think about it, this legislation is targeted to moderate and middle income families, individuals between the income levels, adjusted gross income level of $20,000 to $40,000, or if you are married, twice that. There is no marriage penalty here; all will be eligible for this above-the-line deduction. It helps the middle class, those who struggle the most. Because if you are poor, Medicare picks up the tab; if you are rich, you can afford it. It is the middle class that struggles the most with nursing home care costs.

I also want to commend the gentleman from Arizona (Mr. HAYWORTH) for including in this legislation help for those families who take care of mom or dad or a loved one at home. We receive a $3,000 personal exemption for our dependents and spouses under our Tax Code today. Well, this legislation creates a new one. If you have a parent living at home or someone, a loved one that is at home who requires long-term care needs and you are taking care of that family member at home, you get a deduction that is phased in, will equal $2,500. That is leadership, and that is helping families, particularly middle and moderate-income families who some day will be seniors.

Mr. STARK. Mr. Speaker, I am pleased to join the gentleman from Texas (Mr. BARTLETT) on behalf of the House Ways and Means Committee on this important legislation. It helps the middle class, those people at 50 years old, because we need to be starting to talk about people that might want assisted living, areas that many of our seniors are moving in those directions today. We always want to thank that we give them the help.

So over the years, the Congress has talked about this issue. We also, in the last year or so, were able to pass on to retirees from the Federal Government, as well as Federal employees that are now serving, the ability to buy long-term care. It just seems to me that in some ways, we need to be starting to work with those folks that are 44, 50 years old, so they can start looking at ways to plan for retirement, and so that they are not dependent on their families for the cost of this. Because that has a negative effect on the families that they are trying to put through college or that they are trying to help to buy their first home. We are talking about home health care, we are talking about people that might want assisted living, areas that many of our seniors are moving in those directions today. We always want to thank that we give them the help.

In saying all of that, I also want to say that I am a little concerned that we did not look at a bill that the gentleman from Connecticut (Mrs. THURMAN) and the gentleman from North Dakota (Mr. POMEROY) and myself had worked on, which was H.R. 831, which, quite frankly, I think does a little bit more and would improve the Hayworth bill.

First of all, it would, in fact, look at instead of the deduction by 2012, we could have a little bit more and a possibility of bringing to a 100 percent tax deductible, and particularly for those people at 50 years old, because we need to be encouraging them to buy this. That would have been an excellent place, I think. We could have a little bit more, and I think that would be a little bit more generous with that.

But I would say that I would like to thank the gentleman from Arizona (Mr. HAYWORTH) and others for taking our suggestions during the markup, because we had worked so hard on this piece of legislation that we also knew that there needed to be consumer protections, which in my understanding now have been added to this particular piece of legislation. These consumer protection provisions would apply to all people purchasing long-term care insurance policies, which is good and, among other things, these protections have to keep people from losing their policies. That is big, because we have seen over the course of the last couple of years that we have out-priced policies, that there were no consumer protections. So by adding in this protection for people, but I hope it will help them from losing their policies and being out-priced in the market or, just at the time that folks might need this, all of a sudden their premiums jump so high that they have the inability to pay for it. And if all of this has been purchasing this, they no longer have use of it because they cannot pay the premium.

I think that the gentleman from North Dakota (Mr. POMEROY), because of his background, we talk more about, I hope I am right, on some of the issues that he has dealt with on suitability standards that he has so much knowledge about and has worked with for so many years in his own State of North Dakota.

While I would say that I do not think the Hayworth bill is perfect, I do think it gives us a first step to bringing down the cost of long-term care insurance for people, but I hope it will look at the other bills that are out there.

Mr. HAYWORTH. Mr. Speaker, I yield myself 30 seconds to thank the gentlewoman for her well-intentioned critique and also the work that she has done all of the things that the gentleman from Connecticut (Mrs. JOHNSON).

A couple of points I would make, first of all, based on some of the work we did on the committee, I am tabling again, we included in this legislation the consumer protections. The language is directly from the bipartisan bill H.R. 831, just to amplify that fact, so we tried to work in a constructive way, and we will continue to work in that constructive fashion. Given the budget parameters that we face, the bill advocated by the gentlewoman from Florida is six times the cost of this bill, so while this bill is a first step, it fits into some budgetary parameters and realities in which we had to deal.

Mr. HAYWORTH. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. BRADY) to discuss another important provision of this legislation.

Mr. BRADY of Texas. Mr. Speaker, I rise today in support of H.R. 4946. I want to commend the gentleman from Arizona (Mr. HAYWORTH) from the Committee on Ways and Means for introducing this very important legislation.

This will provide immediate tax relief to assist individuals in getting, and
in keeping, long-term health care for themselves, for their parents, and for their dependents. I am pleased, too, that this bill incorporates legislation that I introduced, the Orphan Drug Tax Credit Act of 2001.

Orphan drugs are drugs that address rare diseases, those which do not have large populations, but that are very serious. The act has really worked well getting these new drugs to the marketplace, but a glitch has developed that we want to correct. Delays in the marketing process unfortunately stop drugs for about 6 months to a year from coming to the market, and that means we are not able to help the approximately 20 million Americans who suffer from more than 5,000 different rare diseases such as Lou Gehrig’s, cerebral palsy, cystic fibrosis, pulmonary hypertension, and Huntington’s disease, for example. This legislation merely removes that timing problem, and a tax credit to be taken from the time they apply.

Our goal here is to get more of these drugs and therapies into the hands of patients in a safe and quick and more affordable way. We do that by eliminating unnecessary delays and costs, encouraging biotechnology and pharmaceutical companies to research, to develop, and to manufacture these drugs, even though the market for them may be relatively small. Without continued research into orphan drugs, people with rare diseases will not see the medical breakthroughs the patients with more common diseases may enjoy.

Mr. Speaker, I support this legislation. It is endorsed by the Biotechnology Institute and a number of patient groups with the rare diseases. I appreciate the leadership of the gentleman from Arizona (Mr. HAYWORTH) and the Ways and Means Committee in bringing this legislation forward.

Mr. STARK. Mr. Speaker, I am pleased to yield 5 minutes to the gentleman from North Dakota (Mr. POMEROY).

Mr. POMEROY. Mr. Speaker, I thank the gentleman for yielding me this time. I applaud the gentleman from Arizona (Mr. HAYWORTH) for his attention to the issue of long-term care. There is no doubt we need to do something about this issue.

Currently, some 5.2 million Americans over the age of 65 and 4.6 million Americans under the age of 65 need assistance with daily activities. The increased life expectancy of the baby boomer generation will increase this need for long-term care. A man aged 65 today can expect to live another 15 years, and a woman aged 65 can expect to live another 20 years. But the cost of long-term care insurance can be prohibitive. The cost of long-term care insurance varies dramatically, according to the age of the consumer. On average, a basic plan premium can cost a 65-year-old $985 annually; $1,007 annually for a 65-year-old; $1,100 for a 79-year-old, if they can find the coverage.

Now, some of us worked to begin this approach at trying to tax and encourage long-term care insurance and, under HIPAA, individuals can deduct long-term care premiums, but only if the taxpayer itemizes deductions and that medical cost exceeds 7.5 percent of adjusted gross income. We had sought in a bipartisan way to expand upon this with H.R. 831, creating an above-the-line deduction for long-term care. I joined the gentlewoman from Florida (Mrs. THURMANN) in sponsoring that legislation. I am very disappointed that budget constraints do not allow us to move on that legislation, because I believe that would have been much more significant in providing relief to those that accept the responsibility to insure themselves against the cost of long-term care.

The bill before us does not do a lot. I do not mean to impugn the dedication of the sponsor to this topic. It is a feature of budget. But I used to prosecute insurance agents as insurance commissioner that overstated what they had in the policy, and to quote back what I am afraid we are not overstating on this legislation, I want to spell out what the bill does and does not do.

Well, it gradually phases in a personal exemption for caregivers of up to 2.5 cents per dollar incentive. We are not talking about立面， particularly phased in very slowly and, when fully phased in, does not produce a lot of benefit. The Center on Budget and Policy Priorities estimates that at full implementation in the year 2012, most eligible taxpayers will defray no more than 5 to 7.5 cents of each dollar spent out of pocket for coverage. While it is phasing in the years 2003 and 2005, you have 2.5 cents per dollar to 3.75 cents per dollar incentive. We are not talking about立面 in terms of generating new interest in the market for long-term care insurance with this very de minimis new incentive.

Now, I am pleased that the sponsor of the legislation did incorporate the consumer protection standards that have been developed by State insurance regulators. I chaired the first National Association of Insurance Commissioners Committee to develop these minimum standards, and they have been embraced and championed by the Commissioner that I particularly concerned about suitability and that these policies not be sold to people that may have very modest amounts of income and are actually relatively near Medicaid eligibility. These individuals historically have been shown not to be able to keep their coverage in force, lapse their coverage, and basically end up poorer than when they started with nothing held by way of protection for long-term care expenses.

I also take some criticism of the way that personal exemption for at-home care has been provided. In our initial legislation, we had sought a tax credit for long-term care for at-home cost of providing care. The tax exemption as figured in this legislation means the more you have by way of resources, the more you have by way of taxable income, the more you get back by way of benefit.

Well, the costs of providing care actually hit harder on those that do not have the income. It is more manageable by those that do have the income. So it is not sound policy to construct a benefit that gives a lot more benefit to those with income and a lot less benefit to those without. Those without income, those without resources yet struggling to provide the care to a loved one in their home need more help, and this is exactly the wrong approach.

I have struggled with whether to support this bill or not. I do not know whether it is a baby step forward, in which case I would vote for it, or a side track, basically diverting the political pressure for doing more on incenting long-term care insurance or a side track down the road to nowhere. In the end I decided to say, very marginally I am satisfied. And I will vote for it without much enthusiasm.

Mr. HAYWORTH. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, talk about faint praise. It is interesting to hear my colleague from North Dakota, Mr. POMEROY, while he is correct, amidst all the rhetoric, a couple of concerns because it bears amplification in a bipartisan way, mindful of the gentleman’s experience in the insurance industry. Precisely because of the concerns he shared with this body on suitability, precisely because of some of the challenges confronted, we specifically added the consumer protections offered in the Johnson bill. Specifically, section 24 of model regulation that deals precisely with the question of suitability.

Now, undergirding all of this is the notion, Mr. Speaker, that the House has already put in place an incremental approach to long-term health care policy and insurance. One of the challenges we confront in a legislative body in a very real way is how to capture the ideal and move something that is real. With carte blanche, with a blank check certainly we could have embraced a bill six times more costly; the Centers for Medicare and Medicaid, and the bill that is real. With carte blanche, with a blank check certainly we could have embraced a bill six times more costly; the Centers for Medicare and Medicaid, and the bill that is real. With carte blanche, with a blank check certainly we could have embraced a bill six times more costly; the Centers for Medicare and Medicaid, and the bill that is real. With carte blanche, with a blank check certainly we could have embraced a bill six times more costly; the Centers for Medicare and Medicaid, and the bill that is real. With carte blanche, with a blank check certainly we could have embraced a bill six times more costly; the Centers for Medicare and Medicaid, and the bill that is real. With carte blanche, with a blank check certainly we could have embraced a bill six times more costly; the Centers for Medicare and Medicaid, and the bill that is real.
And after listening to the debate, I on Ways and Means a short time ago.

Again, we should thank and encourage those who provide home care to dependents.

I strongly believe that we must provide incentives to encourage all Americans to purchase long term care insurance plans. Under current law, both individuals and married couples can deduct the cost of these premiums from their adjusted gross income if these expenditures exceed 7.5 percent of their adjusted gross income. As a result of this limitation, many Americans do not currently purchase these insurance plans. With the average cost of at least $50,000 per year for long term care services, many Americans are not financially prepared to pay for such long term care services. As the number of Americans who are reaching retirement age climbs, there will be more need to provide such coverage. In addition, it is better to encourage Americans to purchase long term care plans when they are healthy and younger. Because long term insurance premium costs are risk-based, it is better to encourage individuals and families to purchase such insurance when their premiums are more affordable.

Another important provision in this measure would provide a new personal tax exemption for home care givers of long term care patients. In a time when many families make personal sacrifices in order to keep their loved ones at home, we should be helping these families to cope with the financial burden for such home-based care. Under the bill, a tax payer who is a care giver for a loved one would be eligible for a personal tax exemption of $500 beginning in 2003 and increasing by $500 every two years until it reaches $2000 in 2010. This tax exemption would be available for individuals whose adjusted gross income is less than $206,000 and would be available for married couples whose adjusted gross income is less than $206,000 annually. In order to encourage all Americans to use these exemptions, the cap of these exemptions would be repealed in 2010. The Joint Tax Committee estimated that this provision would save families $787 million over five years. It is my hope that this exemption will help many caregivers who choose to care for their families in their own homes, rather than the more expensive institution-based care of nursing homes and long term care facilities.

I believe we must encourage families to purchase long term care insurance. Without such incentives, the federal government will face a
The yeas and nays were ordered. The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. HAYWORTH. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4946, the bill just debated.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

NATIONAL AVIATION CAPACITY EXPANSION ACT OF 2002

Mr. MICA. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3479) to expand aviation capacity in the Chicago area, as amended.

The Clerk read as follows:

H.R. 3479
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, TITLE I—NATIONAL AVIATION CAPACITY EXPANSION

SEC. 101. SHORT TITLE.

This title may be cited as the “National Aviation Capacity Expansion Act of 2002”.

SEC. 102. FINDINGS.

Congress finds the following:

(1) O'Hare International Airport consistently ranks as the Nation's first or second busiest airport with nearly 34,000,000 annual passengers enplanements, almost all of whom travel in interstate or foreign commerce. The Federal Aviation Administration’s most recent data, compiled in the Airport Capacity Benchmark Report 2001, projects demand at O'Hare to grow by 18 percent over the next decade. O'Hare handles 72,100,000 passengers annually, compared with 64,600,000 at London Heathrow International Airport, Europe’s busiest airport, and 36,700,000 at Kimpo International Airport, Korea’s busiest airport, 7,400,000 at Narita International Airport, Japan’s busiest airport, 21,700,000 at Kingsford-Smith International Airport, Australia’s busiest airport, and 6,200,000 at Ezeiza International Airport, Argentina’s busiest airport, as well as South America’s busiest airport.

(2) The Airport Capacity Benchmark Report 2001 ranks O'Hare as the third most delayed airport in the United States. Overall, slightly more than 6 percent of all flights at O'Hare are delayed significantly (more than 15 minutes). On good weather days, scheduled traffic is at or above capacity for 3½ hours of the day with about 2 percent of flights at O'Hare delayed significantly. In adverse weather, capacity is lower and scheduled traffic exceeds capacity for 8 hours of the day, with about 12 percent of the flights delayed.

(3) The city of Chicago, Illinois, which owns and operates O'Hare, has been unable to pursue projects to increase the operating capability of O'Hare runways and thereby reduce delays because the city of Chicago and the State of Illinois have been unable for more than 20 years to agree on a plan for runway reconfiguration and development. State law states that such projects at O'Hare require State approval.

(4) On December 5, 2001, the Governor of Illinois and the Mayor of Chicago reached an agreement to allow the city to go forward with a proposed capacity expansion project for O'Hare which involves redesign of the airport's runway configuration.

(5) In furtherance of such agreement, the city, with approval of the State, applied for and received a master-planning grant from the Federal Aviation Administration for the capacity enhancement project.

(6) The agreement between the city and the State is not binding on future Governors of Illinois.

(7) Future Governors of Illinois could stop the O'Hare capacity enhancement project by refusing to issue a certificate required for such project under the Illinois Aeronautics Act, or by refusing to submit airport improvement grant requests for the project, or by improperly administering the State implementation plan process under the Clean
Air Act (42 U.S.C. 7401 et seq.) to prevent construction and operation of the project.

(8) The city of Chicago is unwilling to continue to go forward with the project without assurance that the Governor of Illinois will not be able to stop the project, thereby endangering the value of the investment of city and Federal resources in the project.

(9) Importance of O'Hare to the national air transportation system and the growing congestion at the airport and because of the expenditure of Federal funds for a grant for the expansion of airport capacity at O'Hare, it is important to the national air transportation system, interstate commerce, and the efficient expenditure of Federal funds, that the city of Chicago's proposals to the Federal Aviation Administration have an opportunity to be considered for Federal airport improvement funding. The purpose of the Act is to encourage and facilitate the expansion of airport capacity at O'Hare, and it is desirable to require procedures for approving and funding an airport capacity improvement project, including all applicable safety, utility and efficiency, and environmental reviews.

SEC. 103. STATE, CITY, AND FAA AUTHORITY.

(a) PROHIBITION.—In furtherance of the purpose of this Act to achieve significant air transportation benefits for interstate and foreign commerce and national security, the Federal Aviation Administration makes, or at any time after December 5, 2001 has made, a grant to the city of Chicago, Illinois, with the approval of the State of Illinois, under the provisions of the agreement reached on December 5, 2001, for the construction of runway improvements at O'Hare International Airport, the State of Illinois, and any instrumentality or political subdivision of the State, are prohibited from exercising authority under sections 38.01, 47, and 48 of the Illinois Aeronautics Act (620 ILCS 5), to prevent, or have the effect of preventing:

(1) further consideration by the Federal Aviation Administration of an O'Hare airport layout plan directly related to the agreement reached on December 5, 2001, with respect to O'Hare;

(2) construction of projects approved by the Administrator in such O'Hare airport layout plan;

(3) application by the city of Chicago for Federal airport improvement program funding for projects approved by the Administrator and shown on such O'Hare airport layout plan.

(b) APPLICATIONS FOR FEDERAL FUNDING.—Notwithstanding any other provision of law, the city of Chicago is authorized to submit directly to the Federal Aviation Administration without the approval of the State of Illinois, applications for Federal airport improvement program funding for planning and construction of a project shown on an O'Hare airport layout plan directly related to the agreement reached on December 5, 2001, and to accept, receive, and disburse such funds without the approval of the State of Illinois.

(c) LIMITATION.—If the Federal Aviation Administration approves an airport improvement plan directly related to the agreement reached on December 5, 2001, will not be approved by the Administrator, subsection (c) of this section shall expire and be of no further effect on the date of such determination.

(d) WESTERN PUBLIC ROADWAY ACCESS.—As provided in the agreement referred to in subsection (a), the Administrator of the Federal Aviation Administration shall not consider an airport layout plan submitted by the city of Chicago that includes the runway redesign plan, unless the airport layout plan includes public roadway access through the existing western boundary of the city of Chicago to passenger terminal and parking facilities located inside the boundary of O'Hare and reasonably accessible to such western access. Approval of Western Public Roadway Access shall be subject to the condition that the cost of construction be paid for from airport revenues consistent with Administration revenue use requirements.

(e) NOISE MITIGATION.—As provided in the December 5, 2001, agreement referred to in subsection (a), the Administrator of an airport layout plan that includes the runway redesign plan shall require the city of Chicago to offer acoustical treatment of all single-family homes and businesses within the 65 DNL noise contour for each construction phase of the runway redesign plan, subject to Administration guidelines and specifications of general applicability. The Administrator may not approve the runway redesign plan unless the city provides the Administrator with information by which the first new runway is first used and in each calendar year thereafter will be less than the noise impact in calendar year 2000.

(f) REPORT TO CONGRESS.—If the runway redesign plan described in this section has not received all Federal, State, and local permits and approvals necessary to begin construction by December 31, 2004, the Administrator shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives within 120 days of identifying the reasons why such projects encountered delays and approval necessary for the project and the status of each such action.

(g) JUDICIAL REVIEW.—An order issued by the Administrator, in whole or in part, under this section shall be deemed to be an order issued under part A of subtitle VII of title 49, United States Code, and shall be reviewed in accordance with the procedure in section 46110 of such title.

(h) DEFINITION.—In this section, the term "airport layout plan" means a plan related to a Federal airport improvement program directly related to the agreement reached on December 5, 2001, and such "airport layout plan" means a plan that shows—

(1) parallel runways at O'Hare oriented in the east-west direction with the capability for 4 simultaneous independent visual aircraft arrivals in both directions, and all associated taxiways, runways, terminal and parking facilities, and other related facilities; and

(2) closure of existing runways 14L-32R, 14R-32L, and 18-36 at O'Hare.

SEC. 104. CLEAN AIR ACT.

(a) IMPLEMENTATION PLAN.—An implementation plan shall be prepared by the State of Illinois under the Clean Air Act (42 U.S.C.
SEC. 105. MERRILL C. MEIGS FIELD.

The State of Illinois and the city of Chicago, Illinois, have agreed to the following:

(1) Until January 1, 2026, the Administrator of the Federal Aviation Administration shall withhold all Federal airport grant funds respecting O'Hare International Airport, other than grants involving national security and safety, unless the Administrator is reasonably satisfied that the following conditions have been met:

(A) Merrill C. Meigs Field in Chicago either is being operated by the city of Chicago as an airport or has been closed by the Administration for reasons beyond the city's control.

(B) The city of Chicago is providing, at its own expense, all airport roads and other access, services, equipment, and other personal property that the city provided in connection with the operation of Meigs Field on and prior to December 1, 2001.

(C) The city of Chicago is operating Meigs Field, at its own expense, at all times as a public-use airport, in good condition and repair open to all users capable of utilizing the airport and is maintaining the airport for such public operations at least from 6:00 A.M. to 10:00 P.M. 7 days a week whenever weather conditions permit.

(D) The city of Chicago is providing or causing its agents or independent contractors to provide all services (including police and fire protection services) provided or offered at Meigs Field on or immediately prior to December 1, 2001, including tie-down, terminal, cargo, maintenance, and fire protection services, at rates that reflect actual costs of providing such goods and services.

(2) If Meigs Field is closed by the Administration for reasons beyond the city of Chicago's control, the conditions described in subparagraphs (B) through (D) of paragraph (1) shall not apply.

(3) After January 1, 2006, the Administrator shall not withhold Federal airport grant funds to the extent the Administrator determines that withholding of such funds would create an unreasonable burden on interstate commerce.

(4) The Administrator shall not enforce the conditions listed in paragraph (1) if the State of Illinois and the city of Chicago enter into an expedited agreement under this section by the Secretary with respect to Meigs Field.

SEC. 106. APPLICATION WITH EXISTING LAW.

Nothing in this Act shall relate to or affect any amounts of funds under chapter 471 of title 49, United States Code, to pay the costs of O'Hare International Airport, improvements shown on an airport layout plan directly related to the airport and that requires an analysis of pursuant to subsection (c) with respect to the project and the airport sponsor.

SEC. 107. SENSE OF CONGRESS ON QUIET AIRCRAFT TECHNOLOGY RESEARCH AND DEVELOPMENT.

It is the sense of the Congress that the Office of Environment and Energy of the Federal Aviation Administration should be funded to carry out noise mitigation programming and research and development at a level of $37,000,000 for fiscal year 2004 and $47,000,000 for fiscal year 2005.

SEC. 201. SHORT TITLE.

This title may be cited as the “Airport Streamlining Approval Process Act of 2002.”

SEC. 202. FINDINGS.

Congress finds that—

(a) airports play a major role in interstate and foreign commerce;

(b) congestion and delays at our Nation's major airports have a significant negative impact on our economy;

(c) airport capacity enhancement projects at congested airports are a national priority and should be constructed on an expedited basis.

(d) airport capacity enhancement projects must include an environmental review process that provides local citizenry an opportunity for consideration of and appropriate action to address environmental concerns; and

(e) the Federal Aviation Administration, airport authorities, communities, and other Federal, State, and local government agencies must work together to develop a plan, set and honor milestones and deadlines, and construct and complete airport capacity enhancement projects in a manner that will maximize the economic vitality that will result from the continued growth of aviation.

SEC. 203. PROMOTION OF NEW RUNWAYS.

Section 40194 of title 49, United States Code, is amended by adding at the end the following:

(i) AIRPORT CAPACITY ENHANCEMENT Project for the Chicago Area.

In carrying out subsection (a), the Administrator shall take action to encourage the construction of airport capacity enhancement projects at congested airports as those terms are defined in section 47179.

SEC. 204. AIRPORT PROJECT STREAMLINING.

(a) IN GENERAL.—Chapter 471 of title 49, United States Code, is amended by inserting after section 47110 the following:

"SUBCHAPTER III—AIRPORT PROJECT STREAMLINING

§ 47171. DOT as lead agency

(a) AIRPORT PROJECT REVIEW PROCESSES.—The Secretary of Transportation shall develop and implement a coordinated review process for airport capacity enhancement projects at congested airports.

(b) COORDINATED REVIEWS.—The coordinated review process under this section shall provide that all environmental reviews, analyses, opinions, permits, licenses, and approvals that must be issued or withheld by a Federal agency or airport sponsor for an airport capacity enhancement project at a congested airport shall be conducted concurrently, to the maximum extent practicable, and completed within a time period established by the Secretary, in cooperation with the agencies identified under subsection (c) with respect to the project.

(c) IDENTIFICATION OF JURISDICTIONAL AGENCIES.—With respect to each airport capacity enhancement project at a congested airport, the Secretary shall identify, as soon as practicable, all Federal and State agencies that may have jurisdiction over environmental-related matters that may be affected by the project or may be required by law to conduct an environmental-related review or analysis of the project or determine whether to issue an environmental-related permit, license, or approval for the project.

(d) STATE AUTHORITY.—If a coordinated review process is being implemented under this section by the Secretary in respect to a project at an airport within the boundaries of a State, the State, consistent with State law, may choose to conduct such a coordinated review process and provide that all State agencies that have jurisdiction over environmental-related matters that may be affected by the project or may be required by law to conduct an environmental-related review or analysis of the project or determine whether to issue an environmental-related permit, license, or approval for the project, be subject to the process.

("e) MEMORANDUM OF UNDERSTANDING.—The coordinated review process developed under this section may be included in a memorandum of understanding for a project between the Secretary and the heads of other Federal and State agencies identified under subsection (c) with respect to the project and the airport sponsor.

(f) EFFECT OF FAILURE TO MEET DEADLINES.—

(1) NOTIFICATION OF CONGRESS AND CEQ.—If the Secretary determines that a Federal agency, State agency, or airport sponsor that is participating in a coordinated review process under this section has failed to meet a deadline established under subsection (b) for the project, the Secretary shall notify, within 30 days of such date, the Administrator, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, the Council on Environmental Quality, and the agency or sponsor involved about the failure to meet the deadline.

(2) AGENCY REPORT.—Not later than 30 days after date of notice under paragraph (1), the agency or sponsor involved shall submit to the Secretary, the Administrator, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Council on Environmental Quality, a report on the failure to meet the deadline, including an opinion, license, or approval that was withheld or that is participating in a coordinated review process under this section with respect to an airport capacity enhancement project at a congested airport.

(g) CONSTRUCTION OF STATUTE.—Nothing in this section shall be construed to affect the obligations of the State of Illinois enacts a law on or after January 1, 2001, including tie-down, terminal, cargo, maintenance, and fire protection services, at rates that reflect actual costs of providing such goods and services.

(h) PURPOSE AND NEED.—For any environmental review, analysis, opinion, permit, license, or approval that must be issued or withheld by a Federal agency or airport sponsor for an airport capacity enhancement project at a congested airport, the Secretary shall make a finding that projects at congested airports are a national priority and should be constructed on an expedited basis.

(i) PRIVILEGED OR CONFIDENTIAL.—The Administrator, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, the Council on Environmental Quality, and the agency or sponsor involved shall protect information that the Secretary determines is privileged or confidential.
shall be bound by the project purpose and need as defined by the Secretary.

(b) ALTERNATIVES ANALYSIS.—The Secretary shall determine the reasonable alternative to any other Federal agency under this section to the project shall consider only those alternatives to the project that the Secretary has determined are reasonable in relation to the mitigation that will be achieved.

(1) SOLICITATION AND CONSIDERATION OF COMMENTS.—In applying subsections (g) and (h), the Secretary shall solicit and consider comments from interested persons and government agencies.

§ 47173. Categorical exclusions

‘‘Not later than 120 days after the date of enactment of this section, the Secretary of Transportation shall develop and publish a list of categorical exclusions from the requirement that an environmental assessment or an environmental impact statement be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for projects at airports.

§ 47173. Access restrictions to ease construction

‘‘At the request of an airport sponsor for a congested airport, the Secretary of Transportation may approve a restriction on use of a runway to be constructed at the airport to minimize potentially significant adverse noise or safety hazards on the runway if the Secretary determines that imposition of the restriction—

(1) is necessary to mitigate those impacts and expedite construction of the runway;

(2) is the most appropriate and a cost-effective measure to mitigate those impacts, taking into consideration any environmental tradeoffs associated with the restriction; and

(3) would not adversely affect service to small communities, adversely affect safety or efficiency considerations of the air transportation system, unjustly discriminate against any class of user of the airport, or impose an undue burden on interstate or foreign commerce.

§ 47174. Airport revenue to pay for mitigation

(a) IN GENERAL.—Notwithstanding section 47107(b), section 47133, or any other provision of this title, the Secretary of Transportation may accept funds from an airport sponsor carrying out an airport capacity enhancement project at a congested airport to make payments, out of revenues generated at the airport (including landing fees), for measures to mitigate the environmental impacts of the project if the Secretary finds that—

(1) the mitigation measures are included as part of, or are consistent with, the preferred alternative for the project in the documentation prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(2) the use of such revenues will provide a significant incentive for, or remove an impediment to, approval of the project by a State or other local government.

(b) MITIGATION OF AIRCRAFT NOISE.—Mitigation measures described in subsection (a) may include the insulation of residential buildings and buildings used primarily for educational purposes to mitigate the effects of aircraft noise and the improvement of such buildings as required for the inclusion of the buildings under local building codes.

§ 47175. Airport funding of FAA staff

(a) ACCEPTANCE OF SPONSOR-PROVIDED FUNDS.—Notwithstanding any other provision of law, the Administrator of the Federal Aviation Administration may accept funds from an airport sponsor, including funds provided to the sponsor under section 4714(b), for the provision of services or the hire of consultants in order to facilitate the timely processing, review, and completion of environmental activities associated with an airport project.

(2) ADMINISTRATIVE PROVISION.—Instead of payment from an airport sponsor from funds appropriated to the sponsor under section 47114, the Administrator, with agreement of the sponsor, may transfer funds that would otherwise be apportioned to the sponsor under section 47114 to the account used by the Administrator for activities described in subsection (a).

(c) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any funds accepted under this section, except funds transferred pursuant to subsection (b),—

(1) shall be credited as offsetting collections to the account that finances the activities and services for which the funds are accepted; and

(2) shall be available for expenditure only to pay the costs of activities and services for which the funds are accepted; and

(3) shall remain available until expended.

(d) MAINTENANCE OF EFFORT.—No funds may be accepted pursuant to subsection (a), or transferred pursuant to subsection (b), in any fiscal year in which the Federal Aviation Administration determines that the amount expended in the fiscal year 2002, excluding amounts accepted pursuant to section 337 of the Department of Transportation and Independent Agencies Appropriations Act, 2002 (115 Stat. 862), for the activities described in subsection (a).

§ 47176. Authorization of appropriations

‘‘In addition to the amounts authorized to be appropriated by section 47106(k), there is authorized to be appropriated to the Secretary of Transportation, out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502), $2,100,000 for fiscal year 2003 and $4,200,000 for each fiscal year thereafter to facilitate the timely processing, review, and completion of environmental activities associated with airport capacity enhancement projects at congested airports.

§ 47177. Judicial review

(a) FILING AND VENUE.—A person disclosing an adverse economic interest in an order issued by the Secretary of Transportation or the head of any other Federal agency under this part or a person or agency relying on any determination made under this part may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after the order is issued. The court may allow the petition to be filed after the 60th day only if there are reasonable grounds for not filing by the 60th day.

(b) JUDICIAL PROCEDURES.—When a petition is filed under subsection (a) of this section, the clerk of the court immediately shall send a copy of the petition to the Secretary or the head of any other Federal agency involved. The Secretary or the head of such other agency shall file with the court a record of any proceeding in which the order was issued.

(c) AUTHORITY OF COURT.—When the petition is sent to the Secretary or the head of another Federal agency involved, the court has exclusive jurisdiction to affirm, amend, modify, or set aside any part of the order and may order the Secretary or the head of such other agency to conduct further proceedings. After reasonable notice to the Secretary or the head of such other agency, the court may take any other appropriate action when good cause for such action exists. Findings of fact by the Secretary or the head of such other agency will be conclusive if supported by substantial evidence.

(d) REQUIREMENT FOR PRIOR OBJECTION.—In reviewing an order of the Secretary or the head of any other Federal agency under this section, the court may consider an objection to the action of the Secretary or the head of such other agency only if the objection was filed by the proceeding in the order issued by the Secretary or the head of such other agency or if there was a reasonable ground for not making the objection in the proceeding.

(e) SUPREME COURT REVIEW.—A decision by a court under this section may be reviewed only by the Supreme Court under section 1257 of title 28.

(f) ORDER DEFINED.—In this section, the term ‘order’ includes a record of decision or a finding of no significant impact.

§ 47178. Definitions

‘‘In this subchapter, the following definitions apply:

(1) AIRPORT SPONSOR.—The term ‘airport sponsor’ has the meaning given the term ‘sponsor’ under section 47107.

(2) CONGESTED AIRPORT.—The term ‘congested airport’ means an airport that accounted for at least 1 percent of all delayed aircraft operations in the United States in the most recent year for which such data is available and an airport listed in table 1 of the Federal Aviation Administration’s Airport Capacity Benchmark Report 2001.

(3) AIRPORT CAPACITY ENHANCEMENT PROJECT.—The term ‘airport capacity enhancement project’ means—

—a project for construction or extension of a runway, including any land acquisition, taxiway, or safety area associated with the runway or runway extension; and

(a) Authorization of appropriations.

(b) Judicial review.

(c) Definitions.‘‘

SEC. 205. GOVERNOR.

Notwithstanding section 47166(c) of title 49, United States Code, is amended—

(1) in paragraph (1)—

(A) by inserting ‘‘and’’ after the semicolon at the end of subparagraph (A)(i); and

(B) by striking subparagraph (B); and

(C) by redesignating subparagraph (C) as subparagraph (B); and

(2) in paragraph (2)(A) by striking ‘‘stage 2’’ and inserting ‘‘stage 3’’;

(3) by striking paragraph (4); and

(4) by redesignating paragraph (5) as paragraph (4).

SEC. 206. CONSTRUCTION OF CERTAIN AIRPORT CAPACITY PROJECTS.

Section 47504(c)(2) of title 49, United States Code, is amended by—

(1) by striking ‘‘and’’ at the end of paragraph (C);
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(2) by striking the period at the end of subparagraph (D) and inserting "; and"; and
(3) by adding at the end the following: "(E) to an airport operator of a congested airport an opportunity to the extent practicable to participate in the planning and development of any capacity enhancement project at the airport, if the airport operator is "

and

(4) by striking the period at the end of section 47178 and inserting ";

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still be in the same capacity crisis that we are in today.

This is a 15-year construction project. So why spend more money, take longer, increase environmental problems, put the flying public at greater risk? We support temporary and permanent funding for O'Hare and Midway airports, as well as reducing emissions and increase the economic and racial divide in Chicago when there is a better way of resolving the current aviation capacity crisis?

O'Hare Airport is the economic magnet that provides jobs and economic security for Chicago's north side and northwest suburbs. Midway Airport, housed in the gentleman from Illinois' district, is the economic magnet that provides jobs and economic security for Chicago's southwest side. There is no similar economic engine for Chicago's south side and south suburbs.

O'Hare expansion puts in 195,000 new jobs and $19 billion of economic activity in an area that already has an overabundance of economic opportunity. The greatest beneficiary of O'Hare is Elk Grove Village, a city of 35,000 people where over 100,000 people come to work every day. That is three jobs for every one person. Mayor Craig Johnson of Elk Grove Village, one of the biggest supporters of O'Hare. By contrast, some communities in my district have 60 people for every job. Finally, it just so happens that the areas where O'Hare and Midway Airports are located are primarily where whites live. African Americans live primarily south and in the south suburbs, but African American families need economically stable families and communities that have a future and can send their children to college, too. We need greater economic balance in the Chicago metropolitan area so that all of the people have jobs and economic security.

The gentleman from Illinois (Mr. LIPINSKI) says that 15 environmental groups, including the Sierra Club, support the language in this bill. He, of course, is implying that they have endorsed it. The gentleman from Illinois (Mr. LIPINSKI) knows better. They have opposed it. The Sierra Club has opposed it. The gentleman from Illinois' district, is implying that they have endorsed the language in this bill. He, of course, is implying that they have endorsed the language in this bill. He, of course, is implying that they have endorsed the language in this bill. He, of course, is implying that they have endorsed the language in this bill. He, of course, is implying that they have endorsed the language in this bill.

Mr. Speaker, I do want to address the constitutional issue before I reserve the balance of my time. The United States Supreme Court stated in Printz versus United States decision in 1997 that dual sovereignty is uncontestable, to preempt State law, that is, the Illinois Aeronautics Act, and give power to the city of Chicago and the city of Chicago to come directly to the Federal Government for the purposes of expanding O'Hare airport.

The Printz versus United States decision emphasized that that is a constitutional structural barrier to Congress intruding on a State's sovereignty, and this structural barrier could not be avoided by claiming that constitutional authority was, A, pursuant to the commerce power clause. We have heard the gentleman from Florida (Mr. MICA) admit the importance of jobs and the fact this is a factor in our economy. It will create 195,000 jobs, $19 billion in economic activity pursuant to the commerce power. According to Printz versus the United States these arguments are not applicable to the chairman of the committee. The necessary and proper clause of the Constitution, we have heard there is an aviation capacity crisis, that this bill seeks to alleviate. According to the Printz versus the United States, Congress cannot use the necessary and proper clause argument as a basis for preempting State law.

Last but not least, Printz versus the United States said that the Federal law preempted State law under the Supremacy Clause, that Congress can use its power to solve impasses, that should be solved at the local level in the city of Chicago and in the State of Illinois.

In other words, Mr. Speaker, all of the arguments that we have heard, including the arguments of my good friend, the chairman, are unconstitutio nal according to Printz versus the United States, and whether my colleagues agree with my constitutional interpretation or not, because there is a legitimate constitutional interpretation that is taking place, this can only be solved in Federal court, which means the idea of expanding aviation capacity in northern Illinois is likely to be held up in the Federal courts for a number of years, and therefore, we will not be expanding aviation capacity as the chairman and as the ranking member seek to do.

Therefore, Mr. Speaker, I urge my colleagues to reject this bill. It could be improved if it were brought in the regular order and amendments were allowed to include the faster, cheaper, safer and cleaner proposal, building a third airport in Peotone.

Mr. Speaker, I reserve the balance of my time.

Mr. MICA. Mr. Speaker, I am pleased to yield 10 minutes to the gentleman from Illinois (Mr. LIPINSKI), and I ask unanimous consent that he be allowed to control the time.

The SPEAKER pro tempore. (Mr. ISAKSON). Is there objection to the request of the gentleman from Florida? There was no objection.

Mr. LIPINSKI. Mr. Speaker, I ask unanimous consent to give the gentleman from Illinois (Mr. JACKSON) an additional 10 minutes, the gentleman from Florida (Mr. MICA) an additional 10 minutes, which his 10 minutes will be split with 5 minutes for himself, 5 minutes for the sake.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. JACKSON of Illinois. Mr. Speaker, may I inquire as to how much time we have remaining?

The SPEAKER pro tempore. The gentleman from Illinois (Mr. JACKSON) has 22 1/2 minutes, the gentleman from Florida (Mr. MICA) has 14 1/2 minutes. There is 10 minutes available to the gentleman from Illinois.

Mr. LIPINSKI. Mr. Speaker, in the additional time request, it would be 10 minutes for the gentleman from Illinois (Mr. JACKSON), 10 minutes for the gentleman from Florida (Mr. MICA), which he automatically yields to me 5 minutes. So I should have 15 minutes at the present time.

The SPEAKER pro tempore. The gentleman is correct.

Mr. LIPINSKI. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana (Mr. VISCLOSKY).

(Mr. VISCLOSKY asked and was given permission to revise and extend his remarks.)

Mr. VISCLOSKY. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, I rise today in strong support of H.R. 3479, the National Aviation Capacity Expansion Act, and would point out that I believe one of the reasons we are here today under suspension is a broad-ranging bipartisan support that exists for this legislation today.

Whether we talk about a Democratic mayor for the city of Chicago, whether a Republican governor of the State of Illinois, whether we talk about the Illinois Chamber of Commerce, or whether we talk about the AFL-CIO, whether we talk about the Republican or Democratic leadership of the Committee on Transportation and Infrastructure that reported this bill to the House, one of the things that has been debated hotly about this legislation is the status of the Peotone site in the State of Illinois.

What I want to use my time today is to talk about Members of this body that there are three airports involved, O'Hare International Airport, an airport in Rockford, Illinois, and the airport in Gary, Indiana, which is in my congressional district. There is a proposed site in Peotone, Illinois.

The gentleman from Illinois (Mr. JACKSON) talked about a potential racial divide on the Illinois side. I would
point out that Gary, Indiana’s population is 85 percent African American, and for those African American citizens of Gary, Indiana, the passage of this legislation is very important for their economic future because they and their surrounding environs have been decimated because of the loss of manufacturing jobs.

We have an existing airport at Gary, Indiana, just as there is one at Rockford. One of the things that the leaders on the committee took great pains to do was to ensure that both of those airports, as well as the proposed Peotone site, are all treated equally. Given that equity that exists in this bill for those two airports and that proposed site, I strongly urge support passage of this bipartisan legislation.

Mr. Speaker. I yield 3 minutes to the gentleman from Illinois (Mr. WELLER), who has worked to protect the interests of the Peotone expansion.

Mr. WELLER asked and was given permission to revise and extend his remarks.

Mr. WELLER. Mr. Speaker, today I stand in support of this legislation. As my colleagues know, I am very disappointed in the drafting of this legislation, particularly in regards to the south suburban airport at Peotone. But I believe it is in the best interests to move this process forward, particularly in the hope that in conference between the House and Senate, we can improve upon the language for Peotone.

Air travel is expected to double in the next 10 to 15 years. We need to expand O’Hare, we need to build Peotone to accommodate the doubling of air travel. As we know, expanding O’Hare alone will not accommodate that growth in aviation. We need a south suburban third airport at Peotone.

The governor and the mayor of Chicago have come to an agreement regarding the construction of Peotone, as well as expansion of O’Hare, and this legislation does not fully reflect that agreement, which has been the concern that I have had. But I spoke with the governor yesterday personally, and he asked me to support this legislation so it can move forward and move towards conference. In that spirit, I support this legislation today.

Mr. JACKSON of Illinois. Mr. Speaker, the gentleman from Illinois (Mr. HYDE), the distinguished chairman of the Committee on International Relations, asked and was given permission to revise and extend his remarks.

Mr. HYDE. Mr. Speaker, I hate to disabuse the gentle- man from Illinois (Mr. WELLER), but if this expansion goes through, the gentleman will never see Peotone. We will not need Peotone. We will have 89 million flights, almost that is needed, 1.6 million airplanes. So while the gentleman from Illinois (Mr. WELLER) hopes and prays that some agreement that has been made off the record will guarantee some favorable treatment of Peotone, the best medical advice I can give to the gentleman is not to hold his breath.

I do not know about others, but I love a mystery; and this bill is as mysterious as anything Agatha Christie ever wrote.

First of all, why is such a controversial bill being brought under suspension? What a mystery. Why are the bill’s proponents, and I almost said perpetrators, allergic to debate and amendments? Well, let us be clear about what this bill seeks to do.

The establishment wants to nearly double the capacity of what is now the world’s busiest airport, O’Hare International, to accommodate 11 million people next year. What is the establish- ment? Well, people of substance in the community: The major Chicago newspapers, the Chamber of Commerce, the mayor of Chicago, the governor of Illinois, United Airlines, American Airlines, and so many more famous President once labeled the malefactors of great wealth the establishment. Members know who they are. They have been besieged by their lobbyists.

Who is the opposition? Thousands of citizens who live and work near the airport and its present 900,000 flights a year, whose quality of life will be shattered by doubling the capacity at O’Hare. Those families whose homes will be condemned and bulldozed, whose businesses will be plowed under as the airport expands.

Members might say we cannot stand in the way of progress. Of course not. But O’Hare is landlocked. It is surrounded by vital suburban communities by any of which I represent. It is saturated with aircraft. Add to capacity, yes, but do it by building another airport at Peotone, a modern one that is environmentally friendly and can expand in years to come. By the time the $15 billion to $20 billion is spent on O’Hare, it will be obsolete.

Peotone can be built faster and cheaper than expanding O’Hare.

It makes sense economically and logistically; but the flaw in the ointment is Chicago would not own Peotone. Therefore, it must not survive.

There are fundamental constitutional questions with this bill. In the first place, Chicago has no power or authority to do anything unless that power has been given to the city by the Illinois General Assembly. The city is a political subdivision of the State. It is a creature of the legislature, and its powers are defined and limited by the Illinois Municipal Code. The Illinois Municipal Code contains the Illinois Aeronautics Act which forbids anyone from expanding any airport without a certificate of approval from the Illinois Department of Transportation. The same limitation applies to the governor of the State to continue any airport. The action would be ultra vires, without the authority to do so.

If President Bush were to enter into an agreement with Commonwealth Edison to build a nuclear plant in Illinois, his action would be ultra vires, without a license from the Nuclear Regulatory Commission. But that would require full disclosure, something woefully absent from this O’Hare debate. Does
anyone supporting this bill think the President has constitutional authority to enter into an agreement with Exxon to drill in the Alaskan National Wildlife Refuge without statutory authority from Congress.

The Illinois Aeronautics Act requires a certificate of approval from the Department of Transportation. The city and the governor proposed to march ahead, ignoring the law, all to give the city an unfettered right to condemn all the land they want, sidestepping the Illinois law.

Now let us consider another mystery in this bill. The governor and the mayor should just ask the Department of Transportation for a certificate of approval. It is the Illinois DOT. The governor has peopled it and appointed its chairman. They should just ask that body for a certificate of approval. If that is what is keeping them from complying with the law, why not just apply for a certificate?

I asked a very dear friend, the gentleman from Illinois (Mr. LIPINSKI), at least twice why they have not just asked for a certificate. It is so simple. The gentleman says he does not know. It is a real mystery.

Well, it finally dawned on me like a ton of fire appearing over my head why this circuitous route around Illinois law is being employed: To get a certificate of approval, they would have to disclose what their real plan is. That is the law they want to sidestep. Transparency is not in their vocabulary. To apply for a certificate, they would have to disclose how much this alleged $6.5 billion plan will really cost. How is it going to be financed? Who is going to pay the bonds? Will they be paid for by United and American Airlines after they get their share of the airline bailout? How many acres do they really plan to condemn? How many homes do they really plan to plow under? Does this expand the United-American monopoly existing at O'Hare now? So many questions they would have to disclose, and not to disclose them is why they are ignoring the law. That is why we should not let them.

How much corporate welfare are they concealing? What are they hiding? This is like Enron or WorldCom. What was wrong with them, they did not disclose the true state of affairs in their corporate books? That is why there are Enrons and Arthur Anderson and WorldCom. Well, that is what we are doing today. We are giving American and United and the city of Chicago and the governor a pass on the law having to disclose that this plan, this massive plan, is all about.

Do we encourage nondisclosure? Are we now accessories? Listen, Republicans are always given the image of being in bed with big business and Democrats reallyinside the little guy, the powerless. Well, this vote, if Members vote yes on this bill, they validate that they are in bed with big business, and the heck with the little people whose homes and businesses are going to be wiped out. I do not know how the Democrats will explain that.

This bill is wired. I know it. I can count. But I would rather be on the losing side of a good, honest cause than on the winning side of a cause that hurts vulnerable people.

A famous Russian writer whose name I never knew once wrote that even if the whole world was paved over, somewhere a crack would appear, and in that crack a blade of grass would begin to sprout.

So bring on the bulldozers, the cement mixers and shovels, and the 1.6 million roaring airplanes. That blade of grass is the rule of law, and this fight is far from over.

Mr. LIPINSKI. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois (Mr. DAVIS).

(Mr. DAVIS of Illinois asked and was given permission to revise and extend his remarks.)

Mr. DAVIS. Mr. Speaker, the issue of expansion at O'Hare has been around for a long time and there has been considerable debate. I want to commend the gentleman from Illinois (Mr. LIPINSKI) for his leadership on not only this issue but others surrounding transportation. Today I stand in firm support of H.R. 3479.

I also want to commend the gentleman from Illinois (Mr. HYDE) for his efforts to bring a third airport in the Peotone area. Especially, though, I want to commend the gentleman from Illinois (Mr. JACKSON) for his consistent and eloquent, creative approach to try and develop jobs and economic opportunity and bring them closer to the people in his congressional district.

As Chicago continues to grow, O'Hare International Airport has continued its growth in traffic and demand.

Presently, O'Hare ranks as the Nation's first or second busiest airport at any given time, with nearly 34 million annual passengers traveling both domestically and internationally.

Expanding O'Hare offers an immediate array of benefits, from employment to economic growth. And I am pleased to note that the plan for O'Hare expansion includes a 30 percent goal for minority and women-owned businesses as opposed to a 10 percent goal in the State's plan for Peotone.

As Chicago continues to grow, O'Hare continues to experience the backlog of delays. According to the Airport Capacity Benchmark Report in 2001, O'Hare was the third most delayed airport. Sitting in the heart of the Midwest, these delays continue to burden connecting airports, creating a snowball effect and frustrating passengers.

By the addition of runways, and the expansion of O'Hare, the plan will diminish and air travel at Chicago's bustling O'Hare will undoubtedly improve for the consumer and the region.

I do not believe that this necessitates the idea that there cannot and will not be a third airport at Peotone, or in that area. As the time continues to develop, the need will continue to grow. Right now, though, the greatest need is to expand O'Hare. I think we will go to Peotone at some time come.

Mr. MICA. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Illinois (Mr. MANZULLO).

(MR. MANZULLO asked and was given permission to revise and extend his remarks.)

Mr. MANZULLO. Mr. Speaker, the National Aviation Capacity Expansion Act is not just a bill about expanding O'Hare International Airport. It is about relieving congestion for the entire air transportation system in the United States, of which obviously O'Hare is an integral part.

I fought hard and testified several times to make sure this bill includes a provision asking the FAA to consider utilizing existing airports that are capable of passenger and cargo congestion and delays at our Nation's major airports. In the Chicago region, that airport is the Greater Rockford Airport.

Passage of this legislation ensures that Rockford Airport will be able to offer its vast resources, which include:

$150 million of recent infrastructure improvements; a 10,000-foot runway that can land any jet aircraft today as well as an $200,000 runway; a category III Instrument Landing System; a Glycol Detention and Treatment Facility; an upgraded taxiway system; an FAA 24-hour traffic control tower; it is the present home to United Parcel Service, and largest in the Nation; a modern passenger terminal immediately capable of handling 1 million em플anned passengers annually, and room for 3 million with a modest investment, and capacity for up to 15 million passengers per year, unconstrained airspace; the ability to relieve up to 20 percent of O'Hare’s originating passengers; and all only 1 hour's distance from Chicago.

As my colleagues can see, this bill is the only vehicle by which the Nation's air traffic congestion and delays could be relieved. And Rockford Airport is ready today; built, paid for, existing. It is considered, as designated in this legislation, to be a low-cost and convenient factor in that solution.

I urge my colleagues to vote in favor of this bill.

Mr. JACKSON of Illinois. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. CRANE).

(MR. CRANE asked and was given permission to revise and extend his remarks.)

Mr. CRANE. Mr. Speaker, I thank the gentleman for yielding me this time, and, once again, I am in strong opposition to Federal legislation that would mandate runway expansion and reconfiguration at Chicago's O'Hare Airport.

Like most people, I want the air traffic congestion problem at O'Hare solved as soon as possible, but the plan mandated by this bill will not accomplish that objective. It is projected to
take 900,000 flights annually to 1.6 million flights annually. Moreover, it would be expensive. Very expensive. Its sponsors say the O'Hare runway plan will cost $6.6 billion to implement, but by the time the 500 to 600 property condemnations, the two graveyard relocations, the 62 proofing work, and other items are finished, the price tag is likely to be double or triple that amount.

Meanwhile, there are four good-sized airports currently in operation within less than a 100-mile radius of Chicago, Great Rockford Airport being one, that could handle additional flights, and a fifth could be built south of the city with less difficulty and for less money than it would take to add to and reconfigure the runways at O'Hare. Making greater use of these airports would be a quicker, simpler, and less expensive option than trying to expand O'Hare's runway capacity.

Also, it would spare thousands of people living and working near O'Hare the consequences of higher noise and air pollution levels, declining property values, and, in some cases, the loss of their homes and their jobs.

For their sakes, and for the sake of others who work in places that could suffer a similar fate in the future, I urge my colleagues to vote "no" on this counterproductive and potentially precedent-setting piece of legislation. We can and should do better.

Mr. JACKSON of Illinois. Mr. Speaker, may I inquire about the amount of time everyone has left here?

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman from Illinois (Mr. LIPINSKI) has 10 minutes remaining, the gentleman from Illinois (Mr. JACKSON) has 6 1/2 minutes remaining, and the gentleman from Florida (Mr. MICA) has 9 1/4 minutes remaining.

Mr. JACKSON of Illinois. I am sorry, Mr. Speaker, my math is a little bit different. A moment ago you yielded me and informed me I had 22 1/2 minutes. I yielded 10 minutes to the gentleman from Illinois (Mr. HYDE) and 2 minutes to the gentleman from Illinois (Mr. CRANE). The SPEAKER pro tempore. In the gentleman's request to yield 10 minutes to the gentleman from Illinois (Mr. HYDE), did the gentleman ask that he control the time?

Mr. JACKSON of Illinois. I asked that he yield 10 minutes.

The SPEAKER pro tempore. And the gentleman from Illinois (Mr. HYDE) debated and then yielded back with one minute remaining.

Mr. JACKSON of Illinois. Correct. And at the time I yielded 10 minutes to the gentleman from Illinois (Mr. HYDE) I had 22 1/2 minutes.

The SPEAKER pro tempore. Did you ask unanimous consent that the gentleman from Illinois (Mr. HYDE) be able to control 10 minutes?

Mr. JACKSON of Illinois. I asked that the gentleman from Illinois (Mr. HYDE) have 10 minutes, Mr. Speaker, and then the gentleman from Illinois (Mr. CRANE) had 2 minutes. That should leave me 10 minutes, Mr. Speaker.

The SPEAKER pro tempore. The gentleman from Illinois (Mr. HYDE) used 9 of the 10 minutes, which is 8 1/2 minutes remaining, before yielding to the gentleman from Illinois (Mr. CRANE) 2 minutes, and that leaves 6 1/2 minutes.

Mr. JACKSON of Illinois. I thank the Speaker.

Mr. LIPINSKI. Mr. Speaker, just so we are perfectly clear, I have 10 minutes remaining.

The SPEAKER pro tempore. The gentleman has 10 minutes remaining.

Mr. LIPINSKI. And the gentleman from Illinois (Mr. JACKSON) has 6 1/2 minutes remaining.

The SPEAKER pro tempore. The gentleman has 6 1/2 minutes remaining.

Mr. LIPINSKI. And what does the gentleman from Florida (Mr. MICA) have remaining?

The SPEAKER pro tempore. The gentleman from Florida has 9 1/4 minutes remaining.

Mr. MICA. Mr. Speaker, just for the information of the House and the Speaker, I plan to use only 3 minutes of my available time because I believe that the gentleman from Illinois (Mr. HYDE) wants to proceed with other business.

Mr. LIPINSKI. Mr. Speaker, I yield 5 minutes to the gentleman from Minnesota (Mr. OBERSTAR), the ranking member of the Committee on Transportation and Infrastructure, a longtime chairman of the Subcommittee on Aviation.

Mr. OBERSTAR. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise in support of the Aviation Capacity Expansion Act of 2002, and I do so with greatest respect and admiration for the gentleman from Illinois (Mr. LIPINSKI) who has labored mightily to bring together the State of Illinois, the City of Chicago, and a wide range of interests in the House to support this initiative.

It is unfortunate that we have to do this by legislation, but it is also unfortunate that historically the City of Chicago and the State of Illinois have not been able to work together constructively, with oftentimes the Governor's office countermarching an agreement worked out between the Mayor and the Governor, as Mayor Daley testified to so specifically in our committee hearings last year and early this year.

I just want to point out that we are not talking about an ordinary airport. This is the premier airport in the United States. This is a treasure for all of world aviation. There is no question that we need to address the needs of O'Hare, that we, if necessary, as we do in this legislation, in effect, codify an agreement between the Mayor and the State of Illinois.

Mr. HYDE. Mr. Speaker, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman from Illinois.

Mr. HYDE. The gentleman had one hearing on this bill, did you not? Mr. OBERSTAR. Reclaiming my time, Mr. Speaker, I believe there were two hearings.

Mr. HYDE. If the gentleman will continue to yield, Mr. Speaker, it is my understanding that mayors whose towns are going to be affected by this, and citizens and businesses were here and were not permitted to testify. Is that the gentleman's recollection?

Mr. OBERSTAR. That is not my understanding. All that I know who requested the hearing were accommodated. I am not aware of such. But at any rate, I have only limited time and perhaps the gentleman can discuss this on his time with the gentleman from Illinois (Mr. LIPINSKI).

Mr. HYDE. We can do this off the record, yes.

Mr. OBERSTAR. Mr. Speaker, it is cities, more than States, that have advanced the cause of aviation in the United States. Until 1958, there were 49 States that provided and supported financially for airport construction and development. In the 1940s, Chicago's city council looked into the crystal ball, saw the future of aviation and had the foresight to acquire orchard fields and an additional 7,000 acres to build Chicago O'Hare, that was named for a World War II hero.

Similarly, LaGuardia was the brain-child of Mayor Fiorello LaGuardia, who sought to capitalize on the great shipyard built what was then a treasure on the East Coast. And the same with Atlanta. Hartsfield Airport was the vision of Alderman and Mayor William Hartsfield. So we are now dealing with the need to look into the future of aviation in the United States.

When traffic backs up at O'Hare, it backs up all the way around the world. Delays at O'Hare affect traffic as far away as Frankfurt, in Europe, and Tokyo on the Pacific. The legislation, and I have spent a great deal of time looking at the airport runway reconfiguration, will allow operations of all weather conditions, simultaneous operations. It will make possible simultaneous operations under all but the very worst zero visibility conditions, and that would be a huge improvement over the existing situation at O'Hare.

There have been allegations about the constitutionality of this legislative proposal. Last week, during debate, the gentleman from Illinois (Mr. JACKSON) and the gentleman from Illinois (Mr. HYDE) made references to constitutional issues in a letter written by Professor Ronald Rotunda of the University of Illinois College of Law. Well, we have got other experts and other professors who have also reviewed this letter. We talked to Professor Thomas Merrill, the John Paul Stephens Professor of Law at Northwestern University, to get his opinion, which concludes as follows:

"This legislation is squarely within the power delegated to Congress under
the commerce clause and relies on familiar precepts of preemption. It presents no substantial issue under the anti-commandeering principle of U.S. v. New York.

Mr. Speaker, I am submitting here-with the Durbin-Lipinski memorandum provided by Professor Merrill, and the letter of agreement between the Governor of Illinois and the Mayor of the City of Chicago, testifying that they have reached an agreement and both do strongly support this legislation.

STATE OF ILLINOIS

CITY OF CHICAGO,

July 22, 2002.

DEAR MEMBER OF CONGRESS: We write to unequivocally state our strong support for Representative Bill Lipinski and Mark Kirk’s legislation, H.R. 3479, the National Aviation Capacity Expansion Act of 2002, which is expected to be on the House Calendar this week.

This legislation is crucial to the agreement that we, as Governor of Illinois and Mayor of Chicago, reached to end decades of debate over the future of airports in the Chicago area. That debate has choked off necessary investments to airport capacity in the region, and led to display and congestion that have negatively affected the economy of the region, and rippled through the national aviation system. It is time to end that debate and move forward.

Passage of this legislation is necessary for us to carry out this agreement, which will lead to reconceptualization of the runway system at O’Hare, the reduction of delays, and the creation of almost 200,000 new jobs in Illinois. It will help improve the operations of the entire system, reducing delays around the nation.

The agreement also includes going ahead with work on the development of a new airport in the southern suburbs of Chicago, which has been a great importance to not only the State of Illinois, but to many members of the Illinois delegation. Passage of this legislation is the best course of action to help develop a third regional airport in the southern suburbs.

Let us ensure that failure to pass this legislation will return us to the political gridlock over airport issues in the Chicago region that may take decades more to resolve. A huge economic benefit to the State of Illinois, and to the entire nation will be lost.

We both strongly urge your favorable vote on H.R. 3479.

Thank you.

GEORGE H. RYAN,
Governor.

RICHARD M. DALEY,
Mayor.

MEMORANDUM

To: R. Eden Martin, President, Civic Committee of the Chicago Airports Authority.

From: Thomas W. Merrill, John Paul Stevens Professor of Law, Northwestern University.

Re: Constitutionality of the Durbin-Lipinski Legislation.

Date: April 17, 2002.

This memorandum is in response to your request for an opinion on the constitutionality of the National Aviation Capacity Expansion Act, proposed federal legislation introduced in the Senate by Senator Durbin (S. 2064) and in the House by Representative Lipinski (H.R. 3479) (the Durbin-Lipinski Legislation). This legislation is designed to facilitate the redesign of Chicago’s O’Hare International Airport to accommodate the anticipated volume of commercial air traffic in the Chicago area.

In a letter to Representative Henry Hyde dated March 27, 2002, Professor Ronald Rotunda of the University of Illinois Law School has offered the opinion that the Durbin-Lipinski legislation is “most likely unconstitutional.” (Rotunda Letter at 4.) The proposals he finds constitutionally problematic are §3(a)(3), which exempts the O’Hare redesign project from state permitting requirements, and §48 of the Illinois Aeronautics Act. (Letter at 14.)

I. THE DURBIN-LIPINSKI LEGISLATION REPRESENTS AN EXERCISE OF CORE FEDERAL POWERS UNDER THE COMMERCE CLAUSE AND PRE-EMPTS STATE LAW.

No claim has been made by Professor Rotunda, nor could it be made, that the Durbin-Lipinski Legislation deals with a subject beyond the scope of Congress’s authority under the Commerce and Commerce Clause. The Short answer to this elaborate argument is that the Durbin-Lipinski Legislation is that the Durbin-Lipinski legislation has the effect of compelling the States to enact or administer a federal regulatory program, and extend to laws that are necessarily or primarly related to federal regulation of airport noise.

II. THE DURBIN-LIPINSKI LEGISLATION DOES NOT COMMANDER THE STATE OR ITS OFFICIALS.

Professor Rotunda concludes that the Durbin-Lipinski Legislation is “likely unconstitutional primarily by relying on decisions holding that the Commerce Power does not extend to laws that compel the States to enact or administer a federal regulatory program.” New York v. United States, 505 U.S. 141, 188 (1992), or that “the States must give way to paramount federal legislation.”

The short answer to this elaborate argument is that the Durbin-Lipinski legislation does no such thing. I do not require the State of Illinois or any political subdivision to enact—or require—any legislation. Nor does it conscript state employees to act as federal officials or enforce federal law. Instead, the Durbin-Lipinski Legislation simply preempts state laws that might serve as an impediment to the operation of the new airport.

The State is not ordered to take affirmative steps to aid in the redesign of the airport, either by legislative or administrative action. It is merely prohibited from blocking the redesign and reconfiguration of the airport.

Given that the Durbin-Lipinski Legislation raises no issue under New York v. United States, 505 U.S. 141 (1992), or that “the States must give way to paramount federal legislation,” the anti-commandeering doctrine of New York and Prinztz does not apply. Id. at 151. Condon involved a federal statute, The Privacy Protection Act of 1980, prohibiting States from disclosing personal information about individuals obtained from

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department of motor vehicle records without the individual’s consent. Because the Act did not direct the “States in their sovereign capacity to regulate their own citizens,” id., the Court found that it was a legislative exercisement of the Commerce Power and that contrary state legislation was preempted. The Durbin-Lipinski Legislation likewise contains no provision that would compel the State or its agents to regulate the citizens of Illinois.

In view of the provision of the House bill that calls for the O’Hare redesign to become a federal project if construction has not commenced by 2004 raise any commandeering problem under the Commerce Power. In General Petroleum, in which Congress “offer[s] States the choice of regulating [private] activity according to federal standards or having state law prevail,” the Court found that “this constitutes impermissible legislation because it compels State and private employers alike. New York, 505 U.S. at 167. This type of conditional regulation is often used in environmental legislation, and the New York Court took pains to reaffirm its constitutionality. Id.; see also Printz, 521 U.S. at 925–26. Such condition regulation, the Court found, is constitutionally permissible because it does not represent direct coercion of State governments to generally applicable laws. See, e.g., Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528, 105 S. Ct. at 1401 (1985). The Commerce Clause, as the Court found in the case of a clash between federal and state laws in United States v. City of New Haven, 447 F.2d 396 (2d Cir. 1971) (citations omitted).

III. THE DURBIN- LIPINSKI LEGISLATION IS NOT CONSTITUTIONALLY INFIRM BECAUSE IT APPLIES TO A SINGLE AIRPORT

Professor Rotunda also seeks to rely on language in New York and Condon that distinguishes impermissible commandeering statutes from laws “that subject state governments to generally applicable laws.” New York, 505 U.S. at 160; Condon, 526 U.S. at 151. He notes that the Durbin-Lipinski Legislation applies to only one airport and in this sense differs from generally applicable laws. Id.; see also Printz, 521 U.S. at 925. Thus, he suggests, the legislation is unconstitutional under New York and Printz.

This argument is closely related to a misapplication of the “generally applicable laws” exception recognized in New York and Condon. The exception applies only to federal laws that otherwise compel a State to enact legislation or conscript state employees to enforce federal law. If a federal law has this “commandeering” effect, then it may not be upheld as a constitutional law if it is a “generally applicable law” that applies to state governments and private persons alike. Thus, for example, the Fair Labor Standards Act, as amended, applies to state and local governments as well as to private employers. This statute requires state governments to enact laws or regulations (e.g., setting wages and hours of state employees), and it requires state officers and employees to administer federal law (e.g., determining whether “employees” are in compliance with a federal standard).

Yet the constitutionality of the FLSA as applied to state governments was upheld in Garcia v. Metropolitán Area Transit Auth., 469 U.S. 528 (1986). The Court in New York reconciled this result with the anti-commandeering principle by noting that the FLSA is a “generally applicable law” that “stands in a different light than a law that would constitute a commandeering of the State or its agents to regulate the citizens of Illinois.”

Properly understood, therefore, the generally applicable laws exception has no relevance to the Durbin-Lipinski Legislation. The Durbin-Lipinski Legislation does not mandate the allocation of federal funds or the enforcement of federal regulations, and does not conscript state employees to administer any federal law. Instead, it is a narrow preemption statute.

Such a statute may go in bypassing state governments and compelling them to generally apply federal law. The state statute, and specifically rejected the contention based on the language in Hunter that this constituted impermissible legislation because it compels State and private employers alike. New York, 505 U.S. at 167. The Durbin-Lipinski Legislation likewise contains no provision that would compel the State or its agents to generally regulate the citizens of Illinois.

Outside the commandeering context, there is a principle of law that condones congressional legislation under the Commerce Clause because it proceeds project-by-project rather than under generally applicable laws. Congress has often legislated under the Commerce Clause by addressing particular obstructions of commerce, whether they be inadequate harbor facilities, impassable rivers, or bottlenecks in the interstate highway system. For example, Congress has legislated with respect to a single bridge spanning a navigable river, and this has been sustained as a valid exercise of the Commerce Power. See Pennsylvania v. Wheeling and Belmont Bridge Co., 59 U.S. (18 How.) 421, 453 (1850). Similarly, Congress has often delegated power under the Commerce Clause, such as the Army Corps of Engineers and the FAA, commonly and properly focus their activities on the obstruction of commerce, rather than proceeding by promulgating general regulations. That is all Congress has done here, by legislating to assure that a single airport that serves as a central hub of the entire air traffic system of the United States does not become an impediment to the free flow of interstate and international commerce.

IV. THE DURBIN-LIPINSKI LEGISLATION DOES NOT IMPERMISSIBLY INTERFERE WITH RELATIONS BETWEEN A STATE AND ITS POLITICAL SUBDIVISIONS

Finally, Professor Rotunda suggests in passing (Letter at 7) that the Durbin-Lipinski legislation violated some general principle of federalism that requires Congress to afford a state government complete and unlimited control over the powers and duties of its political subdivisions. The decision he cites is an exception to this proposition. Hunter v. City of Pittsburgh, 207 U.S. 161 (1907), held no such thing. Instead, the Court merely rejected the claim of the City of Pittsburgh that a Pennsylvania law directing the annexation of Pittsburgh territory by vote of the Pittsburgh electorate violated Pittsburgh’s rights under the Fourteenth Amendment’s “Process Clause. It was in this context that the Court said that the “number, nature, and duration of the powers conferred upon” a municipal corporation “rests in the absolute discretion of the state.” Id. at 178. No issue was presented in the case about the authority of Congress to deal directly with municipal corporations, or with other types of corporations—in the implementation of otherwise valid federal legislation.

In fact, Congress has long dealt directly with municipalities in a variety of contexts, and the federal courts have uniformly rejected challenges to these measures based on the notion that the federal government must always defer to state-law limitations on municipal powers. Lawrence County v. Lead-Deadwood School District, 469 U.S. 256 (1985), for example, involved a federal statute that provided payments in lieu of taxes to a county based on the presence of tax-exempt federal land in the county. The federal statute distributed the tax revenues from “federal government funds” to the “county for ‘any governmental purpose.’” Id. at 258. A South Dakota statute, however, provided that all in lieu payments be allocated in the same ratio as the county’s general tax revenues were allocated. By a vote of 7-2, the Supreme Court held that the federal statute did not constitutionally compel a State to generally apply federal law and that the federal government could not confer the power of eminent domain on a municipality in circumstances...
where such power is not given by state law.

City of Tacoma, 307 F.3d at 576-78, rev’d on other grounds, 357 U.S. 320. And although the Supreme Court has held that a federal district court in an implementing a desegregation decree may issue an order pre-empting state tax limitations in order to permit a city to raise taxes, it has reserved judgment as to whether the constitutional question for such court directly to order a city to raise taxes. Missouri v. Jenkins, 485 U.S. 33, 50-51 (1990).

But the Durbin-Lipinski Legislation raises none of these constitutional questions. Section 3(a)(3) in both bills simply pre-empts state certification requirements that might act as an impediment to the City’s execution of the redevelopers’ otherwise existing delegated and home-rule powers under state law. And §3(f) of the House bill provides that if the O’Hare redesign project becomes a federal project, either the City will exercise its existing eminent domain power or the FAA will use its federal eminent domain power to acquire needed land. See H.R. 3479, §3(f)(1) (E) & §3(f)(3). Nor is there any suggestion in this bill that Congress has authorized the City to exercise powers of taxation beyond those it already enjoys under state law. See id. §4(d). The costs of the runway redesign plan will be from the sources normally used for airport redevelopment projects of similar kind and scope.

CONCLUSION

The Durbin-Lipinski Legislation is squarely within the power delegated to Congress under the Commerce Clause and relies on familiar precepts of pre-emption. It presents no substantial issue under the anti-commandeering principle of United States v. New York and Printz v. United States. Nor does it attempt to intrude upon State-municipality relations in a manner that is constitutionally problematic. The proposed legislation addresses a matter of vital national importance in a manner that is minimally intrusive to the legitimate interests of the State as sovereign, and is therefore fully constitutional.

PARLIAMENTARY INQUIRY

Mr. JACKSON of Illinois. Mr. Speaker, I feel compelled at this time to ask a parliamentary inquiry about my time. I yielded 10 minutes to the gentleman from Illinois (Mr. HYDE) for the purpose of his opening statement, which should leave me with 10 minutes. I yielded 10 minutes to the gentleman from Illinois (Mr. CRANE), and I made an opening statement. I do not know how long my opening statement was, but I do not believe it left me 10 minutes.

The SPEAKER pro tempore. The gentleman from Illinois (Mr. JACKSON) made an opening statement of 7½ minutes, leaving 12½ minutes. Thereon the time was expanded by 10 minutes per side, leaving the gentleman 22½ minutes. To the best of my recollection, I gave 2 minutes to the gentleman from Indiana (Mr. VISCLOSKY), 3 minutes to the gentleman from Illinois (Mr. DAVIS), and 5 minutes to the gentleman from Minnesota (Mr. SIMPSON). That is 10 minutes, which means I have 5 minutes remaining.

The SPEAKER pro tempore. Let the chair get this straight. I do not know how long my opening statement was, but I do not believe it left me 10 minutes.

The SPEAKER pro tempore. The gentleman from Illinois (Mr. JACKSON) made an opening statement of 7½ minutes, leaving 12½ minutes. Thereon the time was expanded by 10 minutes per side, leaving the gentleman 22½ minutes. To the best of my recollection, I gave 2 minutes to the gentleman from Illinois (Mr. LIPINSKI), leaving him 7½ minutes.
and advocates that this bill is reflective of the deal but removes the priority status that by 2020 will alleviate the racial, social and economic tensions that exist in our region is a factor why some of us are so adamantly opposed to O'Hare expansion without building this south suburban airport at least first and as a priority.

I agree that there must be some modernization at O'Hare Airport. I disagree that we must tear up five runways at O'Hare and build an additional eight runways at O'Hare Airport as the solution. This area already has sufficient economic activity and jobs. Bring jobs and growth to the south side of Chicago that only a service-based economy can build.

Mr. Speaker, it is not just about airports. With airports come Hyatt and Hilton and Fairmont and UPS and Federal Express and every other ancillary business that requires moving cargo in and out of aviation facilities. Those jobs are absolutely needed not just in the northwest suburbs. They are also needed on the south side of Chicago and in the south suburbs. That is why bringing this bill to the floor in regular order, allowing those of us who have been advocating for this bill and advocating for expansion of aviation capacity in the regular order that we might amend it and ensure that our interests are protected is a factor is why we are disappointed and many of us, namely myself I know for a fact, are going to vote no today.

Certainly the gentleman from Illinois (Mr. WELLER) says that he hopes these issues will be worked out in conference, Mr. Speaker, the mayor of the city of Chicago's father wanted to expand aviation capacity by building a third airport on Lake Michigan. The mayor himself wanted to build one in Lake Calumet. Only when the idea came about to build it in south suburban Peotone where he did not control it did he support this bill and advocating for expansion of aviation capacity in the regular order that we might amend it and ensure that our interests are protected.

And so, Mr. Speaker, I am asking for the justice of this House to vote down this bill because it is controversial, and it has implications 20 years from now for the quality of life for people that I represent. Give us a chance to offer amendments in the regular order and not on suspension.

Mr. Speaker, I reserve the balance of my time.

Mr. LIPINSKI. Mr. Speaker, may I inquire how much extra time the gentleman from Illinois (Mr. JACKSON) used there?

The SPEAKER pro tempore. The gentleman from Illinois (Mr. JACKSON) has 4 minutes remaining.

Mr. LIPINSKI. You were very generous to him. He used 4 minutes and 11 seconds.

Mr. Speaker, I yield 30 seconds to the gentleman from Illinois (Mr. HYDE) and the gentleman from Illinois (Mr. JACKSON) have done a wonderful job. Obviously, people underestimated their ability last Monday. No one is underestimating their ability today. We have done the work that is necessary in order to expand O'Hare. We feel that it is necessary.

Last week, one of the Hispanic Members of this bill because some people were saying that Hispanics were going to be hurt by this expansion of O'Hare. Today we have a commitment of all of the Hispanic Members of this Congress to vote for the bill, including myself, who is present today to vote for the bill.

We will not underestimate it. We know the quality of your arguments and the commitment that you have. Please understand that this is a gentlemen's disagreement. We respect and love you both very, very much.

Mr. JACKSON of Illinois. Mr. Speaker, I am honored to yield 3½ minutes to the distinguished gentleman from California (Ms. WATERS), who has an issue at Los Angeles International Airport.

Ms. WATERS. I would like to thank the gentleman from Illinois for yielding this time to me.

Mr. Speaker, I rise to oppose H.R. 3479, the National Aviation Capacity Expansion Act. H.R. 3479 would expand the size of Chicago O'Hare International Airport and undermine the rights of States and local communities to make decisions regarding local airport development.

O'Hare expansion would destroy approximately 1,500 homes and exacerbate the pollution, traffic congestion and noise endured by residents who live near the airport and north of Chicago. O'Hare expansion is also opposed by residents of the south side of the Chicago region, because it would make the construction of a third regional airport virtually impossible. O'Hare expansion would deny the people who live on the south side of the Chicago region any opportunity to enjoy the economic benefits of having access to a local airport.

H.R. 3479 would set a dangerous precedent by allowing the Federal Government to preempt State and local laws that could limit airport expansion. Such a precedent could prevent the people of southern California from developing a regional solution to our region's aviation needs. The people of my congressional district in southern California are already overburdened by the noise, pollution, and traffic congestion generated by Los Angeles International Airport. Other communities in southern California would like to attract service to their local airports. Legislation to impose LAX expansion would undermine southern California's efforts to ensure that the benefits and burdens of airport development are fairly distributed throughout our region.

Last week I introduced H.R. 5144, the Careful Airport Planning for Southern California Act, known as the CAP Act. The CAP Act would cap LAX air traffic at its current capacity of 78 million passengers per year and would encourage airport development in southern California communities that actually want airport development.

I urge my colleagues to support the CAP Act and oppose the expansion of Chicago O'Hare and LAX. I yield this debate because there is nothing worse than having the folks sit in Washington overlook the people in local communities and in the States, telling them what is best for them when they have a right to make those decisions in their own regions and in their own communities. I respect the right of the people of the south side of Chicago to talk about what is in the best interests of their area, of that region. If we are sincere about not trying to override local control, we will not allow this to happen.

I would ask my colleagues to please oppose H.R. 3479. Someday it may happen to you in your area, in your region; and you would not want the Federal Government to put its foot on your hand and tell you what you can or cannot do.

Mr. LIPINSKI. Mr. Speaker, could I have a breakdown on how much time everybody has left?

The SPEAKER pro tempore. The gentleman from Illinois (Mr. LIPINSKI) has 4½ minutes remaining, the gentleman from Illinois (Mr. JACKSON) has 3½ minutes remaining, and the gentleman from Florida (Mr. MICA) has 4½ minutes remaining.

Mr. LIPINSKI. Mr. Speaker, I yield myself 2½ minutes.

First of all I would like to submit my printed statement for the RECORD, and then I would like to go into a couple of points that have been raised here on the floor.

LAX. That was a wonderful speech by the gentlewoman from California (Ms. WATERS), but it has nothing to do with this situation whatsoever. The State of Illinois is the only State in the Union where the Governor has veto power over the construction of a new airport or a new runway. The Illinois channeling laws have strictly to do with the Illinois Department of Transportation and the Governor, as the gentleman from Illinois (Mr. HYDE) has stated, appoints all the people in charge of the Illinois Department of Transportation. So the LAX situation has nothing to do with, and it is not precedent-setting whatsoever as far as this legislation we have here.

The gentleman from Illinois (Congressman HYDE) has asked me a number of times why the City of Chicago did not ask the Illinois Department of Transportation for a certificate of approval. I now have the answer for the congresswoman. In order to get a certificate for the Illinois Department of Transportation, it takes over a year. Unfortunately Governor Ryan would not allow people in Illinois to do that. A new governor could simply take that report because he has the arbitrary veto power and chuck it out.
the window and say we are going to keep the gridlock in the Midwest in aviation.

The gentleman from Illinois (Congressman JACkSON) talks about Peotone. There is nothing in whatsoever in this legislation that stops Peotone or builds it. What does this legislation not do, though, it does not reach out from Washington, D.C. and say we have to build Peotone. It is entirely left up to the State of Illinois. And it does not give high priority to Peotone, we did that, every airport in the country would be rushing here to get exactly the same status. We do not even do that for O'Hare Airport in this legislation. O'Hare has to be improved in its modernization and expansion by the FAA before it becomes Federal law.

Mr. Speaker, I thought my time might have expired. I will be back shortly.

Mr. JACKSON of Illinois. Mr. Speaker, since our last time, I reserve the balance of my time.

Mr. JACKSON of Illinois. Mr. Speaker, the gentleman from Florida (Mr. MICA) has the right to close. The gentleman from Illinois (Mr. Lipinski) needs to exhaust the balance of his time and then we will exhaust the balance of ours and we will give it to the gentleman from Florida (Mr. MICA).

Mr. Lipinski. Mr. Speaker, is that the ruling of the Chair?

The SPEAKER pro tempore. It is.

Mr. Lipinski. Could I inquire to have a Parliamentary inquiry on why, since I have part of the gentleman from Florida's (Mr. Mica) time, I should not be able to come just before he closes?

The SPEAKER pro tempore. The original time is controlled by the gentleman from Florida (Mr. Mica) and the gentleman from Illinois (Mr. Jackson); the reverse order of opening.

Mr. Lipinski. Mr. Speaker, I yield myself the balance of my time.

Let us see something else that has been brought up here. Competition. The gentleman from Illinois (Mr. Hyde) talked about the competition. We are going to have more gates at new international O'Hare Airport. In the agreement, Delta Airlines, Northwest Airlines, a number of airlines that now utilize O'Hare but feel that they are restricted because of the size of O'Hare will have a much greater opportunity to get gates, get landing slots so that they will be significantly more competition at O'Hare.

Another point I would like to bring up is that this is really a very bipartisan piece of legislation. Not only do we have support from the Republican side and the Democratic side, but beyond this Chamber, five secretaries of Transportation enthusiastically support this legislation, and these are ap-

pointees both on the Democratic side and from the Republican side. Two of them that I could name right here, Secretary Slater, Secretary Skinner. People support this not only because it is necessary to break the gridlock at O'Hare for benefit of the American aviation flying public, but it will also create 195,000 jobs, and those jobs are not going to just go to people on the northwest side of the city of Chicago. They are going to go to people within the city of Chicago, within Cook County, within DuPage County. This is job creation. This is economic development at the highest possible level, and on top of all that, once again I say to you there is nothing in this legislation that stops the State, rural county, or anyone else from building Peotone.

Mr. JACKSON of Illinois. Mr. Speaker, I yield myself 1½ minutes.

Mr. Speaker, this is a Rand McNally map of Chicago. It is called the Rand McNally Easy Finder Map. And in this map it has all of the northwest suburbs in it, it has most of the city of Chicago, it has some of the southwest suburbs, but it stops here at 55th Street, right here at the Museum of Science and Industry. My district does not even start until 71st Street, and then it proceeds almost 40 miles outside the city of Chicago.

Mr. Speaker, it is as if the city of Chicago stops right there where all of the economic activity is without any consideration of the south suburbs.

Mr. Speaker, I brought with me some of the many books that document the damaging effects of Chicago's persistent disparities between north and south. Let me read a passage of just one of these titled When Work Disappears by noted University of Chicago and Harvard University Professor William Julius Wilson. Professor Wilson writes that over the last two decades, 83 percent of the new jobs created in the Chicago metropolitan area have been located in northwest suburbs of Cook and DuPage County surrounding O'Hare Airport; African-Americans constitute less than 2 percent of the population in these areas." He concluded, "The metropolitan black poor are becoming increasingly isolated."

Let us not add to this hefty volume. Let us not continue to perpetuate and exploit this divide. Let us regulate all of these books to the history section and begin our own new chapter of balanced economic growth and justice in Chicago.

Mr. Speaker, I urge a no vote on this bill. It is an unprecedented act that undermines our obligation to determine our State's future.

Mr. Speaker, I include for the RECORD the following remarks:

Mr. Speaker, I rise in opposition to H.R. 3479.

votes on the suspension calendar are supposed to be, by definition, non-controversial. But to argue that H.R. 3479 is non-controversial is like arguing that the elimination of estate taxes, gun control legislation, a patients bill of rights, and prescription drug benefits for seniors should all be on the suspension calendar. H.R. 3479 is one of the most controversial bills to come before the House this year.

It has been extremely controversial in Chicago, in the northwest suburbs, in Illinois general assembly, the Illinois delegation (our two U.S. Senators are divided over it), in all House and Senate Committees, in the full Senate, and, if a full debate were held on the House floor today, the nation would see just how controversial this bill is.

This bill has already been delayed in the Senate by one virtual filibuster, and it will be subjected to every parliamentary and tactical maneuver possible to try to stop it when it comes before the senate again. Hardly non-controversial!

To tear down and rebuild O'Hare will cost taxpayers three times as much money as it would to build a third South Suburban airport—$15–20 billion (not the $6.6 billion generally used) versus $5–7 billion. This bill is hardly non-controversial for taxpayers!

Tearing down and rebuilding O'Hare is estimated to take 15–20 years, assuming it proceeds on schedule, without lawsuits—not like building a new airport. A new airport would take five years, it would expand thereafter as need arises, and would be a more permanent solution to the capacity crisis. When the new O'Hare is completed, we will be in the same position we are today with regard to the air capacity crisis. How is that not controversial?

This bill will double the noise pollution in the suburban communities surrounding O'Hare. It is hardly non-controversial in the polluted northwest suburbs of Chicago.

Doubling the traffic in the air space around O'Hare from 900,000 to 1.6 million operations will make flying into O'Hare less safe for the average traveler—hardly noncontroversial for the flying public.

This bill will increase environmental pollution—O'Hare is already the number one polluter in Illinois—hardly non-controversial for those having to live in the increased pollution.

The Chicago Tribune won a Pulitzer Prize for documenting "sleaze" surrounding the City of Chicago and past business connections, vendor, and service contracts. By passing this bill—and removing the Illinois Aeronautics Law and by-passing the Illinois General Assembly—we are virtually sanctioning more "sleaze" to be found around O'Hare construction, and service contracts. Since when has such potential "sleaze" become non-controversial for Congress.

I don't consider the Federal Government running over any future Governor of Illinois, the Illinois General Assembly, the Illinois Aeronautics Law, and the 10th Amendment of the United States Constitution to build an airport—noncontroversial.

Finally, we're already finding out how controversial this bill is as Judge Holvis Webster on July 9, 2002, stopped the City of Chicago from running rough-shod over their northwest suburban neighbors by illegally trying to buy up and tear down their homes and businesses to make room for O'Hare expansion. This is just one of many controversial lawsuits that have been and will be filed in the future if this bill passes and becomes law.
How is tearing down and rebuilding O’Hare—which will be three times as expensive, take three times longer, be less protective of the environment, make the skies less safe, and be a less permanent solution than building Peotone first, faster, cheaper, and safer, then evaluate what needs to be done with O’Hare.

H.R. 3479 fall woefully short of providing an adequate, equitable solution.

Please note that I do not oppose fixing the current airport crisis surrounding O’Hare. But I have many, many grave concerns about: the current air capacity crisis, the need for a third airport, and the advisable, equitable solution. As states by the United States Supreme Court:

[T]he Framers explicitly chose a Constitution that confers upon Congress the power to regulate commerce with foreign nations, and with the several States, and among the States, by imposing conditions on state as to the political subdivisions, by their express terms. Any attempt by Congress to remove a condition or limitation of that state law delegation of authority to build runways would be ultra vires under state law as being without the required state legislative authority.

I believe that Congress has no power to intrude upon or interfere with a state’s decision as to how to allocate state power.

A state’s authority to create, modify, or even eliminate the structure and power of the state’s political subdivision—whether that subdivision be local, county, or state—is a matter left by our system of federalism and our federal Constitution to the exclusive authority of the state. As stated by the Seventh Circuit in Commissioners of Highways v. United States, 134 F.3d 702 (7th Cir. 1998) (quoting Hunter v. City of Pittsburgh, 207 U.S. 161, 178 (1907)): Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising governmental powers of the state as may be entrusted to them. For the purpose of exercising these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature and duration of the powers conferred upon these corporations and the terms subject to which they are to be exercised rests in the absolute discretion of the State. . . . The State, therefore, at its pleasure may modify or withdraw all such property, hold it, or vest it in other agencies, expand or contract the territorial limits of the whole political subdivision, or divide an municipality, or annex another municipality, repel the citizen and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may not be restrained by any provision of the Constitution of the United States.

Commissioners of Highways, 653 F.2d at 297 Chicago has acknowledged that Illinois has delegated its power to build and operate airports to its political subdivisions by express statutory delegation. 65 ILCS 5/11-102–11 and 11–102–5. These state law delegations of the power to build airports and runways are subject to the National Aeronautics Act requirements—including the requirement that the State approve any alterations of the airport—by their express terms. Any attempt by Congress to remove a condition or limitation imposed by the Illinois Legislature on the terms and conditions that state law would likely destroy the delegation of state authority to build airports by the Illinois Legislature to Chicago—leaving Chicago without delegated state legislative authority to build runways and terminals at O’Hare or midway. The requirement that Chicago receive a state permit is an express condition of the grant of state authority and an attempt by Congress to remove that condition would mean that there was no continuing valid state delegation of authority to Chicago to build airports. Chicago’s attempts to build new runways would be ultra vires under state law as being without the required state legislative authority.

Clearly this bill sets dangerous precedence by stating that Congress—not the FAA, not Departments of Transportation, not aviation experts—but Congress shall plan and build airports.

Further, it ignores the 10th Amendment to the U.S. Constitution. It guts and/or undermines state laws and environmental protections, including the provision of environmental and public hearing process.

My focus today is the same as it’s always been. Finding the best fix. And that best fix is
the construction of a third Chicago airport near Peotone, Illinois. The plain text is Peotone could be built in one-third the time at one-third the cost. For taxpayers and travelers, it’s a no-brainer.

Unfortunately, this bill mandates expansion of O’Hare, yet pays lip service to Peotone. It touches on projects on two separate and unequal tracks. That is my opinion. That is also the opinion of the Congressional Research Service, whose analysis I will provide for the record.

While we don’t need at this critical juncture is favoritism or interference from politicians and profit-oriented airlines to stack the deck against Peotone. What we don’t need is a bill that increases the likelihood of a constitutional challenge that prolongs the debate and delays the fix.

Thus, I urge members to reject this unprecedented, unwise, and unconstitutional bill.

RONALD D. ROTUNDA, UNIVERSITY OF ILLINOIS COLLEGE OF LAW, Champaign, IL, March 1, 2002.

Re Proposed federal legislation granting new powers to the city of Chicago.

Hon. Jesse L. Jackson, Jr., House of Representatives, Washington, DC.

Dear Congressman Jackson. As you know, I serve as the Albert E. Jenner Professor of Law at the University of Illinois Law School. I have been teaching constitutional law for over twenty years. In addition, I co-author, along with my colleague John Nowak, the widely-used multi-volume Treatise on Constitutional Law, published by West Publishing Company. In addition to my books, I have taught and researched in the area of Constitutional Law since 1974. I have also written on the constitutionality of proposed federal legislation entitled “National Aviation Capacity Expansion Act,” identical versions of which have been introduced in both the Senate and the House of Representatives by Senator Durbin and Congressman Lipinski (S. 1786, HR 3479), hereafter the “Durbin-Lipinski legislation.”

The Durbin-Lipinski legislation seeks to enact Congressional approval of a proposal to construct a major alteration of O’Hare Airport (the “runway plan”). As this legislation focuses on Chicago and the State of Illinois, the issues raised by the legislation have serious constitutional implications for all 50 States.

There are two key components of the legislation that have been the subject of my examination:

First, Section 3(a)(3) attempts to give the City of Chicago (a political subdivision and instrumentality of the State of Illinois) the legal power and authority to build a proposed major alteration of O’Hare even though state law does not authorize Chicago to build the alteration without first receiving a permit from the State of Illinois. Chicago, as a legal entity, is entirely a creation of state—not federal law—and Chicago’s authority to build airports is essentially an exercise of state law power delegated to Chicago by the Illinois General Assembly.

The requirement that Chicago first obtain a state permit is an integral and essential element of the power to give a political subdivision the delegation of state power by eliminating the conditions, restrictions, and prohibitions imposed by the Illinois General Assembly on that delegation. These constitutional restrictions on Congress’ power—which prohibit Congress from requiring states to change their state constitutional provisions—are often termed Tenth Amendment restrictions.

Similarly, the provisions of Section 3(f) of the proposed Durbin-Lipinski legislation are necessarily conditioned upon the existence of state law authority of Chicago to enter into agreements for a third party (the FAA) to alter O’Hare without first obtaining a permit from the State of Illinois. Chicago has no state law authority (under the delegation of state power to build and alter airports) to enter into an agreement to engage in a massive alteration of an airport without a state permit. Congress cannot confer powers on a political subdivision of a State where the State has expressly limited its delegation of state power to build or modify airports. Congress cannot require a state permit. Congress has no constitutional authority to create powers in an instrumentality of State law (Chicago) when the power of the city and power of Chicago to undertake the actions proposed by Congress depends on compliance with—and is contrary to—the mandates of the Illinois General Assembly.

For the reasons discussed below, it is my opinion that the proposed legislation is unconstitutional.

Summary of Analysis

The following is a summary of my analysis:

1. Under the governing United States Supreme Court decisions of New York v. United States and Printz v. United States, which are discussed below, the proposed legislation is not supported by any enumerated power and thus violates the limitations of the Tenth Amendment.

In these decisions, the Supreme Court held that legislation passed by Congress, purportedly relying on its exercise of the Commerce Power (in the case of gun control legislation in New York and gun control legislation in Printz) was unconstitutional because the federal laws essentially commandeered state law authorities to the States as instrumentalities of federal policy.

2. The same constitutional flaws afflict the provisions of the Durbin-Lipinski legislation. Central to the Durbin-Lipinski legislation are two provisions [sections 3(a)(3) and 3(f)] that purport to empower or authorize Chicago (a political instrumentality of the State of Illinois, and the State of Illinois that Illinois no authority or even legal existence independent of state law) to undertake actions for which Chicago has no state law authority (from the State of Illinois and that, in fact, are directly prohibited by Illinois law when the conditions and limitations of the State delegation of authority have not been satisfied.

3. Under Illinois law, Chicago (like any other political subdivision of a State) has no authority to construct airports (including constructing airports) without a grant of state authority from the State of Illinois. Under Illinois law, actions taken by political subdivisions of the State (e.g., Chicago) without a grant of authority from the State, or actions taken by political subdivision in violation of the conditions, limitations, or prohibitions imposed by the State in delegating the state authority, are plainly ultra vires, illegal, and unenforceable. The City of Chicago is a creature of state law, not federal law.

4. The power exercised by any state political subdivision (e.g., the power to construct airports) is in reality a power of the State—i.e., the State has delegated authority to the political subdivision. For the political subdivision to have the legal authority to exercise that state power, there must be a delegation of that state power by the State to the political subdivision. Further, it is axiomatic that any such delegation of state power to a political subdivision must accord with federal law.

For the reasons discussed, the Illinois General Assembly has enacted a statute that delegated to Chicago (and other municipalities) the state power to construct airports explicitly and specifically subject to certain limits and conditions that the General Assembly imposed. One basic requirement is that Chicago must comply with all of the requirements of the Illinois Aeronautics Act— including the requirement that Chicago first receive a permit (a certificate of approval) from the State of Illinois. The Illinois General Assembly has expressly provided that municipal construction or alteration with such a state permit is unlawful and ultra vires.

6. Section 3(a)(3) of the Durbin-Lipinski legislation expressly authorizes Chicago to do something the “runway plan” (a multi-billion dollar modification of O’Hare) without regard to the clear delegation limitations and prohibitions imposed by the Illinois General Assembly. The statutorily delegated power to Chicago pertains to airports, Illinois law explicitly prohibits the federal government or any political subdivision from authorizing the construction of airports without first complying with the Illinois Aeronautics Act, including the state permitting requirements of § 47 of that Act. Even though Chicago (a political creation and instrumentality of the State of Illinois) has no power to build or modify airports (a state law power unless Chicago receives the approval.) Section 3(a)(3) purports to authorize the United States to require a state permit. Congress has no constitutional authority to construe federal law to authorize or construe state law to authorize a federal law.

7. Similar problems articulated in New York and Printz fatally afflict Section 3(f) of the proposed Durbin-Lipinski legislation. The proposed Durbin-Lipinski legislation involves Congress attempting to use a federal instrumentality (i.e., the state power to build airports exercised through its delegated state-created instrumentality, the city of Chicago) as an instrument of federal policy. The Supreme Court in New York v. New York and Printz, the Tenth Amendment—and the structure of “dual sovereignty” it represents under our constitutional structure of federalism—prohibits the federal government from using the Commerce power to conscript state instrumentalities as its agents.
plan constructed by the Federal government because Chicago has not received approval from the State of Illinois under the Illinois Aeronautics Act—a specific condition and prohibition. The state has no power or authority under state law (abstain compliance with the Illinois Aeronautics Act) to enter into an agreement for the FAA to construct the runway redesign plan. Chicago also has no power or authority under state law (abstain compliance with the Illinois Aeronautics Act) to enter into the other agreement in Section 3(a)(3) of the Durbin-Lipinski legislation. Again, Section 3(f) is an attempt to have Congress use the Commerce Power to impose obligations on the States and on private parties alike. See e.g., Reno v. Condon, 8 U.S. 505 (1988); (state bond interest not immune from nondiscriminatory federal income tax); Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (general applicaiton but a specifically directed at one city (Chicago). The Durbin-Lipinski legislation proposes to use Chicago (an instrumentality of state power whose authority to construct an airport is an exercise of state power) to exercise repeatedly limited and conditioned on the limits and prohibitions imposed on that delegation by the Illinois legislature) as a federal instrumentality to implement federal policy. Congress is commandeering a state instrumentality of a single State (Illinois) against the express statutory will of the Illinois Legislature, which has refused to confer on Chicago (an instrumentality of the State) the state law power and authority to build airports unless Chicago first obtains a permit from the City of Illinois. This is a constitutional use of the Commerce Power under the holdings New York v. United States and Printz, and does not fall within the “general applicability” of the Commerce Power as stated in Reno v. Condon, South Carolina v. Baker, and Garcia.

A. The basic legal principles

Cities are Creatures of the States and State Law—Not Instrumentalities of Federal Power. Chicago, as a city, is not sovereign. The surrounding the proposed expansion of O’Hare Airport would be left to the state political process. Under Illinois law, the cities in this state have only the power that the State Constitution or the legislature grants to them, subject to whatever limits the State imposes. This legal principle has long been settled.

Nearly a century ago, the U.S. Supreme Court, in Hunter v. City of Pittsburgh, 207 U.S. 563 (1907) held that, under the U.S. Constitution, cities are merely creatures of the State and have only those powers that the State decides to give them. Furthermore, whatever limits the States choose to impose:

“This court has many times had occasion to consider the nature of muni-

cipal corporations, their rights and duties, and the rights of their citizens and creditors. [Citations omitted.] It would be unnecessary and unprofitable to analyze these decisions or quotes from the opinions rendered. We think the following principles have been established by them and have become settled doctrines of this court, to be acted upon wherever they are applicable. Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be [en]trusted to them . . . .

The number, nature, and duration of the powers conferred upon these corporations are, and shall be, the exercise of a power exercised rests in the absolute discretion of the state . . . .

The state, therefore, at its pleasure, may modify or withdraw all such delegation of powers by revocation of such property, hold it itself, or vest it in another agency, expand or contract the ter-
torial area, unite the whole or a part of it with another corporate body and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens.

The various powers which the state may confer or withhold all such aspects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.”

Hunter held that a State that simply takes the property of municipalities without their consent and without just compensation did not violate due process. While Hunter is an old case, it still is the law, and the Seventh Circuit recently quoted with approval the language reproved:

The Illinois Aeronautics Act expressly limits Chicago’s Power to Build and Alter. The State of Illinois has delegated to Chi-

cago the power to build airports. But that power is expressly limited by the requirement that Chicago must comply with the Illinois Aeronautics Act. And the Illinois Aeronautics Act provides that Chicago has no power to make “any alteration” to an airport unless it first obtains a permit, a “certificiate of approval,” from the State of Illinois. Chicago was not obtained this certificate of approval. That fact is what has led to the proposed federal intervention.

B. The federalism problem

As mentioned above, section 3(a)(3) of the proposed legislation authorizes Chicago to construct an airport under the Commerce Power to impose minimum wage requirements on non-state workers in, or affecting, interstate commerce. Congress can regulate the States using the Commerce Clause if it imposes requirements on the States that are generally applicable—that is, if it imposes the same burdens on private employers. Congress cannot single out the States for special burdens; it cannot commandeer or take control over the States or order a state legislature to impose home rule for the City of Chicago; it cannot enact federal legislation that adds to or amends state law. Congress can use the Commerce Power to impose various burdens on States as well as those laws are “generally applicable.” The federal law may not single out the States for special burdens. For example, Congress may impose a minimum wage on state workers in, or affecting, interstate commerce as long as Congress imposes the same minimum wage requirements on non-state workers in, or affecting, interstate commerce. Congress can regulate the States using the Commerce Clause if it imposes requirements on the States that are generally applicable—that is, if it imposes the same burdens on private employers. Congress can not single out the States for special burdens; it cannot commandeer or take control over the States or order a state legislature to impose home rule for the City of Chicago; it cannot enact federal legislation that adds to or amends state law.
Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not concert state governments.” The proposed Durbin-Lipinski legislation will do exactly what New York prohibits: it will conscript the City of Chicago as its agent and interfere with Chicago’s ability to act as it chooses. “It must follow the direction of Congress.” The State has “no option other than that of implementing legislation enacted by Congress.”

The Court in New York went on to explain that there are legitimate ways that Congress can impose federal will on the States. “This is not to say that Congress lacks the ability to encourage a State to regulate in a particular way, or that Congress may not hold out incentives to the States as a method of influencing a State’s policy choices. Our cases have identified a variety of methods, short of outright coercion, by which Congress may urge a State to adopt a legislative program consistent with federal interests. Two of these methods are of particular relevance here.”

The Court then discussed those two alternatives. First, there is the spending power, with Congress attaching conditions to the receipt of federal funds. The proposed Durbin-Lipinski legislation rejects the spending power alternative. Second, “where Congress has the authority to regulate private activity, but there is an identifiable federal interest, we have recognized Congress’ power to offer States the choice of regulating that activity according to federal standards or having state law preempted by federal regulation.” The proposed Durbin-Lipinski legislation rejects that alternative as well. It does not propose that Congress directly take over and expand the City of Chicago’s authority, it simply requires that the City of Chicago be allowed to exercise power that the State does not allow the City to exercise.

New York v. United States did not question “the authority of Congress to subject state governments to generally applicable laws.” But Congress cannot discriminate against the States and place on them special burdens. It cannot commandeer or command state legislatures or executive branch officials to enforce federal law. Congress can provide funding to reward States or penalize States for their actions. But, it cannot command a State government to act in the same way the Federal government chooses. “The Federal government cannot be a monopolist in regulating interstate commerce.”

New York v. United States did not question “Congress may regulate commerce with the States.” Congress may regulate commerce with the States, but it does not have the power to regulate commerce among the States.”

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The Court then discussed those two alternatives. First, there is the spending power, with Congress attaching conditions to the receipt of federal funds. The proposed Durbin-Lipinski legislation rejects the spending power alternative. Second, “where Congress has the authority to regulate private activity, but there is an identifiable federal interest, we have recognized Congress’ power to offer States the choice of regulating that activity according to federal standards or having state law preempted by federal regulation.” The proposed Durbin-Lipinski legislation rejects that alternative as well. It does not propose that Congress directly take over and expand the City of Chicago’s authority, it simply requires that the City of Chicago be allowed to exercise power that the State does not allow the City to exercise.

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businesses and individuals, generating significant revenue. To limit such sales, Congress enacted the DPPA, which governs any state department of motor vehicles (DMV), or its contractor, or its employee, or any resale or re-disclosure of drivers’ personal information by private persons who obtained the information from a state in the performance of their duties, pursuant to the DPPA’s provisions do not apply solely to States.” Private parties also could not buy the information for certain prohibited purposes nor could they resell the information to other parties for prohibited purposes, and the States could not sell the information to the private parties for certain purposes. The private parties could not buy the information for certain prohibited purposes.

Unlike the law in New York, the Court concluded that the DPPA does not control or regulate the manner in which States regulate private parties; it does not require the State to regulate its own citizens, and it does not require the state legislatures to enact any laws or regulations. Unlike the law in Printz, the DPPA does not require state officials to assist in enforcing federal statutes regulating private individuals. DMV information is an article of commerce and its sale or release into the interstate stream of commerce is generally applicable federal regulation.

The DPPA is a “generally applicable” federal law regulating commerce because it regulates “merchants” that act as suppliers to the market for motor vehicle information—the states as initial suppliers and the private resellers or resalees of this information. “South Carolina has not asserted that it does not participate in the interstate market for personal information. Rather, South Carolina asks that the DPPA be invalidated in its entirety, even as applied to the States acting purely as commercial sellers.”

CONCLUSION

The proposed federal law dealing with the O’Hare Airport expansion is most likely unconstitutional because it imposes federal rules on the relationship between a city and the State that created the city. It subjects Illinois to special burdens that are not generally applicable to private parties or even to other States. It authorizes the City of Chicago to do that which Illinois now prohibits.

There is no escape from the conclusion that the proposed federal law does not regulate the behavior of private individuals in interstate commerce. It does not subject the State of Illinois to “generally applicable” legislation. Congress is regulating interstate commerce by the states’ regulation of interstate commerce. Congress may not conscript the instrumentalities of state government and state law as tools of federal power. The case law is clear that Congress does not have this power.

Sincerely,

RONALD D. ROTUNDA

The Albert E. Jenner, Jr. Professor of Law.

CHICAGO IS NOT AN AGENCY OF THE FEDERAL GOVERNMENT

(By Ronald D. Rotunda)

Congress is at it again. The Senate Commerce Committee has cleared a bill that would, in effect, make Chicago as an agency of the federal government. The immediate dispute involves O’Hare Airport, but the underlyng constitutional issue affects us all. The obvious is that there should be no major expansion of O’Hare, or a new airport. That decision has been entrusted to Chicago, a city created under Illinois law. But the state government knows it could not regulate by Chicago’s power to expand O’Hare. First, the city has to secure a state permit.

That’s the rub. Some people who favor the expansion don’t want Chicago to comply with the state permit requirement, so they urged Congress to enact legislation that would allow them to avoid the state law, and to do so without even considering what state law could provide for expansion. Enter the U.S. Constitution. For over two centuries, the federal government has had the power to regulate interstate commerce. Congress could do what state law cannot do, and Congress did. Congress relied on that power to federalize airport security. Notably, Congress didn’t deal with the problem by ordering state and city officials to cover the cost and pay the bills. That’s because the federal government knew it could not regulate by conscripting state or city governments as its agents.

Congress acknowledged that fundamental principle in 1789, the very year that the Constitution was ratified. The First Congress enacted a law that requested state assistance to hold federal prisoners in state jails at federal expense. The law did not command the states’ executives, but merely recommended to their legislatures, and offered to pay 50 cents per month for each prisoner. When Georgia refused, Congress authorized the U.S. marshal to rent a temporary jail until a permanent one could be found. It never occurred to Congress that it could make city or state officials its minions by instructing them to act as if they were federal employees.

All this changed a little over a decade ago, when we allowed the disposal of radioactive waste. Rather than handle the matter directly, it chose a low-cost solution: it simply ordered the states to take care of the problem. The law required the states to take title to radioactive waste that private parties had generated, and be responsible for its disposal, at not cost to the federal government. The Supreme Court explained that the states could do so because the law did not require the states to finance either the waste or the public good. Congress could order the states to engage in interstate commerce by enacting laws that impose burdens on the states. But Congress cannot order or authorize state or city officers to act as if they were federal officials.

Federalism, the Court tells us, exists to prevent federal interests from suffocating state and local decision-making. To the federal government, that means a federal government that does not have power to tell state governments that they are not sovereign entities. The Court explained in 1992, put it bluntly: “Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly.”

A CONTROLLER’S VIEW

Ladies and gentlemen; I have proudly served the FAA for the past 10 years as an Air Traffic Controller. I have been employed at several air traffic control facilities throughout the Chicagoland area, and feel that I have a unique perspective on enhancing future airport development.

To date, most of you have heard numerous insights on a proposed third major airport for Chicago. Let me present an insightful perspective from a “controller’s viewpoint.” Within a small twenty-mile radius of the Chicagoland area, lie four of the busiest airports in the country. Approximately one and one half million airplanes take off and land at Palwaukee, Dupage, Midway, and O’Hare Airports yearly! To put a tremendous strain on the Air Traffic Controllers who struggle to keep this area safe and without significant delay. With air travel continuously increasing, delays and safety will become a nearly impossible task to overcome.

Plans for expansion at the two major Chicago airports will not be enough to meet demands. O’Hare Airport has reached its maximum capacity creating consequential delays. There are not enough available gates, runways, and taxways to serve all the aircraft. Although there are plans to add additional gates and another runway, this will not address the taxway problem. Due to the layout of O’Hare airport, in my opinion there is no effective way to accommodate additional taxways that will have a positive impact on airport operations. Thus making any other method to increase capacity ineffective.

The problems that face the same problems facing Midway Airport. Midway boasts as being aviation’s busiest square mile. Nowhere else are there more commercial airplanes landing and departing in such a condensed area. Unfortunately, Midway Airport is very condensed. Due to runway lengths, it can only handle the smallest of commercial aircrafts. The airport is severely landlocked with major streets, houses and businesses immediately surrounding the field. Even with the current terminal expansion program we find an insufficient number of taxways and the size of the runways, in my opinion limit any significant increase in traffic.

For a third major airport is loud and clear. With the projections of air traffic on the rise, additional airports must become available. In my opinion, Peotone is an excellent location for a major new airport. Peotone is located just outside the main flow of air traffic in and out of Chicago. Any additional airplanes created by this third airport would impact air traffic facilities located east, south, and west of Peotone. A third airport located in Peotone would not be significantly affected by Chicago’s air traffic, which is rapidly reaching a saturation point, but instead would aid in alleviating the congestion heading into Chicago.

A point of interest, which may have been overlooked, is corporate aircraft. The use of corporate aircraft is one of the fastest growing fields in aviation. There are very few airports that accommodate corporate aircraft in the south Chicagoland area. With the pending closure of Meigs Field in Chicago, the Peotone airport would fill this void. The Peotone airport would be crucial to south Chicagoland businesses. Furthermore, suggestions that a third major
aerport being located in the immediate Chicagoland area, namely Gary, Indiana, would not alleviate the saturation problem Chicago is already facing.

In closing, I would like to thank all those involved with the Petone Airport project. I am greatly anticipating the future events surrounding this project.

John W. Trehling, Lockport, IL, January 18, 1999.

Re: A Third Chicago solution.

Governor George Ryan, State Capitol, Springfield, IL.

Dear Governor Ryan: My name is John Trelting. I am aware of its many economic contributions to the public. (It's better to be in Peotone than in Detroit).

It is well known that American and United, who literally control O'Hare, are in great need of both jobs and better airport services. The region cannot double its aviation services without building major new airport capacity. O'Hare and Midway are now at capacity. Emplanements already are being affected, with growth limited to increases in plane size or load factor; neither is expected to increase further. The City's $1.8 billion investment in terminals will not increase capacity. Instead, the region already is evident. Businesses and residents are witnessing major increases in fares in the Chicago region, according to IDOT, the Chamber of Commerce, and the Superfund.

The demand in airline traffic could easily expand by 30% during the next decade. Where does this leaves Illinois and Chicago? It leaves us with no growth in the industry if we have no place to land more airplanes. If Indiana were ever to get smart and construct the much needed airport at Peotone, imagine the damaging economic impact it would have on Northern Illinois!

Sincerely,

John W. Trehling.

The Future of the Chicago Region: Smart Growth, Infill Redevelopment and Regional Balance.

The Midwest and, in particular, the Chicago Metropolitan Area, has had a remarkable turnaround in economic fortune over the past decade. It has shed its "rust-belt" image and has produced remarkable economic growth.

Between 1990 and 1998, the six-county Chicago area grew by 565,500 persons, a 7 percent increase. While this percent increase is moderate, the numerical increase is equivalent to a city larger than Denver. Between 1990 and 1997, the six-county area grew by 275,000 jobs, a 9 percent increase. Between 1990 and 1996, the region (Kenosha to Michigan City) grew by 1,310,000 jobs, the fifth largest increase in the nation.

Between 1990 and 2020, the Chicago region is projected to grow by 785,000 persons. This is a city the size of San Francisco.

Between 1990 and 2020, the Chicago region is projected to have the largest growth of any metro area in the U.S., adding 1,118 million jobs.

In spite of these significant regional turnarounds, the City of Chicago continued to lose ground. Between 1991 and 1997, the City of Chicago lost over 27,000 jobs; 11,000 were from new firms and 16,000 were from old firms. Every one of the City's eight major community areas experienced losses, with the exception of North Michigan Avenue and the Northwest area around O'Hare International Airport. The Far South, Southwest and South communities experienced the greatest losses.

This development trend extended to the suburban area. While the six-county Chicago Area grew by 275,000, the north and northwestern suburbs were the major beneficiaries. DuPage, Lake and Northwest Suburban Cook (including Chicago and the Northwest area around O'Hare) have added 184,000 jobs, or 71 percent of the net growth. With 500,000 jobs in Chicago's Central Business District versus 450,000 in North Suburban Cook County (including DuPage County), the economic center of the region has shifted from downtown to O'Hare. O'Hare International Airport is, undeniably, the engine that is portrayed. But, it has run out of space, both in the air and on the ground. Its enormous attraction, to business and industry, has brought hundreds of thousands of jobs, millions of visitors and billions of dollars, annually, to the Chicago region. On this, we all agree. But, the area surrounding it, the development. Other areas, particularly the South Side, are in great need of both jobs and better airport access. In fact, the two issues are closely related.

The massive development attracted by O'Hare Airport makes airport expansion here costly, time-consuming, difficult and impractical. Traffic congestion is brought to a near halt on the expressways leading to O'Hare; future traffic problems would be compounded many times over. O'Hare's neighbors—well aware of the gravitational attractions, also are wary of expansion, weary of noise and traffic, and fearful of possible future compromises on safety. On the opposite side of O'Hare's air traffic are the residents of DuPage, Lake and the Northwest area around O'Hare; these are the communities of the Chicago South Side and the South Suburbs. By all accounts, these areas find themselves overlooked and under-served—primarily due to their distance from the region's airports. This economic disparity is clearly evident in the following maps, which show job concentration in 1990 and 1990. This period marked major declines in manufacturing jobs in the region's South and West suburban areas in both manufacturing and service jobs in the North/West, around O'Hare. Airport access was the difference.

In summary, the region needs the Third Chicago Airport. Development of the Third Chicago Airport is a true urbanist's dream: obtaining multiple benefits from one investment: traffic and employment. Why, therefore, not Chicago? When you have two powerful and thoughtful representatives of the people—Congressman Jerry Weller, Bobby Rush, and Tom Ewing, Senator Peter Fitzgerald, Governor George Ryan, Senate President Pate Phillip—plus scores of local mayors, hundreds of local businesses and hundreds of residents, have joined in the effort to bring the airport to the South Suburbs. Perhaps, with the airport in place, we will have true balance growth, encourage infill development and share the wealth of the region.

The Planning Process: Twelve Years of
Ten years ago, Chicago was one of the nation’s least expensive regions to fly to, due to its central location. Obviously, its location has not changed; however, now, due to O'Hare’s on-time and high-fare service, it is cheaper to fly from all around the country to many other cities than to Chicago. For instance, according to data supplied by the U.S. Department of Transportation, it is now cheaper to fly from Green Bay to Las Vegas than from Green Bay to Chicago. It is cheaper to fly from Seattle to Orlando than from Seattle to Chicago. Something is wrong. Due to capacity constraints, O’Hare’s airfares are over-charging $750 million, annually (the difference between average fares for large U.S. airports and those at O’Hare). This fact is beginning to affect regional development—especially conventions and tourism—but it also affects every major and start-up business, every individual with family and friends in far-flung places. As is well-known, access to an airport is one of the three requirements of a locating or expanding business. But, access must be at competitive fares. Expanding O’Hare will simply buttress the behavior of its airlines. Such monopolistic practices currently are a major concern of Congress.

THE DEVELOPMENT ALTERNATIVES

Aviation infrastructure must be expanded—soon—to handle overpopulation, lower fares and increased service to the region. The alternatives are two: adding runways to O’Hare; or building the Third Chicago Airport. The two alternatives have far different consequences. The question is: ‘Will we continue to spend great outlays of public-private funds on an area that is overcrowded with both riches and the congestion those riches bring; or do we make those investments in mature urban areas that are wanting for jobs and economic development?’

As is clearly documented by a recent Chamber study, O’Hare’s benefits are conferred, primarily, on the west, north and northwestern suburbs. Virtually all of the airport’s employees reside near it. In addition, it has garnered high concentrations of development. These concentrations, however, have led to serious social and economic problems with one investment. The ample land also allows the construction of new, environmentally-sensitive fringes of the region and in areas far removed from the region’s central core.

THE TWO SIDES OF THE COIN

While unprecedented growth takes place around O’Hare, to the north, the three million residents of the region who reside south of McCormick Place are left with long trips to the airport for flights and out of the running for the many jobs it produces. The consequences for South Side/South Suburban residents and the dwindling businesses that serve them, are the highest property tax rates in the State. Because jobs have disappeared, residents have some of the longest trips to work in the nation. Because transit only to the Loop is convenient, recent job losses in that area, as well, (11,000 since 1991; 25,000 since 1983) have compounded the job searches of the South Side’s residents. For decades, regional planning agencies have called for the development of economic-income housing near job concentrations. Instead, let us bring the jobs to the residents.

Recent public forums on the disparity of property tax rates in Cook County and south communities have led to the South’s designation as the “Red Zone,” signifying its concentration of highest property tax rates. But, the disparity was not new. It has occurred over the last three decades and proliferated in the last two, as shown below. The “Metropolis 2020” study addresses this disparity issue by calling for a sharing of revenues with the “lesser havens.” The more-responsive, enduring and—ultimately—more-beneficial approach is to provide the South Side with the Economic opportunities generated by the Third Chicago Airport.

Whether the region expands O’Hare or builds a supplemental airport, O’Hare’s riches will remain and grow. It is currently enjoying a $1 billion public investment upgrade to 60 terminals. Midway, as well, will continue to thrive, as the recipient of an $800-million-publicly-funded new terminal. However, this $1.3 billion investment will not increase capacity: an initial investment of $500 million ($2.5 billion through 2010) to build the Third Chicago Airport, will. And, it will produce more than just added aviation capacity. The Third Chicago Airport will provide 235,000 airport-related jobs—in the right places—by 2020. Additional airport access jobs will benefit the entire region. In addition, it will reinforce Chicago’s role as the center of the region’s growth.

Spokesmen for the incumbent airlines claim that other airlines will not invest in the Third Chicago Airport; this is a traditional response to discourage competition. Furthermore, the financing of any airport construction is via the Passenger Facility Charges (PFC). These are expected to increase by 50 percent; and Passenger Facility Charges (PFC’s) are expected to increase from $1 to $2.50 per flight. This $1.50 at O’Hare yields $37 million per year. At the Full-Build forecast and $6 rate, the Third Chicago Airport will generate $100 million in PFC’s annually by 2010. The FAA must provide the needed approvals and normal up-front funding. A Third Airport development in the South Suburban can provide social and economic parity; and it can do it with a hand-up rather than a hand-out.

THE ARGUMENT FOR SMART GROWTH WITH CHICAGO’S THIRD AIRPORT

Independent studies have demonstrated overwhelmingly, the need for expanded aviation capacity in the region. Demand will more than double by 2020. Needed is a Third Airport that can grow as future demand dictates.

The need is now. The region is beginning to experience the costs of capacity constraints. These are:

Dampened aviation growth.
Increased and non-competitive fares.
Lost jobs, conventions and other opportunities.

There are two alternatives for meeting the region’s demand:

Adding runways at O’Hare—an area already well-served and suffering the effects of overdevelopment.

Building the Third Chicago Airport—investing in an existing, mature part of the region suffering losses due to changes in the national/regional economies and lack of access to a major airport.

Doubling traffic at O’Hare drives new development farther away from the region’s core—the South Suburban Area, and its residents and businesses to the South.

It will encroach on environmentally-sensitive areas.

It will create nonstop noise, pollution and traffic congestion; and impose these on hundreds of thousands of additional residents.

It will buttress monopolistic behavior by major airlines. Building the Third Chicago Airport is a true urbanist’s dream. It solves multiple problems with one investment.

It develops an environmentally-sensitive, new airport, that can provide increased capacity for decades to come.

It provides nearby, inexpensive land for development.

It brings jobs and development to mature portions of the region.

It provides three airport facilities to function at optimal capacity.

It maintains the Chicago region as the nation’s aviation capital.

Because of planning already completed, the Third Chicago Airport can be built before additional runways at O’Hare.

Resources are available to build the airport.

Federal Funds for airport development will increase by 50 percent.

The U.S. Congress, many businesses and consumers are demanding access to and through the Chicago area.

Ultimately, the passenger pays through Passenger Facility Charges.

THE GROWING IMBALANCE IN THE REGION’S GROWTH, AND ACCESS TO JOBS

1. The Chicago region has grown robustly over the past 25 years. Over 1.310 million jobs (1970-96) for the consolidated area.

2. Beyond 250,000 jobs between 1990 and 1997, alone, for the six-county area.

3. This growth has been very uneven. The North has prospered, while the South has languished.

4. The region’s center has migrated from Downtown Chicago (with its excellent public transportation access) to the area around O’Hare (dependent on autos).

5. The City of Chicago lost over 27,000 jobs between 1991 and 1997; 11,000 of these losses were from the South Loop.

6. With 500,000 jobs in Chicago’s CBD, versus 450,000 in North Suburban Cook and 150,000 in Northeast DuPage, the economic center of the region has shifted from Downtown to O’Hare.

7. Consequently, residents of the South Side and South Suburbs have commutes to work that are among the nation’s longest. There is little public transit between suburbs.

8. These same residents do have the region’s highest tax rates, however; without businesses and industries, the residents, alone, must pay for all their services.

9. New businesses and industries want access to major airports. O’Hare’s nearby communities have run out of space to offer. The South Side has ample land, but no airport. The ample land also allows the construction of an environmentally-sensitive airport.

10. To accommodate the economic growth anticipated over the next 20 years, the Chicago region needs additional airport capacity. To balance the economic growth, it needs a South Suburban Airport.

SOUTH SUBURBAN AIRPORT: AVIATION DEMAND IN THE CHICAGO REGION

Background Assumptions for Demand Forecasts

Aviation demand is derived from a few basic assumptions.

The national/international growth in aviation.

The socio-economic dynamics and growth of the region.

The location/ desirability of the region for providing connecting flights.

July 23, 2002
The ability of the region to accommodate this demand depends on: 
- The capacity of its airports.
- The competitiveness of its fares.

**National/International Aviation Growth**

The FAA forecasts a doubling in aviation growth over a 15 year period.

International enplanements and freight are growing even more rapidly.

The Federal Airports Council International have equated this growth to 10 O'Hare Airports.

By 2012, there will be more than 1 billion enplanements, 2 billion passengers in the U.S.

**Socio-Economics Create Demand**

Since the original aviation forecasts, made in 1994, the socio-economic performance of the Chicago region has matched or exceeded expectations.

In 1990-1996, population and employment for the 14- and 9-County regions grew at rates and volumes slightly above those forecast.

The Chicago Consolidated Area (Kenosha to Michigan City) produced 1,311,000 jobs between 1970 and 1996; and added 617,280 persons.

The regional planning agencies have increased their 2020 forecasts, to reflect this growth.

So has NIPC, author of forecasts used by City of Chicago.

Woods & Poole Economics (the national forecast used by IDOT), in its 1999 edition, expects the City to project the largest volume growth in employment of any metropolitan region in the U.S.—for 1996-2020, a 1,118,660 job growth—far 1990-2020, a 1,835,500 job growth.

Chicago’s economy continues to grow robustly only if it can provide excellent aviation access. And it, can serve the region fairly, or the region provides that access to the south suburbs.

**Location Drives Connecting Flights**

Because of its central location and high concentration of jobs and population, the Chicago region is a critical location for connecting flights.

The recent Booz-Allen study, prepared for the City, forecasts an international growth that is 150% of the City’s; and claims that the high ratio of connecting to O/D are not just desirable, but necessary.

The City of Chicago, in 1998, forecast connecting enplanements based on regional location; their connecting forecasts were higher than IDOT’s.

O’Hare’s current connecting is 54.7%, slightly under its past average. IDOT assumed 50% connecting for O’Hare in 201; 51% for the region.

**Aviation Growth Parallels IDOT Forecasts**

Since their national forecasts of 1994 (base for IDOT forecast), the FAA has generated five 12-year forecasts, five long-range national forecasts though 2020, and five terminal area forecasts.

All the FAA national forecasts are higher than the City’s base forecast.

Although it continues to contest IDOT’s forecasts, the City and Chicago and its consultants are using forecasts that are nearly identical.

The City and State are using IDOT’s socioeconomic and aviation forecasts for all short- and long-term regional transportation planning.

Other aviation plans (Gary Airport Master Plan; Booz-Allen forecasts for O’Hare International) are consistent with IDOT forecasts.

**Capacities Constraints Jeopardize Economic and Aviation Growth**

The ability of the region’s airports to accommodate demand is a most-serious concern. The Chicago region has reached aviation capacity. These aviation capacity constraints have damaged regional growth.

Since 1985, O’Hare’s growth in commercial operations has declined.

Domestic enplanements at O’Hare have declined this year.

Small cities have been dropped from service.

Booz-Allen says the international market is not being served.

Fares at O’Hare have risen above the average for large airports.

O’Hare’s delays have been much greater this year than last; O’Hare’s delays are among the most severe and cascade throughout the nation’s airports.

The FAA has long forecasted such capacity problems and resultant delays. In 1992 it forecasted a doubling of airports with delay problems by 2001.

The forecasts have arrived a bit ahead of schedule.

Without additional capacity, the economic well-being of both Chicago and the nation are jeopardized.

**NIPC Findings—November 1996**

**Talking About the Region’s Future**

We recently asked a cross-section of the region’s leaders:

- Should water quality protection measures for our rivers, lakes, and streams be implemented even if this means placing development and limits on presently undeveloped high-quality catchments?
- Should the region pursue infill and redevelopment strategies that lead to employment and income growth in older communities that have experienced diminished tax base and disinvestment?
- Should priority in transportation funding be given to maintenance of the existing system?
- Should measures to encourage reclamation of contaminated lands, including tax credits and limits on liability, be enacted?

Yes, said strong majorities of participants in two public workshops conducted by NIPC in June and September of this year. The workshops were held as part of an effort to engage the region in a discussion of growth choices facing us. Participants representing local governments, federal agencies, and civic and community organizations were asked to respond to possible future developments, their probable consequences, and the steps we might take to bring them about.

The broad choice which framed the discussions was this: should anticipated future growth continue along the path of past trends or should efforts be made to moderate the physical decentralization of the region?

NIPC is not alone in the region in raising these issues, or in trying to remember a time when the future development of the region has been discussed more widely or fervently. Numerous civic and community organizations have been developing analyses and recommendations on transportation and development and encouraging discussion of regional issues by their members and constituents.

The Commission’s immediate purpose in conducting the workshops was to seek public guidance in the development of new demographic forecasts for the region. These forecasts will be used in the preparation of the Regional Transportation Plan for 2020. Draft forecasts will be completed by early 1997. At the same time, the Chicago Area Transportation Study (CATS) will complete a draft transportation plan. After a period of public review, the transportation plan will be tentative for consideration of the Clean Air Act. Following additional opportunity for public comment, final forecasts will be endorsed and the Regional Transportation Plan for 2020 will be adopted.

Beyond the immediate need to support the transportation planning process, this regional discussion advances NIPC’s mission of striving for consensus on policies and plans for action which will promote the sound and orderly development of the Illinois area. The purpose of this newsletter is to inform the region of what we have heard and to encourage continuing deliberation on this kind of region we want to be in the next century.

**What We Have Heard**

Several general conclusions emerged from the workshops. The first is that there is a widespread, though anonymous, belief that the past trend of dispersed, low-density residential and employment growth has had unintended negative consequences for the interests of environmental quality, prudent public investment, and social equity.

There is also substantial support for some past and current policies, and for new legislation and executive orders which could be highly effective in helping to moderate growth. These will be described in more detail below. Some measures which could be highly effective in slowing past trends are widely agreed to lack political acceptability in this region.

Finally, there is broad support for measures which would improve the quality of local planning and development within the continued or moderate trend approach.

**The Forecast: A Growing Region**

The preparation of forecasts of future population, households, and employment is one of NIPC’s most important responsibilities. These are not simply forecasts of the number of people, households and jobs which will be in the region in a future year. People, households, and jobs imply houses, roads, sewers, and parks. The forecasts thus represent the Commission’s best estimate of how activities and facilities will be distributed across the region: where new housing will be necessary and old housing may become vacant, where new or expanded streets and sewers will be required, and where streams and wetlands will come under pressure from growing population.

The forecasts thus have implicit in them a generalized land use plan for the region. One of the critical beliefs that they be as realistic as possible in reflecting the trends and constraints of the market, the influences of public policy, and expectations of local governments.

We have previously described the process being used to develop forecasts for the year 2020 (NIPC Reports, January 5, 1996). In March 1994, the Commission endorsed regional forecast totals of 9 million people, 3.4 million households, and 5.3 million jobs in 2020. These figures represent a 25 percent increase in population, a 50 percent increase in employment from 1990 to 2020. By way of comparison, between 1970 and 1990 the region’s population increased by only four percent and employment by 23 percent. The amount of land devoted to urban uses, however, increased by 34 percent during that twenty-year period. In view of this finding about land consumption, the forecasted future growth has the potential to add seriously to pressures on the transportation system, air and water quality, and agricultural lands.

The Commission concluded that alternative to past patterns of growth had to be presented to the region for discussion.

**A Preferred Development Pattern in Northwestern Illinois**

On June 26, 1996, the Commission conducted the first of two regional workshops on alternative growth scenarios and their
implications. The intent was to assess how much support there might be for different development patterns and how much acceptance of their probable costs. It was hoped that this would add considerable depth to the feasibility for the time being and respond to the question of what is the most desirable future for the region. The workshop was attended by participants representing a broad spectrum of organizations and interests.

Three general scenarios were presented. Each was designed to illustrate the outcome of a unique combination of public policies with respect to transportation and community development. The broad patterns of new housing and jobs to which these scenarios would lead are shown in the maps below. Participants were not asked to express a preference among the scenarios themselves but to evaluate the relative importance of the impacts which each would have on communities and the natural environment. Questions to the participants concerned the importance of land development patterns which would (1) help preserve farmland, (2) encourage the use of public transit, (3) protect high-quality watersheds from erosion, and (4) promote affordable housing close to centers of job growth.

Continued Trends. This is the ‘baseline’ scenario which assumes the least change, in terms of public policy, from recent conditions. Only limited highway and rail transit capacity would be built beyond what is currently committed for funding. Future demand for aviation service would be met at O’Hare and Midway. The broad pattern of low-density dispersal of jobs and households would continue. Households and jobs in Chicago and some inner suburbs would continue to decline while they would increase in the rest of the region. Employment and housing growth would be low. Under this scenario, job growth and household growth to which these scenarios would lead are shown in the maps below. Participants were not asked to express a preference among the scenarios themselves but to evaluate the relative importance of the impacts which each would have on communities and the natural environment.

The redevelopment scenario was designed to simulate the effect of efforts to moderate the worst unintended consequences of recent trends. Two assumptions emerge from an examination of the scenario results:

- Given NPC’s overall forecasts, economic growth and housing costs will not need to be an either-or situation. Even with deliberate efforts to encourage reinvestment in the mature core communities, the balance of the region can sustain a relatively high level of growth.

- Under conditions of high overall growth, managing negative environmental consequences will be very difficult even if the trend of decentralized, low-density development is moderated.

Following the presentation of the scenarios, a panel of five experts on aspects of the region’s development commented on the alternatives and on issues related to their implementation. Here are some of the highlights of their comments:

Barry Hokanson, Director of Planning, Lake County: Lake County is expected to experience the largest growth under any one of the scenarios. While the county has programs to meet the demands on resources and services generated by growth, the multiplicity of local governments and regional projections into coordinated local planning difficult. There are strong voices in Lake County advocating for conservation on new transportation corridors and new regional projections into coordinated planning difficult.

David Schulz, Director, Infrastructure Technology Institute, Northwestern University: The outward movement of households is driven by a variety of forces having to do with the quality of schools, perceptions of safety, and availability. Transportation systems do not induce people to move but influence where they move. Constrained planning systems will simply reallocate growth out past the perceived zone of congestion and will thus worsen the problem of dispersal rather than curing it.

Rusty Erickson, Director of Development, City of Aurora: Aurora has benefited from the decentralizing trend in the region. Continuous growth is necessary to provide quality schools and other services to residents. It is important that new suburban growth be concentrated in areas with full public services.

Low-density development in rural areas will destroy the open countryside which is a strong quality-of-life value.

Frank Martin, President, Shaw Homes Inc: There is a market for residential development that integrates the natural and built environments and which provides the resource efficiency and quality of life of a dense community, including access to public transportation, while preserving high-quality natural surroundings. However, development of new infrastructure and transportation capacity would be hard to do successfully if local government does not address inefficiencies in public services and excessive regulations which result in high fees for raising land values and construction costs.

Benjamin Tuggle, Field Office Supervisor, U.S. Fish and Wildlife Service: Making maximum use of existing infrastructure and established urban areas is an important way of preserving high-quality air, surface water, and wetlands in .

If You Build It, We Won’t Come—The Collective Refusal of the Major Airlines To Compete in the Chicago Air Travel Market

An Analysis of the Per Se Violations of Federal Antitrust Laws by Major Airlines in Their Refusal to Compete with Each Other in Fortess Hub Markets—With Metropolitan Chicago as a Case Example—May 2002

The Suburban O’Hare Commission (SOC) is an inter-governmental agency representing more than one million residents who live in communities surrounding O’Hare Airport. SOC membership is comprised of elected officials of member local governments and other officials who are both advocates for the quality of life and health of their communities and business persons who are concerned about the economics of the region. Over the past several years SOC has conducted a number of studies relating to the environmental, safety, public health, and economic issues surrounding air transportation in the Chicago metropolitan region. This current (SOC) report focuses on one of the significant economic issues relating to air transportation—high monopoly-supported air fares—and the legality of the Fortress Hub system under the nation’s antitrust laws. However, as is discussed in the report, the major airlines’ drive for preservation and expansion of their footprint system (especially at O’Hare)—and their corresponding refusal to compete in each other’s markets—creates serious economic, social, and environmental harm in broad areas of the metro Chicago region.

Preface

In the past several years there have been numerous congressional hearings and media stories about a phenomenon in the airline industry known as “Fortress Hubs” and the problem of high monopoly supported air fares charged to airline passengers traveling from or through these Fortress Hubs.

However, most of the attention of Congress, the Administration, and the media has focused on two narrow facets of the Fortress Hub problem (1) restrictions on access by so-called “newcomers” to a few of the Fortress Hubs, and (2) the allegations of predatory pricing by a dominant major airline against a new low-cost entrant. But this narrow focus has ignored a much more fundamental question: Does the Big Seven Airlines Fortress Hub geographic allocation of markets—and their corresponding refusal to compete in each other’s Fortress Hub markets—violate federal antitrust laws?

Virtually ignored by Congress and the Administration has been the concerted refusal by the major airlines to so-called “Big Seven” (Northwest, United, American, Delta, US Air, Continental, and Trans World)—to compete with their fellow major airlines in each other’s Fortress Hubs. This study, prepared by the Suburban O’Hare Commission (SOC), focuses on the collective refusal
of the Big Seven to compete with each other and examines the question as to whether this geographic allocation of Fortress Hub markets by the Big Seven violates federal antitrust laws. The heart of the problem in Fortress Hub markets—and the resultant high monopolistic fares—has been the de facto agreement among the Big Seven to stay out of each other’s Hub markets. The relevant entry point has been found in the decision of the major airlines to boycott the proposed new South Suburban Airport in metropolitan Chicago. The major airlines would use it, the attempt is simply a manifestation of the majors’ overall horizontal geographic restraint of major markets across the nation—and particularly in metropolitan Chicago.

The FINDINGS of THIS STUDY

The study’s findings include:

1. De Facto Geographic Allocation of Fortress Hub Markets by the Big Seven. The heart of the problem in Fortress Hub markets—and the resultant high monopolistic fares—has been the de facto agreement among the Big Seven to stay out of each other’s Hub markets. The relevant entry point has been found in the decision of the major airlines to boycott the proposed new South Suburban Airport in metropolitan Chicago. The major airlines would use it, the attempt is simply a manifestation of the majors’ overall horizontal geographic restraint of major markets across the nation—and particularly in metropolitan Chicago.

2. The Fortress Hub Monopoly Dominance Geographic Allocation by the Big Seven is Likely Costing the Nation’s Air Travelers Billions of Dollars Annually. There is an overwhelming body of evidence that—because of the de facto geographic allocation of major air travel markets in the nation’s largest cities—where the major airlines, along with their surrogate allies, have employed the “Fortress Hub” market arrangement to guarantee their de facto monopoly over the metropolitan markets in which they compete. In this market agreement not to compete in any significant way with United and American in their dominant Chicago market. This refusal by major airlines to compete along with US Air and Continental to use new metropolitan Chicago airport capacity to compete in metropolitan Chicago is but an example of the antitrust violation of allocating geographic markets by the major airlines. “If you build it, we won’t come” is a blatant violation of the federal antitrust laws.

3. The Big Seven’s De Facto Geographic Allocation of Major Air Travel Markets in the Nation through the Development of “Fortress Hubs” Constitutes a Per Se Violation of Federal Antitrust Laws. Little discussion or analysis has been undertaken by Congress or the Administration as to whether this concerted refusal by the Big Seven to compete with each other in major air travel markets’ which costs consumers billions annually—constitutes a violation of federal antitrust laws. Based on clear and repeated precedent, the Supreme Court has uniformly condemned arrangements to carve up horizontal markets as per se violations of section 1 of the Sherman Act. See, e.g., Palmer v. BRG Group of Georgia, 498 U.S. 46, 49 (1990); United States v. Toco Associates, Inc., 405 U.S. 596, 607-609 (1972).

4. The Big Seven’s Explicit Refusal to Compete In Metropolitan Chicago: If You Build It, We Won’t Come. In the metropolitan Chicago market, the de facto refusal of the Big Seven to compete is manifested by two actions: (1) the de facto abandonment by members of the Big Seven (other than United and American) of any significant role at O’Hare Airport and (2) the announcement by the Big Seven and its allied carriers that they would refuse to use a new South suburban Regional Airport. In the popular jargon of the media, the Big Seven have said “If you build it, we won’t come”—violate federal antitrust laws.

5. The SOC Study also focus on the Metropolitan Chicago market as a case study of the Big Seven’s de facto arrangement not to compete with each other in each of their Fortress Hub cities. A glaring example of this concerted refusal by the major airlines to compete in the fellow major airline’s metropolitan markets is found in the decision of the major airlines to boycott the proposed new South Suburban Airport in metropolitan Chicago. The major airlines said they would use it, the attempt is simply a manifestation of the majors’ overall horizontal geographic restraint of major markets across the nation—and particularly in metropolitan Chicago.
spoke service in the Chicago market and the place to put that hub-and-spoke is the new South Suburban Airport.


Slightly more than a year ago, the United States was “at the dawn of a new era” of airline deregulation.  Federal and state officials proposed a new runway at South Suburban Airport in metropolitan Chicago.

Chicago Mayor Richard M. Daley and Congressman Henry Hyde, in statements to the Illinois General Assembly in 1998, said that the runway would provide “the opportunity to bring new competition into the region, to provide new entry into the market, and to make the United, American and the other carriers, particularly American, serve a market that they do not currently serve.”

As stated by the Illinois Department of Transportation, the only effective way to challenge the monopoly power of American and United at O'Hare is for federal officials to use the authority they have already been granted under the Airport and Airway Development Act of 1970 to prevent any new runway to compete with United and American.

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Thus, Chicago’s World Gateway program has been designed in consultation with United and American to enhance and expand United and American’s hub-and-spoke system at O’Hare.  Congress’ Gateway proposal is not designed to bring new hub-and-spoke competition into O’Hare or the Chicago market to compete with United and American.

One of the principal asserted justifications of American and United in the Chicago market is to build major new capacity in the metropolitan Chicago area.

The consequences of these abuses of monopoly power for the metro Chicago region are stark and real.  O'Hare area communities will be subjected to more noise, more air pollution, and more safety hazards because—under the United, American, and Chicago proposal—all the international, all the transfer traffic, and the lion’s share of the origin-destination traffic are jammed into an already over- stuffed O'Hare.  Any new airport—even if built—will simply receive the origin-destination overflow (if any) from a vastly expanded O'Hare.

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South suburban and south suburban communities will continue to suffer serious economic decline because the South Suburban Airport—which should have been built years ago—lies hostage to a political pique that stricken by the monopoly power of United and American and the political pique of Illinois mayor.

RECOMMENDATIONS

Based on the facts and the antitrust law analysis contained in this report, the Suburban O'Hare Commission recommends the following actions:

1. The United States Attorney General and the United States Attorney for the Northern District of Illinois should initiate civil action in federal court to enjoin and break up the illegal Fortune Hub geographic market allocations and to prohibit the collective refusal by the Big Seven to compete in each other’s Fortune Hub market.  In an appropriate proceeding, the failure of the Big Seven to maintain this geographic market allocation might be shown to be a violation of the Sherman Antitrust Act.

2. The Federal Aviation Administration, the Illinois Department of Transportation, the United States Attorney General and the United States Attorney for the Northern District of Illinois should initiate civil action in federal court to enjoin and break up the illegal Fortune Hub geographic market allocations and to prohibit the collective refusal by the Big Seven to compete in each other’s Fortune Hub market.  In an appropriate proceeding, the failure of the Big Seven to maintain this geographic market allocation might be shown to be a violation of the Sherman Antitrust Act.

3. The United States Attorney General and the United States Attorney for the Northern District of Illinois should initiate civil action in federal court to enjoin and break up the illegal Fortune Hub geographic market allocations and to prohibit the collective refusal by the Big Seven to compete in each other’s Fortune Hub market.  In an appropriate proceeding, the failure of the Big Seven to maintain this geographic market allocation might be shown to be a violation of the Sherman Antitrust Act.

4. The GAO and the Department of Justice should undertake a comprehensive audit of all federal funds that may have been used to further the refusal of the other members of the Big Seven to compete with United and American in metropolitan Chicago—particularly the campaign by the airlines and Chicago to “Kill Peotone.”

5. The United States Department of Transportation should withhold any further approvals of federal funds for expansion of the United and American monopoly profits at O’Hare.

6. The GAO and the Department of Justice should undertake a comprehensive audit of all federal funds that may have been used to further the refusal of the other members of the Big Seven to compete with United and American in metropolitan Chicago—particularly the campaign by the airlines and Chicago to “Kill Peotone.”

7. Our Governor should hold fast to his promise not to permit any additional runways at O’Hare. To do otherwise would simply enhance and expand the monopoly power of O’Hare and doom the opportunity to bring new competition into the region at the South Suburban Airport.

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9. The two candidates for President of the United States—both of whom have likely received large campaign contributions from the Big Seven—should be respectfully asked by the United States Attorneys for the Northern District of Illinois to bring civil action in federal court.

10. The GAO and the Department of Justice should undertake a comprehensive audit of all federal funds that may have been used to further the refusal of the other members of the Big Seven to compete with United and American in metropolitan Chicago—particularly the campaign by the airlines and Chicago to “Kill Peotone.”

INTRODUCTION—RELEVANT QUOTATIONS

Alfred Kahn, the “father” of airlines de-regulation:

H5138 CONGRESSIONAL RECORD—HOUSE July 23, 2002
Anyone who says applying antitrust laws is the same as re-regulation is simply ignorant. To preserve competition we need the antitrust laws and vigorous enforcement of the antitrust laws.

When we deregulated the airlines, we certainly didn't intend to exempt them from the antitrust laws.

Gordon Bethune, Chairman and CEO, Continental Airlines: "Continental chief says hub competition over;"

Competition among airlines for dominance at major U.S. airports is virtually a thing of the past, the chairman of Continental Airlines said Monday.

Continental chief executive Gordon Bethune, in a break from the usual industry line that competition reigns supreme, said the large airlines have staked out their respective hubs and will be difficult to dislodge.

"In the last 20 years, the marketplace of the United States has been sort of. American (Airlines) kind of controls Dallas-Fort Worth and Miami and we've got Newark, Houston and Cleveland. Delta's got Atlanta, Southwest and United have sort of closed shop, and within the last two years the 'Big Seven' have carved up the U.S. aviation market..."

CEOs of 16 major airlines tell Illinois Gov. George Ryan that they will not use new airport in metropolitan Chicago.

We are writing to express our concerns about further planning and development of the so-called "Fortress Hub." Our understanding is that the State of Illinois will not proceed with the construction of a third airport without the support of the airlines. This letter is intended to inform you that the airlines oppose further planning and construction of this facility. . .

In the two decades since deregulation forced the government to stop telling carriers where they fly, some airlines have built up "fortress hubs" in the U.S., where, without meaningful competition, they alone decide where to go, how often to go there and how much to charge.

What the airlines say is true: Airfares are climbing fast, and nowhere is the situation worse than at the hubs for the nation's largest airlines.

Business travelers have been especially hard hit at hubs. And almost everywhere, hub fares, especially for business fliers, are soaring.

Even low-cost, low-fare carriers enter a hub market, they usually control so little of the traffic that they can’t do much to bring fares down.

New York Times:

Business travelers feel particularly abused because they account for more than half of airline revenue. For in the through-the-looking-glass world of airline pricing, the fares paid by leisure travelers, who book as long in advance as the traffic that they can’t do much to bring fares down.

The point is that the business traveler is inelastic," said Peter M. Buchheit, director of travel and meeting services for the Black & Decker Corporation, which paid $90 per ticket for American employees last year. "We need to travel so we will pay whatever it costs. But it has reached a point where we can’t pay it anymore."

The burden of high fares is even greater on small companies. John W. Galbraith, president of the Galbraith Company, a consulting company based in Rochester that had $2 million in billings last year, said he was thinking about dropping his business because the high cost of visiting them cancels out the profit he makes from having their business. "Basically, what the airlines have done is to capture their business from growers," he said. (New York Times January 11, 1998)

United States Supreme Court on horizontal market allocations as per se violations of federal antitrust law:

One of the classic examples of a per se violation of [antitrust law] is an agreement between competitors at the same level of the market structure to allocate territories in order to minimize competition. This Court has reiterated time and time again that [horizontal territorial limitations] are naked restraints of trade with no purpose except stifling of competition. The Sherman Act, (The United States Supreme Court in the 1990 decision in Palmer v. BBG Group of 49, 48, 1990.) Relevant Provisions of The Sherman Act:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations, is hereby declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy in restraint of trade or commerce among the several States or with foreign nations, is hereby declared to be guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court. (Title 15 United States Code §1)

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court. (Title 15 United States Code §2)

The several districts courts of the United States shall have jurisdiction to prevent and restrain violations of sections 1 to 7 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. (Title 15 United States Code §4)

Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefore in any district court of the United States in which he resides or is a citizen, or in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney’s fee. (Title 15 United States Code §15)

1. Pricing as the Elephant in the Corner:

Over the last decade there have been extensive congressional hearings and much media coverage of so-called "Fortress Hubs." But there are two significant dimensions of the hub phenomenon:

Various "constraints" that the so-called "low-cost" "new-entrant" airlines (e.g., Southwest, AirTran) have cited and threats to see new entrants from entering and competing in Fortress Hub markets; and

In those instances where the new low-cost airlines could physically enter the Fortress Hub market, the dominant hub airlines are alleged to have engaged in predatory pricing to drive the so-called "low-cost," "new-entrant" competitors out of the market.

But while Congress and the Administration have focused on these elements, they have focused—correctly, I believe—that "have-nots in the corner" aspect of the Fortress Hub issue. Virtually ignored in these debates has been the role of the so-called "major" airlines, specifically the so-called "Big Seven" controlling members of the trade group known as the Air Transport Association (ATA)—in creating and maintaining the Fortress Hub market.

While Congress and the Administration talked about the anti-competitive aspects of keeping the new "low-cost" airlines out of the Fortress Hub market, little attention was given the role of the Big Seven in maintaining the national Fortress Hub system itself a violation of the nation’s antitrust laws.

The purpose of this study is to: (1) analyze the known facts of the Fortress Hub system; (2) determine if the known facts demonstrate violations of antitrust laws; (3) examine the role of the "Big Seven's" conduct in the Chicago air travel market as a case study illustration of their collaborative conduct maintaining the national Fortress Hub network, and (4) propose remedial action.

The findings of this study unequivocally demonstrate that the system maintained by the Big Seven—alone and through their trade organizations, the Air Transport Association—is an illegal cartel in violation of both federal and state antitrust laws.

2. Geographic Market Allocation through Fortress Hubs—Mutual Protection of Fortress Hubs

There is overwhelming and incontrovertible evidence that, since “deregulation” in 1978, the major airlines have carved up major areas of the Nation into territories of geographic market dominance known as “Fortress Hubs.” Under this Fortress Hub arrangement, one or two major airlines are ceded geographic market dominance and other major airlines tacitly agree not to compete in that geographic market.

Delta has Fortress Hubs in Atlanta and Cincinnati, USAir at Pittsburgh, Northwest at Minneapolis and Detroit, American at Dallas Ft. Worth, American and United at Chicago O'Hare, etc. The other Big Seven airlines—either implicitly or by explicit agreement—have agreed to stay out of each other’s Fortress Hub markets in any significant way. Thus, for example, Delta remains unchallenged by United, Northwest, and others in Atlanta. In turn, Delta doesn’t provide significant challenge to United and American in Minneapolis-St. Paul. Similar facts exist in Detroit and in other major airports where Delta, Burlington, American, and Northwest have dominant control of the local market.

As stated by one congressional witness: "The major airlines have maintained high market share hubs in large sections of the country. Given the market power that they have developed, the major airlines have raised prices far above the competitive level in their market hubs (as study after study has shown). Furthermore, the major airlines defend their high price hub markets with predatory pricing. These are descriptive called 'fortress hubs.'"

"There are two things the major airlines are doing to monopolize large segments of the country. First, they have agreements that entry to their largest markets remains closed or difficult. Second, if a competitor..."
enters a few of their markets they use predatory pricing to drive the discounts out of business."

The broad reach of this Fortress Hub system is illustrated in the table prepared by the National Association of Attorneys General. The Illinois Department of Transportation—that the dominance of these major markets by one or two carriers results in a monopolistic ability to raise fares beyond the air fares that would exist if there was strong competition in these Fortress Hub markets. As stated by the GAO as far back as 1990:

"Airports where one or two carriers handle most of the enplaning traffic have higher fares than airports where the traffic is more concentrated. Moreover, the data show that fares tend to rise as concentration increases. While many factors can influence fare changes, it is clear that we have collected strong evidence that concentrated airports have higher fares than airports where the traffic is less concentrated. Fares are higher at concentrated airports than at relatively concentrated airports, and the evidence suggests that the gap is increasing."

Subsequent studies by GAO since 1990 have confirmed the problem of higher fares at Fortress Hubs—higher than would exist in a competitive environment. See, e.g., Barriers to Entry Continue in Some Markets (GAO/T-RCED-96-112; March 5, 1996); Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets (GAO/RCED-97-4; Oct. 18, 1996); Domestic Aviation: Barriers to Entry Continue to Limit Benefits of Airline Deregulation (GAO/RCED-97-120; May, 13, 1997); Airline Competition: Higher Fares and Less Competition Continue at Concentrated Airports (GAO/RCED-98-165; Airline Competition: Effects of Airline Market Concentration and Barriers to Entry on Airfares (GAO/RCED-98-237; Apr. 3, 1998).

While repeatedly emphasizing the problem of higher monopoly fares caused by lack of competition, GAO continued to emphasize the implications at the nation’s airports as a partial solution to the problem. GAO’s prime emphasis has been to obtain access to airport capacity for the so-called “low-cost” new entrant airlines into the Fortress Hub markets.

But GAO has never analyzed the issue of the “capacity” of these slot-restricted airports in service new competition—even if the slot restrictions were lifted. As discussed below, the FAA has repeatedly emphasized that the practical capacity of an airport is limited by, among other things, the traffic flow approaches the physical limits of the airport’s capacity, aircraft delays rise geometrically—essentially leading to gridlock.

As the analysis contained in the 1995 DOT report A Study of the High Density Rule, and this study show, there simply is not enough capacity available, even with the slots lifted, to all significant new competition to enter the Chicago market. This is why the Big Seven’s collective refusal (discussed infra) to support the major new capacity that would be provided by the new South Suburban Airport is a central component in the preservation of the Fortress Hub problem in metropolitan Chicago. Moreover, any arguable minor increment of available capacity at O’Hare will rapidly be consumed by United and American. There simply is not enough room at O’Hare to allow a major new competitor to gain the “critical mass” to compete with United and American.

The Illinois Department of Transportation has repeatedly emphasized its opinion that monopoly dominance at O’Hare results in higher fares paid by Chicago area travelers and that additional airport capacity is essential to breaking the monopoly stranglehold of O’Hare. There are numerous examples besides these to demonstrate that without the competition of a new entrant, the fares at Chicago are increasing or remain inordinately high.

“We encourage and support your [USDOT’s] focus on anticompetitive practices that are injuring commerce, smaller cities, and consumers in Illinois and throughout the region serviced by O’Hare Airport as the hub of United Airlines and American Airlines. We strongly urge, however, that the department should be a part of a broader initiative that will assure that there will be airport capacity available in the Chicago area that will provide new air service and allow new entrants to compete with United and American. Additional air port capacity is vital to restoring airline competition in the Chicago, Illinois, and Midwestern markets.

“There is simply no room at O’Hare for new entrant airlines to pose competitive challenges to the dominant airlines.”

4. Time Sensitive Business Traveler Biggest Loser in Fortress Hub Monopoly System

The air travel consumer most seriously harmed by this high density market allocation is the business traveler—particularly the small to medium size business traveler who cannot negotiate bulk fare discounts and who must make time sensitive business trips at unrestricted coach fares.

The Illinois Department of Transportation estimated this monopoly based fare penalty at O’Hare alone exceeds several hundred million dollars per year. Nationally, the loss to the traveling public from these monopoly premium Based to a single large metropolitanFortress Hub, because the dominant Big Seven airlines at O’Hare have no competition at its hub, it is in their economic self-interest to make sure that the user of their service pays the highest possible premium. In essence they are extorting billions of dollars annually from captive travelers—most often time sensitive business travelers living in these air lines’ own Fortress Hubs or in nearby markets.

5. The Second Biggest Loser in the Fortress Hub Monopoly System is the “Spoke” Passenger

The second biggest loser from this Fortress Hub monopoly is the so-called “spoke” passenger in the small to medium size community that serves the “spoke” to a single large metropolitan Fortress Hub. Because the dominant Big Seven airline at a Fortress Hub has no competition at its hub, it is in its economic self-interest to make sure that the user of their service pays the highest possible premium or that increase the power of their hub networks.

Because the dominant O’Hare airlines perceive they have the near exclusive right to service the flight operations with the highest profitability, the small community “spoke” traveler gets harmed on two levels. First, he loses service when the service cuts to small community service to use the limited capacity to service more lucrative long-haul or international traffic—eliminating less profitable small community service. Second, as to the small community traffic that the dominant airlines still service, they are able to charge exorbitant rates—knowing that the small community spoke traveler is at their mercy.

6. The Big Seven’s Fortress Hub Geographic Market Allocation Also Appears to be a Per Se Violation of the Antitrust laws.

Neither the Administration nor the Congress appears to have critically examined a central question: Does the O’Hare Hub geographic market allocation violate the Nation’s antitrust laws? Based on clear and repeated Supreme Court precedent, it clearly does.

The major airlines general de facto geographic allocation of major air travel markets is the nation through their control of “Fortress Hubs” constitutes a per se violation of the antitrust laws. The Supreme Court has uniformly condemned arrangements in which the dominant airline has per se violations of Section 1 of the Sherman Act. See, e.g., Palmer v. BRG Group of Geor., 498 U.S. 46, 49 (1990); United States v. Topco Associates, Inc., 405 U.S. 596, 607-609 (1972).

Virtually all laymen and most lawyers shy away from antitrust law as an economic morass difficult to understand. But there is one area where the United States Supreme Court has been clear and unequivocal: horizontal arrangements to carve up geographic markets are per se illegal (without any showing of the federal antitrust laws. Because this law is so clear and unambiguous—and recognizing that the airlines will claim that they are not anti-competitive—we believe it important to quote the United States Supreme Court on this subject:
The Big Seven—The largest and most powerful of the major airlines—told the Illinois Governor that they will refuse to use the proposed new metropolitan Chicago airport capacity to compete in metropolitan Chicago is but an individual example of the per se antitrust violation of allocating geographic markets by the major airlines.

8. The Fortress Hub System and the Big Seven’s Collective Refusal to Compete in the Chicago Metropolitan Area—A Per Se Violation of the Antitrust Laws. The Big Seven—Chicago, United, Northwest, USAir, and Continental to use their collective refusal to competing in the metropolitan Chicago market—and the manifestation of that refusal by their letters to Governor Edgar and Ryan—Is immunized from antitrust law enforcement by the Noerr-Pennington doctrine. That doctrine immunizes antitrust violations where the principal vehicle for achieving the monopolistic goal is political expression—i.e., lobbying government.

But the post-Noerr-Pennington case law makes clear that when behavior is anticompetitive—such as the refusal of the Big Seven and the other major air carriers to compete in metropolitan Chicago—and the antitrust laws are violated, the court will impose serious sanctions and remedies to prevent and restrain such violations. (Title 15 United States Code § 16 (emphasis added))

Section 15 provides that any person injured by the violations of the antitrust laws can recover treble damages and the reasonable attorneys’ fees caused by the violations. [Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefore in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorneys’ fee. (Title 15 United States Code § 16 (emphasis added))

In summary, the statutory sanctions for these antitrust violations are significant. The Federal Department of Justice officials have been unwilling to initiate antitrust enforcement proceedings to break up the Fortress Hub monopoly of the Big Seven. The Major Airlines Geographic Market Allocation—A Per Se Violation of the Antitrust Laws—Is Not Immunized by the “Noerr-Pennington” Doctrine.

The carriers have been engaged in this de facto Fortress Hub geographic market allocation scheme for more than a decade. It is likely that the airlines have some collective refusal to compete in the metropolitan Chicago market—and the manifestation of that refusal by their letters to Governors Edgar and Ryan—Is immunized from antitrust law enforcement by the Noerr-Pennington doctrine. That doctrine immunizes antitrust violations where the principal vehicle for achieving the monopolistic goal is political expression—i.e., lobbying government.

But the post-Noerr-Pennington case law makes clear that when behavior is anticompetitive—that otherwise violates the antitrust laws—has one component that involves the exercise of First Amendment speech, there is an immunity from antitrust enforcement under the “Noerr-Pennington” doctrine. See Allied Tube & Conduit Corp. v. Indian Head,
In 1943, the Supreme Court’s rationale in Parker for “state action” immunity was the Congress had not intended in the Sherman Act to preempt the states from enacting or maintaining antitrust laws in concert with the state legislature. The applicable antitrust statute is 417 U.S. at 351–352.

But the Supreme Court has severely limited the availability of “state action” immunity when invoked by private parties such as the airlines in an attempt to immunize conduct clearly violative of the antitrust laws. The Supreme Court has established two requirements for “state action” immunity where private parties participate in the antitrust violation: 1) the monopolistic activity must be primarily, if not entirely, adopted as being the policy of the State, and 2) the monopolistic activity must be actually supervised by the State itself. Federal Trade Commission v. Morton Salt Co., 330 U.S. 377, 380–381 (1947); Carr v. Bur. 466 U.S. 495, 530–532 (1984); California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., 445 U.S. 97, 105–106 (1980).

In the case of Fortress O’Hare and the collective campaign of United, American and Chicago to keep significant new hub-and-spoke service from coming to the Chicago market, there is no question that the “state action” defense does not apply. First, the State of Illinois has not authorized the Fortress O’Hare monopoly maintained by United and American and has actively spoken out against the monopoly problem there. Second, the State is not actively supervising and approving the anti-competitive conduct by United and United and Chicago.

12. Federal Officials Have Participated in and Supported the Big Seven’s Illegal Monopolistic Arrangement to Refuse to Compete in the Chicago Market. Not only have federal funds been used to support the illegal monopolistic arrangement to refuse to compete in the Chicago market, but it appears that federal officials within the Administration have worked with the major airlines and Chicago to prevent the development of a new airport in metropolitan Chicago. For the last several years, federal administration officials—several of whom are former Chicago officials who worked for the Chicago Aviation Department—have blocked development of the new airport through a series of spurious legal claims that federal law requires that a “consensus” must exist between the State of Illinois and the City of Chicago before any new airport can be constructed. No such legal requirement exists.

Because of the active participation of key players in the federal government in promoting and supporting the continued blockage of a new airport development in metropolitan Chicago—in concert with the illegal monopolistic arrangement to refuse to compete in the Chicago market by using the new airport and impartiality and lack of bias of the Administration in conducting law enforcement in the public interest—the Attorney General should be asked to appoint an independent prosecutor to conduct the antitrust investigation and to undertake all appropriate actions needed to correct the ongoing antitrust violations.


There have been two “remedies” asserted to end the illegal dominance of Fortress O’Hare in the Chicago market. The first—eliminating slot restrictions at O’Hare—was proposed and passed by Congress and the FAA. According to proponents of lifting the slot limits, elimination of slot controls would bring new competition into O’Hare.

A. Lifting the Slot Limits Was an Unmitigated Disaster.

At the time the federal laws lifting the slot limits were passed, Senator Peter Fitzgerald and Congressman Henry Hyde both voted against the bill. They argued that the slot limitations were not an artificial restriction on the capacity, and that the already exhausted limited capacity of O’Hare. They argued that lifting the slots would be a disaster: (1) added flights should lead to a major delay gridlock at O’Hare, and (2) that even if there were any additional capacity, that capacity would be rapidly consumed by American and United. Under these circumstances, they argued that lifting the slot limits would simply expand United’s and American’s monopoly—not increase competition.

B. Another “remedy” the FAA defined the acceptable level for delay policy as 10 minutes average annual delay. This translates (in equivalent terms) into more than an hour delay in peak periods.

What is important to emphasize is that all FAA and Chicago—and most likely Booz-Allen and United—operations of the SIMMOD model for O’Hare show average annual delay at O’Hare is currently in excess of 10 minutes average annual delay—already acceptable capacity limits without adding more flights. FAA and Chicago and United and American all know that a push 400–500 new flights per day into O’Hare is not acceptable capacity limits without adding more flights. FAA and Chicago and United and American all know that a push 400–500 new flights per day into O’Hare is not acceptable capacity limits without adding more flights.
illustrates the massive delay increase that adding just a few flights at O'Hare beyond the slot limits will do to all passengers at O'Hare. This analysis shows that adding 400–500 flights will lead to delays for all passengers—more than doubling the delays for all passengers, not just those who are on the new additional flights.

We believe that FAA and United and American will claim that the delay and capacity results of DOT in 1995 have been changed because of capacity improvements at O'Hare since 1995. But, if so, there are two important points that will be the capacity/delay numbers (comparable to DOT’s 1995 analysis) with the new capacity? Why were there no public hearings and environmental disclosure on these capacity improvements?

We suspect the answer is that there have not been any capacity changes at O'Hare since 1995 and DOT’s numbers remain valid. Conversely, if there have been capacity changes, FAA has failed to inform both affected elected officials (e.g., Congressman Hyde of Illinois and Congressman Guelatt) and the public and failed to tell the public and give the public an opportunity to be heard.

There is another important point to emphasize throughout this argument: the assumption shown on the FAA charts. Where the airport is at the limits of acceptable delays—i.e., the practical capacity limit—very small increases in traffic demand can dramatically increase delays for all passengers. Thus a small increase in traffic demand beyond the practical capacity limit will make further increases in capacity meaningless for all passengers. Similarly, a slight decrease in capacity—such as experienced this past year when regional jet pilots were refusing to fly safety missions—can dramatically increase delays with little or no increase in throughput. The point here is that O'Hare is already at the breaking point—brought there by the resistance of Chicago and the Chicago Hub and spokes at O'Hare (United and American) to the building of the new regional airport. O'Hare cannot handle 400–500 new flights per day and United and American know it. Their own SIMMOD analysis tells them that.

Why will United and American announce a literally foolhardy plan to jam 400–500 flights into O'Hare—an announcement made the same day that United’s and American’s point-to-point (i.e., the Civic Committee) calls for a new runway at O'Hare? By deliberately creating chaos at O'Hare, United and American will then be able to say that delays are at crisis levels and we must increase new capacity at O'Hare. As discussed above, the airlines’ current public relations argument is that the lion’s share of all the origin-destination traffic in the United States—point-to-point (i.e., origin—destination) traffic should go to the sole hub-and-spoke airport in the region (O'Hare). Any minor overflow of point-to-point origin—destination traffic is essentially expanded O'Hare and Midway could not handle (if any) could be addressed in a small point-to-point airport like the South Suburban Airport or Gary. Paralleling this argument is the claim by the airlines all that a new runway at O'Hare is needed to “reduce delays”. They claim that a new runway would not increase O'Hare capacity but simply reduce delays.

Yet an analysis using FAA’s own capacity analysis standards and criteria demonstrates that a new runway would substantially increase the capacity of the airport. As discussed above, the concepts of capacity are counterintuitive to the FAA and Chicago both define capacity as the level of aircraft operations that can be processed at an airport at an acceptable level of delays. The FAA’s published graphic showing the relationship of capacity and delay illustrates a how a so-called “delay reduction” at one airport can result in an increase in capacity at the airport to accommodate additional levels of traffic. This capacity increase at O'Hare—by building a third runway could dramatically expand America’s and United’s hub-and-spoke monopoly at O'Hare.

Further, it would virtually doom the economic justification for the new south suburban airport because the new “delay” runway—once built—could easily be used to substitute for O'Hare. There is no argument that the new airport was intended. Simply by piecemealing incremental expansion at O'Hare, Chicago and American and United could achieve a monopoly over the vast majority of all of the transportation overflow (if any) from a vastly expanded O'Hare airport.

C. A New Runway at O'Hare Is Intended to Increase Capacity to Expand American's and Monopoly Power

As discussed above, the airlines’ current public relations argument is that the lion’s share of all the origin-destination traffic in the United States—point-to-point (i.e., origin—destination and international traffic) should go to the sole hub-and-spoke airport in the region (O'Hare). Any minor overflow of point-to-point origin—destination traffic is essentially expanded O'Hare and Midway could not handle (if any) could be addressed in a small point-to-point airport like the South Suburban Airport or Gary. Paralleling this argument is the claim by the airlines all that a new runway at O'Hare is needed to “reduce delays”. They claim that a new runway would not increase O'Hare capacity but simply reduce delays.
law and justice—where political leaders must account for their failure to correct these abuses—such destructive monopoly power should not be tolerated.

RECOMMENDATIONS

Based on the facts and the antitrust law analysis contained in this report, the Suburban O’Hare Commission recommends the following actions:

The United States Attorney General and the United States Attorney for the Northern District of Illinois should initiate an investigation into the collective refusal of the Big Seven airline companies to compete against each other in each other’s Fortress Hub Markets. Included in the investigation should be an examination of the role of third party collaborators in these violations—including the City of Chicago and other private organizations and individuals who have assisted the Big Seven (including United and American) in perpetrating these violations. Because of the involvement by federal officials in affirmatively assisting the Big Seven and the City of Chicago in keeping significant competition out of Chicago, the Attorney General should be asked to consider the appointment of independent counsel.

The United States Attorney General and the United States Attorney for the Northern District of Illinois should undertake an immediate and detailed audit of all federal funds that may have been used to assist the Big Seven to compete in each other’s Fortress Hub Markets. Included in the relief should be a requirement that members of the Big Seven halt all efforts to refuse to use a new South Suburban Airport in metropolitan Chicago and that competitive hub-and-spoke operations be established in metropolitan Chicago to compete with United and American.

The State Attorneys General should initiate civil damage actions to recover treble damages for the billions of dollars per year in excess monopoly profits in airfare overcharges that have been charged at the Big Seven’s Fortress Hubs. The Illinois Attorney General should bring suit to recover treble damages for the hundreds of millions of dollars in monopoly overcharges by American and United at Fortress O’Hare. On a multiple year time horizon, the treble damage recoverable for consumers would exceed several billion dollars.

The civil action by the Department of Justice should undertake an immediate and detailed audit of all federal funds that may have been used to further the refusal of the other members of the United/AM/United and American in metropolitan Chicago—particularly the campaign by the airlines and Chicago to “Kill Peotone.”

The United States Department of Transportation should withhold any further approvals of federal funds for expansion of the United and American duopoly at Fortress O’Hare.

The House and Senate Judiciary Committees should conduct immediate hearings on these issues.

Our Governor and our two United States Senators, the Speaker of the House, and our Illinois Attorney General should be respectfully asked what specific actions they will take to block the Fortress Hub system—particularly Fortress O’Hare: (1) bring new hub-and spoke competitors into the Chicago market; (2) recover the billions in excess monopoly overcharges from the United/AM/United and American at O’Hare; (3) prevent the Big Seven from continuing to refuse to use the new capacity provided by the South Suburban Airport; (4) reimburse the federal and state resources needed to rapidly build the South Suburban Airport.

Our Governor should hold fast to his promise not to permit any additional runways at O’Hare. To do otherwise would simply enhance and expand the monopoly power of Fortress O’Hare and doom the opportunity to bring in new competition into the region at the South Suburban Airport.

The two candidates for President of the United States should be asked why they would likely receive large campaign contributions from the Big Seven—should be respectfully asked what they will do to break up the Fortress Hub system of Fortress O’Hare in particular. Vice President Gore in particular should be asked why his administration has failed to end the Big Seven’s monopoly overcharges and why he has allowed violations of the nation’s antitrust laws to literally steal billions of dollars from American consumers. Mr. Gore should also be asked to explain why his administration has blocked development of new competitive capacity in metropolitan Chicago—i.e. a new South Suburban Airport—every year. Finally, Mr. Bush should be asked why he would refuse to build the South Suburban Airport.

CONCLUSION

The monopoly abuses of the Fortress Hub system—and especially the abuses of Fortress O’Hare—have violated the nation’s antitrust laws to literally steal billions of dollars from American consumers. The Illinois Attorney General should be asked why his administration has blocked development of new competitive capacity in metropolitan Chicago—i.e. a new South Suburban Airport—every year. Finally, Mr. Bush should be asked why he would refuse to build the South Suburban Airport.

SUBURBAN O’HARE COMMISSION—EXECUTIVE SUMMARY

A study prepared by the Suburban O’Hare Commission concludes that the major airlines have committed per se violations of federal antitrust laws by refusing to compete with each other in Fortress Hub markets, such as in the metro Chicago region now dominated by United and American.

The glaring example of these monopolistic practices are documented by the major air- airline’s letter to former Illinois Gov. Jim Edgar which, in effect, said if the state builds a new airport in Chicago’s southern suburbs, “we won’t come.” That leaves United and American airlines, which control over 80% of the air traffic at O’Hare in an unchallenged market position. It would be as if Ford Motor Company told General Motors, “If you agree not to build a new car, Ford will not compete with you in Los Angeles.”

SOC’s major findings include:

The de facto agreement among the “Big Seven” airlines—United, American, Delta, US Air, Continental and Trans World—not to compete in each others hub market is the heart of the monopoly problem.

The resulting fortress hub monopolies are costing American air travelers billions of dollars annually in monopoly induced high fares, especially the fares charged to time-sensitive business travelers and “spoke” passengers who must connect through the hub to get to particular destinations.

The Big Seven’s geographic market allocation violates the nation’s antitrust laws, based on clear and repeated Supreme Court decisions which have long since condemned arrangements to carve up geographic markets horizontally.

In Chicago, the clear violation of the antitrust law is demonstrated by the abandonment by major airlines of meaningful competition to United and American at O’Hare and the announcement that they would not use a South Suburban Airport.

The airlines can’t defend their anti-competitive practices with the “Noerr-Pennington” doctrine, which asserts that petitioners are helpful. Instead, they engage in antitrust actions is protected under Free Speech guarantees. Case law doesn’t protect anti-competitive practices that have evolved independent of any government authorization, as in the present case.

For can the airlines or Chicago defend themselves by the “state action” doctrine, which allows states, as a matter of federalism, to consciously participate in monopoly practices. For example, Supreme Court decisions require that the state must clearly endorse and supervise the monopoly practices. Here there has been no such approval of the Fortress Hub monopoly abuses by the State of Illinois.

Chicago and its officials are not immune from antitrust law liability for helping the United/AM/United and American cartel at O’Hare.

Federal taxpayer funds may have been used to suppress competition and violate antitrust laws in the Chicago market.

The Clinton administration has not only looked the other way in not bringing antitrust enforcement action to break up the United/AM/United and American monopoly to compete in each other’s market, but has even used public funds to assist United/American in perpetrating these violations.

Our Governor and our two United States Senators, the Speaker of the House, and our Illinois Attorney General should be asked specifically what he will do to break up the United/AM/United and American monopoly, and prevent the state from further complicitly assisting United/American and their cartel at O’Hare.

The withholding of U.S. Transportation Department of any more federal funds for expansions at O’Hare would simply enhance and expand the monopoly power of Fortress O’Hare and doom the opportunity to bring in new competition into the region at the South Suburban Airport.

The two candidates for President of the United States should be asked why they would refuse to build the South Suburban Airport.

Governor Ryan should hold fast to his promise not to permit any additional runways at O’Hare. To allow additional runways would simply enhance and expand the monopoly power of Fortress O’Hare and doom the opportunity to bring in new competition into the region at the South Suburban Airport.

The withholding of U.S. Transportation Department of any more federal funds for expansion at Fortress O’Hare would simply enhance and expand the monopoly power of Fortress O’Hare and doom the opportunity to bring in new competition into the region at the South Suburban Airport.

An explanation and action by Illinois’ highest elected officials as to what they will do to break up the O’Hare monopoly and provide for a new south suburban airport.
A clear statement by Republican and Democratic candidates for president to state their positions on Fortress Hubs, especially O’Hare and the role of the federal government in further breaking up Fortress Hubs or building new capacity for new competition at the South Suburban Airport.

STUDY FINDS MAJOR AIRLINES AND CHICAGO VIOLATE FEDERAL ANTITRUST LAWS TO SUPPORT HIGH MONOPOLY FARES AND BLOCK NEW COMPETITION

BENSENVILLE, IL, May 21, 2000.—The nation’s major airlines have committed serious violations of U.S. antitrust laws by refusing to compete with each other in “Fortress Hub” markets, including Chicago, a study by the Southern Office of Consumer and Allied Organizations (SOC) revealed.

The study (entitled “If You Build It, We Won’t Come: The Collective Refusal of the Major Airlines to Compete in the Chicago Air ‘Travel Market’”) calls for an investigation by the Justice Department into the anti-competitive practices by the airlines, and also by the city of Chicago, its consultants and third party allies, which have been complicit in the antitrust violations. Based on the study, SOC officials also called for:

U.S. Attorney General Janet Reno to begin civil action to break up the monopoly on the way.

State attorneys general to recover treble damages for fliers who have been billed billions of dollars in excessive fares, which have been possible by the monopolistic practices. The U.S. Transportation Department to withhold any more federal funds for the expansion, and further strengthen its leverage by new fees on Chicago’s Southern Hub.

Governor Ryan to hold to his firm commitment not to permit new runways at O’Hare since such runways would expand United’s and American’s Fortune Hub monopoly at O’Hare and would doom the economic justification for the new South Suburban Airports.

SOC is a government agency representing more than 1 million residents who live in communities surrounding O’Hare airport. The study alleges that the airlines, the city of Chicago, its consultants and allies, have used millions of dollars of taxpayers’ money to thwart a south suburban airport that would bring competition to the United and American airlines’ cartel at O’Hare and to expand the Fortress Hub monopoly at O’Hare.

The antitrust violations are as clear and as egregious as if Ford said to General Motors, ‘We won’t compete against you in Chicago, if you agree not to compete against us by selling cars in Los Angeles’ said John Geils, SOC chairman and mayor of Bensenville, which borders O’Hare Airport.

“The major airlines even went so far as to write two governors of Illinois, in their infamous letters, in which they warned the airlines that they would not use a south suburban airport. This extraordinarily public flaunting of the nation’s antitrust laws simply cannot be tolerated.

The heart of the antitrust violations, according to the study, is found in the de facto agreement among the big seven airlines—Northwest, Delta, Continental and Trans-World—not to significantly compete in each other’s hub markets. The resulting domination by these airlines of their hubs (such as Denver, Chicago, New York, Atlanta, TWA in St. Louis and Northwest in the Twin Cities), forces fliers, especially time-sensitive business travelers, billions of dollars in unwarranted and additional fares, government studies have shown.

“Taxpayers should be concerned that millions of dollars of federal money, raised in part through taxes on every passenger using O’Hare, among other airports, have gone towards financing costly public relations and political lobbying campaigns to support this restraint of trade,” said Craig Johnson, vice president of SOC and mayor of Elk Grove Village. “At every turn, the recommendation of expert panels to break up the monopoly on O’Hare and the national aviation system by building an airport in Chicago’s south suburbs has been stymied by this campaign. It is in the interests of the airlines to dominate the Chicago market and is abetted by other major airlines interested in protecting their own turf. And it is carried out by a compliant Chicago mayor who is dependent on the political spoils of a monopolistic O’Hare airport and those who share in those spoils—contractors, political consultants, big public relations firms, concessionaires and their friends in corporate board rooms and the media.”

Said Geils: “The antitrust movement 100 hundred years ago was aimed at breaking up precisely this sort of attack on the public and consumers. After a century, we don’t need new laws to deal with the irresponsible public officials who won’t look the other way, who will carry out the sworn duties of their office.

The hub-and-spoke airline market was made possible by aviation deregulation two decades ago, which gave commercial carriers the right to compete where, when and at what price they wanted. But instead of the robust competition that deregulation was intended to spawn, it led to increasing concentrations of power of separate airlines at separate Puntos. While the industry will argue that this leads to economics of scales that are passed along to some air travelers in the form of price savings, government and independent studies show that large numbers of travelers—especially time-sensitive business travelers—are actually paying billions more.

“The costs, said Geils, are paid in more than just higher fares. ‘They come in the form of more air pollution, more noise and more safety hazards that the airlines are willing to impose on Americans simply to protect and expand the Fortress Hub monopoly. We now live in a bizarre world where the desire to protect profit and growth from Illinois highlights the protection of public health, safety and quality of life.’

[From The Sun Times, May 20, 2000] GORE’S INTEREST HARDLY PUBLIC

(Gore’s interest hardly public (By Jesse Jackson, Jr.) At a recent Democratic fund-raiser hosted by Mayor Daley, Al Gore, the vice president and presumptive Democratic nominee, said: “The Department of Transportation has said at the present time it’s a bit premature to build a third airport . . . and I have agreed what price they wanted. But instead of the robust competition that deregulation was intended to spawn, it led to increasing concentrations of power of separate airlines at separate Puntos. While the industry will argue that this leads to economies of scale that are passed along to some air travelers in the form of price savings, government and independent studies show that large numbers of travelers—especially time-sensitive business travelers—are actually paying billions more.

“The costs, said Geils, are paid in more than just higher fares. ‘They come in the form of more air pollution, more noise and more safety hazards that the airlines are willing to impose on Americans simply to protect and expand the Fortress Hub monopoly. We now live in a bizarre world where the desire to protect profit and growth from Illinois highlights the protection of public health, safety and quality of life.’

Let’s look at Gore, O’Hare and the public interest.

First, is the ‘best public interest’ served through O’Hare, or through development of a federal transportation policy? Gore came before the Congressional Black Caucus and said that “federalism” would be an important issue in the coming decades. Build O’Hare and you are openly a “states right,” I assumed that the vice president was appealing to us for support by saying, as president, he would fight for federal policies that contributed to the public interest. Gore did that in the South Carolina flag issue, but in the case of the airport, he failed to bring us into the debate.

Gore is right that the DOT has recommended against building a new airport now. However, Gore did not share the rationale for the DOT’s recommendation. Did he draw his conclusion after a thoughtful series of conversations, after going back and forth with Department of Transportation officials? Or were 2000 political considerations uppermost? President Clinton has told some Chicagoans privately that, “Jesse Jr. may be right, but given the political atmosphere, we don’t want to make the situation worse.”

At Daley’s request, the Clinton-Gore administration in 1997 took an interest in the Peotone airport site, making it ineligible for federal funds. Thus, one is led to conclude that, in Chicago, local politics control federal aviation policy, rather than the public interest.

The top 11 businesses in the 2nd Congressional District, with nearly 600,000 residents, employ a mere 11,000 people—one job for every 50 people. By contrast, more than 600,000 people go to work in Elko Grove Village, a city of 36,000 people. By contrast, more than 600,000 people go to work in Elko Grove Village, a city of 36,000 people—every 60 people.

The costs, said Geils, are paid in more than just higher fares. They come in the form of more air pollution, more noise and more safety hazards that the airlines are willing to impose on Americans simply to protect and expand the Fortress Hub monopoly. We now live in a bizarre world where the desire to protect profit and growth from Illinois highlights the protection of public health, safety and quality of life.”

July 23, 2002 CONGRESSIONAL RECORD—HOUSE H5145
MEMORANDUM—July 13, 2002

To: Senator Peter Fitzgerald, Congressman Henry Hyde, Congressman Jesse Jackson, Jr.

From: Joe Karaganis.

Re: Impact of the Lipinski/Oberstar Bill on Illinois Law and Unchecked Condemnation Powers for Chicago to Condemn Land in Other Communities.

Standing to me as an opportunity to give you some background legal analysis of the impact of the language in the Lipinski/Oberstar bill (see §3 of the bill) to create a federal law overruling the Illinois Aeronautics Act—specifically as that impact relates to expanding Chicago’s power to engage in widespread condemnation and demolition of residential and business properties in other municipalities outside Chicago’s boundaries.

As you know, on July 9, 2002 Judge Holis Webster of the DuPage County Circuit Court entered a ruling declaring that Chicago had no authority under Illinois law to acquire property in other municipalities without complying first with §47 of the Illinois Aeronautics Act, 620 ILCS 5/47 which requires any municipality to first obtain a “certificate of approval” from the Illinois Department of Transportation before making any alteration or extension of an airport.

Prior to her ruling, Chicago had proposed to acquire and demolish over 500 homes in Bensenville and Elk Grove, a process (James Bildilli) testified:

1. Without judicial enforcement of the Illinois Aeronautics Act, Chicago could acquire and demolish all the homes and businesses proposed in Bensenville and Elk Grove (over 500 homes and dozens of businesses) and only after such acquisition and demolition, would IDOT have a hearing in which IDOT would hear evidence and consider whether the harm caused by the acquisition and demolition justified IDOT’s approval of the project. Essentially IDOT, in reaching its decision on the certificate of approval, would hear and consider evidence of the harm caused by the acquisition and demolition justified IDOT’s approval of the project. Essentially IDOT, in reaching its decision on the certificate of approval, would hear and consider evidence of the harm caused by the acquisition and demolition justified IDOT’s approval of the project. Essentially IDOT, in reaching its decision on the certificate of approval, would hear and consider evidence of the harm caused by the acquisition and demolition justified IDOT’s approval of the project.

2. Without judicial enforcement of the Illinois Aeronautics Act, Chicago could acquire and demolish all the homes and businesses under condemnation authority with the abil-
by claiming either a) that the congressional delegation of state authority to its political subdivisions—whether that subdvision be Chicago, Bensenville, or Elmhurst—is a matter left by our system of federalism and our federal Constitution to the exclusive authority of the States. As stated by the Seventh Circuit in Commissioners of Highways v. United States, 653 F.2d at 292 (7th Cir. 1981) (quoting Hunter v. City of Pittsburgh, 301 U.S. 101, 110 (1937) (emphasis added)).

Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers as may be entrusted to them. For the purpose of exercising these powers properly and efficiently they usually are given the power to acquire, hold, and dispose of real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. . . . The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter, or even eliminate the structure and powers of the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects, however, the State, as the legislative body, conforming its action to the state constitution, may do as it will, un restrained by any provision of the Constitution of the United States. Commissioners of Highways, 653 F.2d at 297.

It is incontestable that the Constitution prohibited by it to the States, are reserved to the United States by the Constitution, nor does any provision of the Constitution limit the delegated exercise of state power by a state legislature—whether that power be exercised directly or indirectly to build an airport or runways by delegation of state authority to its political subdivisions—whether that subdvision be Chicago, Bensenville, or Elmhurst—is a matter left by our system of federalism and our federal Constitution to the exclusive authority of the States. As stated by the Seventh Circuit in Commissioners of Highways v. United States, 653 F.2d at 292 (7th Cir. 1981) (quoting Hunter v. City of Pittsburgh, 301 U.S. 101, 110 (1937) (emphasis added)).

It is incontestable that the Constitution established a system of “dual sovereignty.” Printz v. United States, 521 U.S. 898, 918 (1997) (emphasis added).

Although the States surrendered many of their powers to the new Federal Government, they retained “a residuary and inviolable sovereignty.” The Federalist No. 39, at 245 (J. Madison). This is reflected throughout the Constitution’s text.

Residual state sovereignty was also implicit, of course, in the Constitution’s conferment of federal authority to the Congress. The Framers explicitly chose a Constitution that confers upon Congress the power to regulate commerce and “to establish post offices and post roads.” U.S. Const. Art. I, Sec. 8, which implication was reaffirmed upon Congress of not all governmental powers, but only discrete, enumerated ones, Art. I, Sec. 8, as is evident from the delegation express by the Tenth Amendment’s assertion that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

This separation of the two spheres is one of the Constitution’s structural protections of liberty and it buttresses the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch. Hence, the separation of powers between the States and the Federal Government will reduce the risk of tyranny and abuse from either the central or delegated power.

Increasingly, the States have said all along: The Ryan-Daley airport deal for the public. The provisions appear to op- pose instead of an airport in Peotone. The plain truth is that Peotone could be built in one-third the time at one-third the cost. For taxpayers and transportation, it’s a no-brainer.

Unfortunately, this bill mandates expan- sion of O’Hare yet pays mere lip service to Peotone. It puts the projects on two separate and unequal tracks. That is my opinion. That is also the opinion of the Congressional Research Service, whose analysis I will provide to you.

STATEMENT OF U.S. REPRESENTATIVE JESSIE L. JACKSON, JR. BEFORE THE U.S. SENATE COMMERCE COMMITTEE—THURSDAY, MARCH 21ST, 2002 WASHINGTON, DC

I want to commend and thank Members of the Committee on Commerce, Science and Transportation for this opportunity to again discuss the future of Chicago’s airports. As you know, I sent a letter to each of you stating my opposition to the Ryan-Daley deal for the public. Please know that I do not oppose fixing O’Hare’s problems. But I have many grave concerns about this specific expansion plan. Concerns about cost. About safety. About environment impact. About federal preemption. And about constitutio

Clearly this bill sets dangerous precedent by stating that Congress—not the FAA, not Departments of Transportation, not aviation experts—but Congress shall plan and build airports. Further, it ignores the 10th Amendment to the U.S. Constitution. It guts and/or undermines state laws and environmental protections. And it sidesteps the checks-and-balances and the public hearing process.

My focus today is the same as it’s always been. Finding the best fix. And that best fix always understood that even where Congress has the authority under the Constitution to interfere with a state sovereign body, it is the exclusive authority of the States to require or prohibit those Acts. "''The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'"

As stated by the United States Supreme Court in Printz, Congress confirmed what Peotone proponents have said all along: The Ryan-Daley airport agreement puts O’Hare on the fast track and just pays lip service to Peotone.

An analysis released today by the independent, non-partisan Congressional Research Service concludes that the proposed National Aviation Capacity Expansion of 102 projects on separate and unequal tracks.

The CRS analysis states that the Federal Government “shall construct the runway re- development” at O’Hare. The Ryan-Daley “review and give consideration to” the Peotone Airport project.

In reaction to the release of today’s report, Congressman Jackson, non-partisan CRS analysis for 15 years. We need any more reviews. We need a Third Airport.”

Jackson said. “Peotone can be built faster, cheaper, safer, and cleaner than expanding O’Hare, and presents a more secure and more permanent solution to Illinois’ aviation cri s. This is shortsighted legislation and a bad deal for the public.”

The CRS report states that the Lipinski-Durbin bill “specifically states that the (FAA) Administrator ‘shall construct’” the runway redesign plan; however, there is no mention regarding the construction of the south suburban airport.”

CRS concludes that the bill “provides for the Administrator’s review of the Peotone project and the O’Hare expansion of O’Hare. The provisions appear to operate independently of each other and are
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for judicial review of an order issued by the Administrator. The bill provides that the bill may be reviewed pursuant to the provisions contained at 49 U.S.C. § 46110. If the Administrator does not issue an order and judicial review is not possible under this provision, then it is possible that “nonstatutory review” may occur. When Congress has included a special statutory procedure for judicial review, an injured party may seek “nonstatutory review.” This review is based upon some statutory grant of subject matter jurisdiction to the federal courts under a provision that contains a declaratory judgment basis for jurisdiction in this case—if the Administrator does not carry out his/her Congressional mandate—may be under the general federal question jurisdiction that applies to the federal courts. This would authorize the federal district courts to entertain any case “arising under” the Constitution or the laws of the United States. An action for relief under this provision is usually the most direct way to obtain nonstatutory review of an agency action. Hence, it is possible that an action could be brought under this provision, compelling the Administrator to comply with the provisions contained in the bill.

CONCLUSION

This memo has summarized staff discussion of certain provisions contained in the proposed National Aviation Capacity Expansion Act. Subsection (e) provides for the Administrator’s review of the Peotone Airport project. Subsection (f) provides for the expansion of O’Hare. The provisions appear to operate independently of each other, are not drafted in parallel language, and provide separate directions to the Administrator. The Administrator is given certain responsibilities under both subsections. Congress possesses plenary oversight authority over capital projects. This would provide oversight Administrator is given certain responsibilities under both subsections. Congress possesses plenary oversight authority over federally funded projects. This would provide oversight over the Administrator and his/her actions. A judicial proceeding against the Administrator could compel the Administrator to fulfill the statutory responsibilities provided by the bill.

STATEMENT OF U.S. REPRESENTATIVE JESSE L. JACKSON JR. BEFORE THE U.S. HOUSE AVIATION SUBCOMMITTEE—WEDNESDAY, AUGUST 23, 2001 WASHINGTON, DC

I want to thank Members of the House Aviation Subcommittee for this opportunity to discuss Chicago’s aviation future. As you may know, I ran on this issue in 1995, and have been working on expanding aviation capacity by building a third regional airport in Peotone, Illinois.

Let me begin with a personal anecdote that, from my perspective, illustrates why we’re here. I won my first term in a special election and on December 14, 1985 took the Oath of Office. Congressman Lipinski, my good friend and fellow Chicagoan whose district borders mine, was present and his was the seventh or eighth hand I shook as a new good friend and fellow Chicagoan whose dis...
our communities and to the regional economy,” said John Geils, SOC Chairman and president of the Village of Bensenville. “This will come as a surprise only to those who have taken in by the rhetoric of our opponents, who maliciously tried to portray us as anti-O’Hare zealots, willing to damage or even destroy O’Hare. Our plan will expand the region’s aviation and economic growth, and the Daley-Ryan O’Hare expansion plan are untrue. We have a plan that is better for the entire region, and not just for Chicago City Hall and its big business friends,” Geils said.

Among the improvements are a realistically modernized O’Hare, instead of the impossible attempt by Daley and Ryan to stuff ten pounds of potatoes into a five-pound sack. Terminals would be updated, with an eye to matching them with capacity and making them more user friendly. Selected runways would be widened to accommodate the large new jets, such as the A380X, thus increasing the number of passengers the airport can serve, without increasing air traffic. Western Corridor and a bypass route would be built on airport property, skirting O’Hare to matching them with capacity and environmental protections. Every home impacted by noise at O’Hare and Midway would be soundproofed, instead of a select few, as provided under the Daley Ryan New Math. Daley-Ryan neighbors would be spared the concentration of air pollution brought by a doubling of flights at what is already the state’s largest single air polluter. Under the Daley-Ryan plan, O’Hare neighbors would find themselves in federally required crash zones at the end of runways, forced to either give up their homes or live in devalued property in great risk. Because most of the region’s air traffic growth and more flight operations cannot be absorbed by the South Suburbs, political and environmental protections are required under current federal standards, fewer total people in the region would be subjected to health and safety risks.

**COMPARISONS OF THE DALEY-RYAN PLAN AND THE SOC SOLUTION**

**Which Plan Provides Greatest Economic Benefits Over Costs?**
- Daley-Ryan
- SOC

**Which Plan Provides Immediate Solution to the Delay Problem at O’Hare?**
- Daley-Ryan
- SOC

**Which Plan Provides Greatest Capacity Growth for Region?**
- Daley-Ryan
- SOC

**Which Plan Provides Oppurtunity for New Competition and Lower Fares?**
- Daley-Ryan
- SOC

**Which Plan Provides Greatest Job Growth?**
- Daley-Ryan
- SOC

**Which Plan Makes Peotone A Reality?**
- Daley-Ryan
- SOC

**Which Plan Produces Less Toxic Air Pollution Impact on Surrounding commuities?**
- Daley-Ryan
- SOC

**Which Plan Produces Less Noise Impact on Surrounding communities?**
- Daley-Ryan
- SOC

**Which Plan Is Safer?**
- Daley-Ryan
- SOC

**Which Plan Provides Justice and Equity for the South Side and South Suburbs?**
- Daley-Ryan
- SOC

**Which Plan Preserves State Law protections?**
- Daley-Ryan
- SOC

**Which Plan Provides Greatest Economic Benefits Over Costs?**
- Daley-Ryan
- SOC

**Cost Claims Untrue. Daley-Ryan O’Hare plan says it will create 195,000 jobs **

**Financial Claims Untrue. Daley-Ryan O’Hare says there is plenty of federal and airlines money to expand O’Hare and only $15 billion for $20 billion in costs.**

**Hiding the Data and Information. Daley-Ryan O’Hare plan claims based on slick Power Point Slides—no backup information provided.**

**Monopoly Overcharge Problem. Daley-Ryan plan O’Hare says no mention of monopoly overcharge at O’Hare—costing Chicago based travelers hundreds of millions of dollars per year. As Governor-Elect George Ryan said, monopoly customer and non-monopoly customer get overcharged travelers pay $800 million annually.**

**Where is the Western Ring Road? Daley-Ryan O’Hare plans says western ring road is needed for O’Hare expansion, yet remove to disclose location, cost, and impact on local jobs, industry, housing.**

**Where are the Terminals? Daley and Ryan say they have identified all the terminals needed for the Daley-Ryan O’Hare plan.**

**Noise—The Daley-Ryan New Math. Daley-Ryan O’Hare plan says noise will be less at 1,600,000 operations than at 900,000 operations.**

**Tone Air Pollution. Daley-Ryan O’Hare plan makes no mention of toxic air pollution yet Ryan as Governor said O’Hare should not be expanded because of toxic air pollution problem.**

**Key to the SOC Solution is the construction of a truly regional hub airport in the South Suburbs, rather than an inadequate “reliever” airport as envisioned under the Daley-Ryan plan.**

**Hare plan will not require governor to disclose location, cost, and impact on local jobs, industry, housing.**

**Hare plan already at capacity, the sounds of “no one will come to Peotone” no longer are heard.**

Finally, the SOC Solution will protect taxpayers by creating an oversight board of independent experts at all airports, including the south suburban airport and Midway.

“The SOC Solution is not a fragmented plan that simply focuses on O’Hare, which under the Daley-Ryan proposal is merely an extension of the political and economic might of a select few,” said Geils. “Ours is a plan for a regional airport system—one that is based on common sense and what is fair and good for the entire public.”

**THE DALEY-RYAN PLAN’S ALLEGED BENEFITS AND THE REALITY**

<table>
<thead>
<tr>
<th>Daley-Ryan O’Hare Plan Claims</th>
<th>Reality</th>
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<tr>
<td>Cost Savings: Daley-Ryan O’Hare plan claims it will reduce delays by 70% and overall delay by 50%.</td>
<td>Actual delays increase by 20%.</td>
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<tr>
<td>Capacity Claims: Daley-Ryan O’Hare plan claims it will meet aviation needs of Region.</td>
<td>Capacity is far below projected needs.</td>
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<td>Noise: Daley-Ryan O’Hare plan says Peotone will not impact public health.</td>
<td>Peotone will have significant impact on public health.</td>
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<tr>
<td>Financial Claims: Daley-Ryan O’Hare says there is plenty of federal and airlines money to expand O’Hare and only $15 billion for $20 billion in costs.</td>
<td>Federal and airlines money does not exist.</td>
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<td>Hiding the Data and Information: Daley-Ryan O’Hare plan claims based on slick Power Point Slides—no backup information provided.</td>
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<td>Monopoly overcharge is a major problem.</td>
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<td>Where is the Western Ring Road? Daley-Ryan O’Hare plan says western ring road is needed for O’Hare expansion, yet remove to disclose location, cost, and impact on local jobs, industry, housing.</td>
<td>Western Ring Road is not needed.</td>
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<td>Where are the Terminals? Daley and Ryan say they have identified all the terminals needed for the Daley-Ryan O’Hare plan.</td>
<td>Terminals are not identified.</td>
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<td>Noise: The Daley-Ryan New Math. Daley-Ryan O’Hare plan says noise will be less at 1,600,000 operations than at 900,000 operations.</td>
<td>Noise increases with increased operations.</td>
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Total bad weather and good weather delays will increase dramatically under Daley-Ryan O’Hare plan.

Daley-Ryan O’Hare plan will increase total delay costs by hundreds of millions of dollars annually.

Real Costs—$15 billion to $20 billion.

Real Capacity of Daley-Ryan O’Hare plan will fail short of 1,600,000 operations by billions of dollars.

Leaves region with huge capacity gap for both passengers and aircraft operations.

SOC plan creates economic rationale and funding for Peotone.

If Daley-Ryan O’Hare plan meets its capacity claims, no economic justification for Peotone—needed.

If Daley-Ryan O’Hare plan fails short of capacity, $30 billion to $40 billion spent at O’Hare will exhaust federal and state funding resources.

Actual jobs fail short of the 195,000 jobs claimed because of enormous capacity shortfall, much greater job growth needed under SOC alternative.

Daley-Ryan O’Hare plan will bankrupt federal airport aid trust fund and United and American cannot afford billions in bonds.

Daley-Ryan O’Hare plan steals from Peotone by siphoning public and private funds from Peotone.

Daley-Ryan O’Hare plan will expand and strengthen the monopoly hold United and American have on Chicago market—costing Chicago business travelers hundreds of millions annually in overcharges.

Daley-Ryan O’Hare plan uses toll lanes to increase highway congestion and originating and terminating flight operations at O’Hare.

SOC plan preserves and protects state law safeguards for our environment, public health, and the consumers.

SOC plan provides much greater regional capacity, eliminates the delay problem in the short and long term, and can be built for far less, with far less cost. Also provides much greater potential for new competition and lower fares. A much greater economic bang for far less bucks.
American Indians that were exhumed 50 years ago to make way for O'Hare Airport might have to be moved again to accommodate Mayor Daley's runway expansion plans.

That's disturbing to some Native Americans, who say they want their ancestors and relics treated with greater respect.

And it's prompting local opponents of the proposed closure of two O'Hare cemeteries—one of which has Indians—to explore whether federal law that is limited protection to Native American burial sites and artifacts could help them resist the city's efforts.

"Maybe the federal law might come to our aid," said Bob Placek, a member of the Hare Cemetery board's 40 of his relatives, all German and German-American, are buried there. "The dead folks out there aren't trying to be obstructionists, they're trying to rest in peace. . . . I feel it's a desecration to move a cemetery. It's a disregard for our family's history."

Resthaven is a resting place for European settlers, their descendants and, possibly, Potawatomi.

It seems unlikely federal law, specifically the Native American Grave Protection and Repatriation Act, would lend much muscle to those opposed to Daley's plan, which calls for knocking out three runways, building four new ones and adding a western entrance and terminal.

"Primarily, the legislation applies to federal lands and tribal lands," said Clarice Ritchie, a member of the Illinois Commission on Native American Preservation and Repatriation.

Even if someone made the argument that O'Hare is effectively federal land because it uses the land, few Resthaven proponents could probably hope for is a short delay, a say in how any disembowelment takes place and, if they are Indian, the opportunity to claim the bodies of Native Americans.

"They've got a hard road," Smith said of those who might try to halt a Resthaven closure on the basis of Indian remains.

When O'Hare was being built five decades back, an old Indian burial ground that had become a cemetery for the area's white settlers was bulldozed. Some bodies were moved to a west suburban cemetery and some, including an unknown number of Indians, were believed to be transferred to Resthaven, according to published accounts and those familiar with local history.

"Ma used to talk about Indians being buried at Resthaven," said the 44-year-old Placek, who believes the Indians share a mass grave. His mother, who died in 1996, also is buried at Resthaven. "I used to hear her as a little kid Potawatomi" were there.

Regardless of the tribe to which the dead belonged, the Forest County Potawatomi Community of Wisconsin, one of several Potawatomi bands relatively close to Chicago, plans to claim the bodies.

"It's concerning," said Clarice Ritchie, a researcher for the community of about 1,000 people who hadn't heard about the issue until contacted by a reporter.

"At this stage of the game, who can determine who they were specifically? But we run into this sort of circumstance in many instances throughout the state of Wisconsin, not just in Illinois, and we take care of them as if they were relatives," she said. "We're all related, we're all created from God, so we do the right thing, we take care of anybody and try to see that they're either not disturbed or properly taken care of."

"I guess we'd have to keep our mind broad as to what would be done," Ritchie said.

"Naturally we don't like to see graves disturbed, but somebody has already disturbed them, they're probably doin'. We're talking about the Hare cemetery is talking to the tribal elders and spiritual people and other tribes who could be in the area and come to a conclusion of what should be done."

Bill Daniels, one of the Potawatomi band's spiritual leaders, said spirits might not look kindly on those who move remains.

"It's not good to do that—move a cemetery or just plow over it," he said.

Daley's plan, which still must be approved by state and federal officials, also may displace nearby St. Johannes Cemetery, which is not believed to have any Native American bodies.

John Harris, the deputy Chicago aviation commissioner overseeing the mayor's $6 billion project, said this is the first he's heard that it might be Indian remains at Resthaven, and city officials are trying to verify it.

"I have no reason to doubt them at this time, but I have no independent knowledge," he said. But "whether they're Indians or not, we would exercise an extreme level of sensitivity in the interest of their survivors."

Resthaven, which is loosely affiliated with the United Methodist Church, has about 200 graves, some of which date to the 19th century. It's located on about 2 acres on the west side of O'Hare, in Addison Township just south of the larger St. Johannes.

Self-described "advocate for the dead" Helen Sclair has heard there might be Indians buried at Resthaven, but she suspects not all Native American remains were retrieved when Wilmer's Old Settlers Cemetery was closed in the early 1950s to make room for O'Hare access roads.

She said the Chicago region, which used to be home to Potawatomi, Chippewa and other Indians, doesn't have enough cemetery space, and the dead should be treated with more respect.

"We don't have much of a positive attitude toward cemeteries in Chicago," Sclair said. "I think you know why. The dead don't pay taxes or vote. . . . Well, technically they don't vote."

Rosemary Mulligan, State Representative 55th District, Des Plaines, IL, July 5, 2002
Hon. Jesse L. Jackson, Jr., U.S. House of Representatives, Washington, DC.
Subject: Vote "No" on HR 3479

DEAR REPRESENTATIVE JACKSON, JR.: As an Illinois state legislator, I would like to use this opportunity to express my concern and opposition to the National Aviation Capacious Act. The issue of expansion of Chicago O'Hare Airport is extremely important but has been so misrepresented that I believe it is imperative to make an appeal to one of Daley's friends or political associates on contract federal preemption of state law only to prevent upsetting Daley-Ryan deal by a future governor.

Public pressure to protect national parks has been quiet but strong. O'Hare expansion could take Federal Aviation Administration with it. Daley and Ryan make no mention of the history of rampant corruption and kickbacks to Daley friends and cronies in O'Hare contracts or the need for safeguards and reforms to assure the integrity of the process.

Economic Equity and Justice for the South Side and South Suburbs. Daley-Ryan O'Hare plan could help them resist the city...
4. The safety of this plan has been questioned, particularly with its inadequate FAA Safety Zones. The lack of land does not allow for significant changes. It jeopardizes surrogates and businesses.

5. No matter what configuration or expansion moves forward, O’Hare’s Midwest location means it will always be impacted by weather from projections.

6. Proponents claim a 70 percent decline in delays with reconfiguration of runways. However, an increase of 800,000 flights is factored in, delays will increase to above their current levels.

Notwithstanding the economic benefits proponents propose to this project, the responsibility of elected officials must be first to the health, welfare and public safety of the people we represent.

Last March there was a glaring discrepancy between the legislation before you and what has been told to Illinoisans. A simpler answer to all of the O’Hare congestion problems exists in the development of a third regional airport. The legislation has downgraded the priority of this solution and will further delay any true relief for our nation’s transportation woes. This fact is omitted from news reports and official proponent propaganda.

With due respect, I ask that you vote “no” on HR 3479. Let this remain a state issue. Please feel free to contact me anytime if you have any questions at (630) 297-6500. Thank you for your time.

Respectfully,

Rosemary Mulligan, Illinois State Representative, 5th District.


Hon. Peter Fitzgerald, U.S. Senate, Washington, DC.

Senator Fitzgerald, As requested from your staff, I have summarized the most obvious concerns that air traffic controllers at O’Hare have with the new runway plans being considered by Mayor Daley and Governor Ryan. They are listed below along with some other comments.

1. The Daley and Ryan plans both have a set of east/west parallel runways directly north of the current O’Hare Tower. north and in close proximity to each other. Because of their proximity to each other (1200 feet) they cannot be used simultaneously. They can only be used simultaneously if one is used for departures and the other is used for arrivals, but only during VFR (visual flight rules), or good weather conditions. During IFR (instrument flight rules, ceiling below 1000’ and visibility less than 3 miles) these runways cannot be used simultaneously at all. They basically cannot be operated at one runway for safety reasons. The same is true for the set of parallels directly south of the terminal; they too are only 1200’ apart.

2. Both of these sets of parallel runways closest to the terminal (the ones referred to above) are all a minimum of 10,000’ long. This creates a runway incursion problem, which is a very serious safety issue. Because of their length and position, all aircraft that land or depart O’Hare would be required to taxi across either one, or in some cases two runways to get to and from the terminal. This doubled flaw exists in both the Daley and the Ryan plan. A runway incursion is when an aircraft accidentally crosses a runway when another aircraft is departing. This can be caused by either a mistake or mis-understanding by the pilot or controller. Runway incursions have skyrocketed over the past few years. The NTSB’s most recent ed list of safety issues that need to be addressed. Parallel runway layouts create the potential for runway incursions; in fact the FAA publishes a pamphlet for airport design- ers and planners that urge them to avoid parallel runway layouts that force taxing aircraft to cross runways.

3. The major difference in Governor Ryan’s current proposal is the elimination of the southern most runway. If this runway were eliminated, the capacity of the new airport would be less than we have now during cer- tain times (estimated at about 40% of the time). If you look at Mayor Daley’s plan, it calls for six parallel east-west runways and two parallel northeast-southwest run- ways. These two runways are left over from the current O’Hare layout. These two runways simply won’t be usable in day-to-day operations because of the location of them (they are wedged in between, or pointed at the other parallels). We would not use these runways except when the wind was very strong (35 knots or above) which we estimate would be less than 1% of the time. That leaves the six east/west parallels for use in normal day-to-day operations. This is the one runway we believe is available and used at O’Hare today. If you remove the southern runway (Governor Ryan’s counter proposal), you are leaving us five runways which is one less than we have now. That means less capacity than today’s O’Hare during certain weather conditions. With good weather, you may get about the same capacity we have now. If this is the case, then why build it?

4. The Daley-Ryan plans call for the removal of the NW/SE parallels (Runways 32L and 32R) which must be considered because during the winter it is common to have strong winds out of the northwest with snow, cold temperatures and icy conditions. During these times, it is critical to have runways that point as close as possible into the wind. Headwinds mean slower landing speeds for aircraft, and they allow for the airplane to decelerate quicker after landing which is im- important when landing on an icy runway. Landing into headwinds makes it much easier for the pilot to control the aircraft as it comes in to land. Furthermore, we would have to land on icy conditions during strong cross-wind conditions. This is a possible safety issue.

These are the four major concerns we have with the Daley-Ryan runway plans. There are many more minor issues that must be addressed including runway layout, clear zones (areas off the ends of each runway required to be clear of obstructions), ILS critical areas (similar to clear zones, but for navigation purposes), airport fire, airport security, airport towers, etc. The memorandum contains a series of related questions and a detailed list of suggestions that would ensure the rapid develop- ment of major new runway capacity in the Chicago region, open the region to major new competition, and accomplish these obj- ectives in a low-cost, environmentally sound manner.

Again, we would appreciate the oppor- tunity to discuss these matters with you and Secretary Mineta at your earliest conven-ience.

Very truly yours,

Henry Hyde, Jesse Jackson, Jr.
The debate can best be summarized in a simple answer format. Does the Region need new runway capacity now? Unlike the City of Chicago—which has for more than a decade privately known that the region needs new runway capacity while publicly proclaiming that new runway capacity is not needed—bipartisan leaders like Jesse Jackson, Jr. and myself have openly acknowledged the need for, and urged the construction of, new runway capacity in the region.

The need for new runway capacity is not a distant phenomenon we should have had new runway capacity built several years ago. While 20-year growth projections of air travel demand show that the harm caused by this failure is only now becoming apparent, the available information suggests that the region has already suffered serious economic harm for several years because of our past failure to plan for new runway capacity.

If the answer to the runway question is yes—and we believe it is—the next question is where the new runway capacity should be located? Though the issue has been discussed, the media, Chicago and the airlines have failed to openly discuss the alternatives as to where to build the new runway capacity—and especially, the issues, facts and impacts to the pros and cons of each alternative.

The alternatives for new runway capacity in the region are straightforward: (1) build new runways at a new airport, (2) build new runways at O'Hare, (3) build new runways at Midway, or (4) a combination of all of the above. Given these alternatives, the following facts are clear:

1. The new runways can be built faster at a new airport as opposed to O'Hare or Midway. Construction at a new airport (as well as paper and regulatory planning) the new runways can be built faster at a "greenfield" site than can be at either O'Hare or Midway.

2. More new runway capacity can be built at a new site than at O'Hare or Midway. Given limitations of O'Hare and Midway, it is obvious that more new runways (and therefore more new runway capacity) can be built at a new larger greenfield site at O'Hare and nowhere else. We acknowledge that additional space can be acquired at Midway or O'Hare by destroying densely populated surrounding residential communities—but only at tremendous economic and environmental cost.

3. The new runways can be built atfar less cost at a new airport than at O'Hare or Midway. Again, it is obvious that the new runways—and their associated capacity—can be built at far less cost at a "greenfield" site than can be at either O'Hare or Midway. Given taxpayer resources that must be used for any of the alternatives—and the relative scarcity of public funds—the Bush Administration should consider those sources of funds to support the new runway capacity (and associated terminal and access capacity) at a new airport vs. building the new capacity at O'Hare or Midway.

4. Construction of the new capacity at a new airport will have far less impact on the environment and surrounding communities than the expansion of either Midway or O'Hare. Midway, and later O'Hare, were sited and built at a time when concerns over environment and public health were far less than they are today. As a result, both existing airports have virtually no "environmental buffer" between the airports and the densely populated surrounding communities. In contrast, the site of the new South Suburban Airport has, by design, a large environmental buffer that will ameliorate most, if not all, of the existing public health risk from the site. Indeed, prudence would suggest an even larger environmental buffer around the South Suburban site than is now contemplated. We can create the same or similar environmental buffer around O'Hare or Midway—but only at a cost of tens of billions of dollars and enormous social and economic disruption.

5. Construction of the new capacity at a new airport offers the best opportunity for bringing major new competition into the region. When comparing costs and benefits of alternatives, the Bush Administration must address the existing problem of monopoly (or duopoly) in air travel at O'Hare and the economic penalty such high fares are inflicting on the economic and business community in our region. Does the lack of significant additional competition proposed for O'Hare to charge our region's business travelers higher fares than they could if there was significant additional competition in the region? What is the economic cost to the region—in both higher fares and lost business opportunities—of the "Fortress O'Hare" business fare dominance of United and American?

6. The selected alternative that has the room to bring in significant new competition is the new airport near St. Louis is today because of the World Gateway Program at O'Hare if we decide that new runway capacity should be built elsewhere? If the decision is to build new runway capacity for the region, let's have an honest exploration and discussion of the full costs of expanding O'Hare with new runways and compare it to the cost of building the new airport. Chicago and the already know what the components of an expanded O'Hare would be. These components are laid out in Chicago's "Integrated Airport Plan and include a new "quad runway" system for O'Hare and additional ground access through "western access."

Based on information available, we believe that the cost of the O'Hare expansion would exceed ten billion dollars. These costs should be compared with the cost of a new airport. Are the delay and congestion problems experienced at O'Hare self-inflicted? Sadly, when Chicago and the major O'Hare airlines advocated lifting of the restrictions for more than a decade, the restrictions for major competitors to come in and compete head-to-head with United and American.

The State of Illinois has stated that existing "Fortress O'Hare" business fare dominance of United and American costs the region many hundreds of millions of dollars per year. Bringing in one or more significant competitors to the region would bring enormous economic benefits in increased competition and reduced fares.

And the only alternative that has the room to bring in significant new competition is the--the new airport in the region. Chicago's proposed World Gateway Program—designed in concert with United and American to preserve and expand their dominance at O'Hare—has virtually no room for significant new competition to come in and compete head-to-head with United and American.

The airlines know this fact and that is why they—and their surrogates at the Civic Committee and the Chicagoland Chamber—are pushing for new runways.

The Region needs new runways and we wish to explore the alternatives of putting the new runways in at O'Hare, what is the economic justification for the new airport. With the lack of significant competition into the region. Does the lack of significant competition into the region. Does the lack of significant competition into the region. Does the lack of significant additional competition proposed for O'Hare to charge our region's business travelers higher fares than they could if there was significant additional competition in the region? What is the economic cost to the region—in both higher fares and lost business opportunities—of the "Fortress O'Hare" business fare dominance of United and American? This increase in traffic at O'Hare, it is obvious that more new runways (and therefore more new runway capacity) can be built at a new larger greenfield site at O'Hare and nowhere else. We acknowledge that additional space can be acquired at Midway or O'Hare by destroying densely populated surrounding residential communities—but only at tremendous economic and environmental cost.

The new runways can be built faster at a new airport as opposed to O'Hare or Midway. Construction at a new airport (as well as paper and regulatory planning) the new runways can be built faster at a "greenfield" site than can be at either O'Hare or Midway.

More new runway capacity can be built at a new site than at O'Hare or Midway. Given limitations of O'Hare and Midway, it is obvious that more new runways (and therefore more new runway capacity) can be built at a new larger greenfield site at O'Hare and nowhere else. We acknowledge that additional space can be acquired at Midway or O'Hare by destroying densely populated surrounding residential communities—but only at tremendous economic and environmental cost.

The new runways can be built at far less cost at a new airport than at O'Hare or Midway. Again, it is obvious that the new runways—and their associated capacity—can be built at far less cost at a "greenfield" site than can be at either O'Hare or Midway. Given taxpayer resources that must be used for any of the alternatives—and the relative scarcity of public funds—the Bush Administration should consider those sources of funds to support the new runway capacity (and associated terminal and access capacity) at a new airport vs. building the new capacity at O'Hare or Midway.

Construction of the new capacity at a new airport will have far less impact on the environment and surrounding communities than the expansion of either Midway or O'Hare. Midway, and later O'Hare, were sited and built at a time when concerns over environment and public health were far less than they are today. As a result, both existing airports have virtually no "environmental buffer" between the airports and the densely populated surrounding communities. In contrast, the site of the new South Suburban Airport has, by design, a large environmental buffer that will ameliorate most, if not all, of the existing public health risk from the site. Indeed, prudence would suggest an even larger environmental buffer around the South Suburban site than is now contemplated. We can create the same or similar environmental buffer around O'Hare or Midway—but only at a cost of tens of billions of dollars and enormous social and economic disruption.

Construction of the new capacity at a new airport offers the best opportunity for bringing major new competition into the region. When comparing costs and benefits of alternatives, the Bush Administration must address the existing problem of monopoly (or duopoly) in air travel at O'Hare and the economic penalty such high fares are inflicting on the economic and business community in our region. Does the lack of significant additional competition proposed for O'Hare to charge our region's business travelers higher fares than they could if there was significant additional competition in the region? What is the economic cost to the region—in both higher fares and lost business opportunities—of the "Fortress O'Hare" business fare dominance of United and American?

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out by the FAA and other experts. The solution can be easily administered by the FAA recognizing—as it has at LaGuardia—that limits must be placed on uncontrolled airline operations into flights Chicago.

Should the short-term “fix” to the delays and congestion include “capacity enhancement” through air traffic control devices? Absurd. The FAA has flagged and permitted a variety of operational devices designed to allow increased levels of departures and arrivals in a set period of time. The answer is yes. “Incremental capacity enhancement”—focus on putting moving aircraft closer together in time and space more operations into a finite amount of runways. Typically, this squeezing is being done in low visibility, bad weather conditions because these are the conditions where FAA wants to increase capacity.

While the air traffic controllers remain mute on the safety concerns raised by these procedures, the pilots have not.

“We have seen the volume of traffic at O'Hare pick up and exceed anyone’s expectations, so much so that on occasion mid-air incidents occur. O'Hare is at maximum capacity, if not over capacity. It is my opinion that it is only a matter of time until two airliners collide making disastrous headlines.” Sherril Song, Retired A/A Captain with 31 years experience flying out of O'Hare January 1999 letter to Governors Blagojevich and Pataki.

Paul McCarthy, ALPA’s [Airline Pilots Association] executive air safety chairman, condemned the incremental capacity enhancements as threats to safety. Each one puts a small additional burden on pilots and controllers, he said. Taken together, they reduce safety margins, particularly at multiple runway endpoints that contribute to a midair collision, a runway incursion or a controlled flight into terrain. Aviation Week, September 18, 2000 p at p 51 (emphasis added)

It is clear that FAA’s constant attempts to squeeze more and more capacity out of the existing overloaded runways—through such “enhancement” procedures as the recently announced “Compressed Arrival Procedures” and other ATC changes—is incrementally reducing the safety margin so cherished by the pilots and the passengers who have entrusted their lives to them.

The answer to growth is new runways at a new airport—not jamming more aircraft closer and closer together at O’Hare. The answer is to fly new runways at O’Hare, redirecting and reducing the overscheduled levels of traffic to reduce traffic levels to the capacity of the runways without the need to jam aircraft closer and closer together.

Does the current level of operations at O’Hare (and Midway) generate levels of toxic air pollution that expose downwind residential communities to levels of these pollutants in their communities at levels above USEPA cancer risk guidelines? Though our residents are exposed for years to the toxic air pollution from O’Hare, none of the state and federal agencies would pay attention. Recently however, Park Ridge funded a study by two nationally known expert firms in the field of air pollution and public health to conduct a preliminary study of the toxic air pollution risk posed by O’Hare. That study, Preliminary Study and Analysis of Toxic Air Pollution Emissions From O’Hare International Airport and the Resultant Health Risks Caused By Those Emissions in Surrounded Residential Communities (August 2000), found that current operations at O’Hare—based on emission data supplied by Chicago—created levels of toxic air pollution in excess of the risk guidelines by the USEPA for 98 downwind communities. The highest levels of risk were found in those residential communities that O’Hare uses as its “environmental buffer”—namely Park Ridge and Des Plaines.

Is the Park Ridge study valid? Park Ridge has challenged O’Hare, the airlines, and federal and state agencies to come forward with any alternative findings as to the toxic air pollution impact of O’Hare’s emissions on Park Ridge. And that does not mean simply listing what comes out of O’Hare. The downwind communities are entitled to know how much toxic pollution O’Hare is emitting and how toxic pollution from O’Hare goes, what are the concentrations of O’Hare toxic pollution when it reaches downwind residential communities, and what are the possible, and then necessary, O’Hare pollutants at the concentrations in those downwind communities.

Should new runways be designed to control and reduce the unacceptable levels of toxic air pollution coming into downwind residential communities from O’Hare’s current operations?

Should not the relative toxic pollution risks to surrounding residential communities created by the alternatives of a new airport at O’Hare or an airport in the suburbs be added to the analysis and comparison of alternatives?

What about the monopoly problem at O’Hare?

What should the Bush Administration do if in fact there is a monopoly problem at O’Hare? What should be done about it? We have already alluded to the factor of high monopoly fares as a consideration in choosing an alternative for the new runway capacity. But the monopoly problem of O’Hare will be relevant even if no new airport is built. The entire design of the proposed World Gateway Program is predicated on a terminal concept that solidifies and expands the current market dominance of United and American at O’Hare and in the Chicago market.

What can the Bush Administration do if indeed there is a monopoly air fare problem at O’Hare or monopoly dominance is costing Chicago area business travelers hundreds of millions of dollars per year?

When these questions were raised in the Suburban O’Hare Commission report, if you Build It We Won’t Come: The Collective Reusal Of The Major Airlines To Compete In The Chicago Air Travel Market, Chicago and the airlines responded with smoke and mirrors. First they refused closeateria showing that more than 70 airlines serve O’Hare. What they neglected to show was that United and American control over 80% of those passengers through the remaining 65 DNL (decibels day-night 24-hr. average) or greater, Chicago and the airlines are only committing funds to the 70 DNL level. Revenue passenger is only and could be less than 10% of the homes that Chicago itself acknowledges to be severely impacted.

3. Whereas many major airport cities with residential soundproofing programs are soundproofing all aircraft having 65 DNL and no more. For example, Chicago is only soundproofing less than 10% of the homes that Chicago itself acknowledges to be severely impacted.

4. Instead of an atmosphere of trust, these tactics by Chicago have created additional animosity as neighbors on one side of an alley or street get soundproofing while their neighbors across that alley or street get no soundproofing. Why? Because the Chicago based business traveler is locked into Chicago. While the Chicago based business traveler is locked into Chicago.

Can we have more than one “hub” airport operating in the same city? Faced with the potential inevitability of a new airport, the airlines for the last two years have been arguing for an expansion of O’Hare (instead of a major new airport) with the argument that a metropolitan area cannot have more than one hub airport. Based on that premise, United and American say that the sole hub airport in metro Chicago should be O’Hare. That simply is not correct.

1. There are several domestic and international cities with more than one hubbing airport. Competing airlines create hubbing operations wherever airport space is available. Thus, there are multiple hubbing airports in metro New York (JFK and Newark), Washington, D.C., London, and Paris.

2. The Lake Calumet Airport proposed by Mayor Daley would have been a second hub airport.

3. There is simply no reason—given the size of the business and other travel origin-destination market in metro Chicago—that a major new airport cannot exist near O’Hare and then to Washington D.C. than a Chicago based traveler who gets on the same plane to Washington. Why? Because the Springfield traveler has the choice of hubbing either through O’Hare or St. Louis while the Chicago based business traveler is locked into Chicago.

Where are the antitrust enforcers to break up these geographic cartels? Equally important, in addition to the great government giveaways, the federal government has ignored the maneuver to break up the cartels through the funding approval process of the Airport Improvement Program and Passenger Facility Charge (PFC) programs. Yet billions of federal taxpayer funds go to United and American without so much as a raise to enforce.

What about Noise? Shouldn’t we be happy to exchange some soundproofing for new runways at O’Hare? The City of Chicago has a substantial soundproofing program that was created on the advice of its public relations consultants to create a spirit of “compromise” that would lead to acceptance of new runways at O’Hare.

But here are some facts that are little publicized: soundproofing of our residents feel that soundproofing—while improving their interior quality of life—essentially assumes that we will give up living-out-of-doors or with our windows open in nice weather.

2. Whereas many major airport cities with residential soundproofing programs are soundproofing all aircraft having 65 DNL and no more. For example, Chicago is only soundproofing less than 10% of the homes that Chicago itself acknowledges to be severely impacted.

3. Chicago came into our communities asking for less in noise mortgages for their “real world” data as to the levels of noise. Yet, despite promises to share the data, Chicago refused to share the data with our communities.

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How do we fund new airport construction?

The answer is simply and the same answer Mayor Daley had for the proposed Calamet Airport. Daley proposed using a mix of FFC and AIP funds to cover the cost of building the new airport. Indeed, the entire justification for his urging the passage of FCC legislation was to collect FFCs at O’Hare and use them for the new airport. But united and American claim that the FCC revenues are “their” money. On the contrary, the FCC funds are federal taxpayer funds no different in their nature as tax-contrary, the PFC funds are federal taxpayer dollars to the airlines. They are federal funds that a cooperative fast-track planning and construction program for a new airport could be made sense.

The answer is simply and the same answer Mayor Daley is transferring funds from O’Hare to Gary and the same way he proposed getting federal funds collected at O’Hare to the LaGuardia project: a regional airport authority.

SUGGESTIONS

We have respectfully posed some questions and posted some answers for the President’s and your administration. We believe that a thorough and candid examination and discussion of these questions leads to only one conclusion: we should build a new airport and we should name it O’Hare.

But more than raising questions, we also have several concrete suggestions for addressing the region’s air transportation needs:

1. Let’s stop the paper shuffling and build the new airport. The program we outline is this simple: we fund the airport expansion proposal drafted by Mayor Daley for construction of the Lake Calamet Airport. We believe that a cooperative fast-track planning and construction program for a new airport could see the new airport open for service in 3-5 years.

2. The money, resources and legal authority to build the new airport can be assembled by passage of a regional airport authority bill similar to the regional airport authority bill drafted in 1992 by Mayor Daley for the Lake Calamet project. So the Illinois General Assembly is a necessary partner in any effort. But equally important is the dominant role the federal Administration plays in contributing to the success of AIP and PFC funds and in asserting enforcement of federal anti-trust laws. Let’s put together a federal-state partnership to get the job done.

3. Give the O’Hare suburbs guaranteed protection against further expansion of O’Hare. Such guarantees are needed not only for our protection but for the viability of the new regional airport.

4. Provide soundproofing for all of the noise impacted residences around O’Hare and Midway; and give O’Hare airport residents the funds they need; it does not correct existing problems caused by existing levels of traffic.

5. Initiate a regulatory program to control and review sub-leasing at O’Hare. We believe that the airports are not gathering the right information to make a decision.

6. Fix the short-term delay and congestion at O’Hare by returning to a recognition of the existing capacity limits of the airport. The delay and congestion now experienced at O’Hare is a self-inflicted wound brought about by airline attempts to staff too many planes too soon. The delays are due to the fact that runway expansions from O’Hare are 8. The entire World Gateway Program should be examined in light of the questions raised here and should be modified or abandoned depending on the answers provided to these questions.

We would appreciate the opportunity to discuss these matters with you and Secretary Mintz or at your convenience.

HOUSE OF REPRESENTATIVES, July 23, 2002

WASHINGTON, DC

FIVE REASONS TO OPPOSE THE NATIONAL AVIATION CAPACITY EXPANSION ACT (HR 3479)

Dear Colleague: This legislation to expand O’Hare International Airport is fatally flawed because it will:

1. SET A TERRIBLE PRECEDENT: This bill will allow the federal government to preempt state law requiring approval of airport construction and expansion—approval that requires the blessing of the state legislature. Will your state legislature be next to lose its power to decide local airport matters?

2. THREATEN SAFETY AND THE ENVIRONMENT: This legislation attempts to superimpose the amount the airline industry will need to carry more passengers on the size of Dulles International on a land-locked airport the size of Reagan National—an absurd idea on its face. Former U.S. Department of Transportation Inspector General Mary Schiavo has called this proposal “a tragedy waiting to happen.”

3. UPROOT THOUSANDS OF FAMILIES: This legislation will destroy the single largest concentration of federally assisted affordable housing in the country. It will uproot hundreds of thousands of low-income people and other minorities, particularly Hispanics, depend on.

4. THREATEN THOUSANDS OF JOBS: This legislation will destroy as much as one-third of the nation’s largest contiguous industrial park, threatening tens of thousands of jobs and how many jobs will be created by the airport expansion? That remains a great mystery.

5. COST TOO MUCH: This legislation will require the expenditure of $15 billion or more once the entire infrastructure, relocation, soundproofing and other costs are figured in. This is much more costly than the $6.6 billion that supporters keep touting.

Commits Chicago, Illinois and federal taxpayers to a plan whose costs have not been adequately detailed. We have requested documentation of the costs, but have been rebuked. That is why a Freedom of Information lawsuit is pending in Illinois court.

Mr. Speaker, I reserve the balance of my time.

[From the Chicago Tribune, March 20, 2001]

DALEY AND THE STENCH AT O’HARE

Maybe after 12 years in office the mayor of Chicago thinks he owns the chair. And why not. Richard M. Daley’s decision to let his pals run wild, and get the best interests of citizens a distant second makes sense.

After all those years of worrying about ap- pellate court judges who couldn’t bend a few rules? Who wouldn’t get tired of staring cameras and pretending that every deci- sion is being made for the good of Chicago? And who wouldn’t feel up to answering questions from the newspaper gnat about ethics?

Truth is, the growing trail of pals and pals with their connections to get rich—and to trash the mayor’s reputation in the process—is a marvel. So is the chutzpah that leads the boodlers to think they won’t be found out.

Unless, with their millions already stuffed in their pockets and Daley as their see-no-evil patsy, the boodlers just don’t care any more.

The latest to be outed is Jeremiah Joyce, an old Daley buddy who reportedly has been exploiting his connections to line his pocket- book up with a not-so-secretly rich—and to trash the mayor’s reputation in the process—is a marvel. So is the chutzpah that leads the boodlers to think they won’t be found out.

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Mr. Mayor, spare all of us the calls for a tougher ethics ordinance and the angry glare when you deny that you knew about the Joyce deal. Hey, maybe you didn’t know about every deal.

What you did know, and have known for years, is that your pals are oinking at the O’Hare through. And they oink all they want, but you still hold your peace. This game has only two rules: Don’t get caught. And don’t say “Peotone.”

The rest of us now see O’Hare for the economic engine it really is. Not just for shrewd contractors and patronage hacks, but for the select few who call the mayor of Chicago by his first name.

[From the Chicago Tribune, Nov. 21, 2000]

POLITICS SNARL O’HARE

STALLMATE BLOCKS NEW AIRPORT, MORE RUNWAYS

(By Andrew Martin and Laurie Cohen)

The parochial and petty politics that have turned O’Hare International Airport into a treasure trove for concessionaires and contractors also are at the heart of why the transportation hub is a quagmire of delays, hassles and heartaches.

The political self-interests that have gotten in the way of expanding the world’s second-busiest airport—are quite literally on display in the vexed corridors of the United Airlines terminal.

Buy your candy at the duty-free shop and some of your money finds its way into the pockets of Jeremiah Joyce, who has been one of Mayor Richard Daley’s key political strategists.

Need a book or a magazine to pass the time? The airport’s bookseller, W.H. Smith, has paid for political advice from mayoral pal O’Hare. And its patrons include Grace Barry and Barbara Burrell, friends of the mayor’s wife.

Satisfy a sweet tooth and you’re patronizing the candy shop partially owned by Rev. Clay Evans and Elzie Higginbottom, both influential supporters of the mayor in the African-American community.

Now, take a look at the passengers killing time because of delays or sleeping on rollaway cots because of cancellations. They’re where they are because of politics too.

The hidden motives that determine everything from contracts to projections for growth at O’Hare have created an airport that works for the politicians, their friends and American community.

And don’t get caught.

The late Mayor Richard J. Daley was instrumental in breaking a long impasse between the city and the airlines, which had been reluctant to move from Midway Airport, then the nation’s busiest, and cover the costs of a new airport.

Daley also resolved the sticky issue of how the City of Chicago could control an airport outside its borders. The city annexed 5 miles of Higgins Road, creating a controversial “O’Hare corridor” that linked the city with its new airport.

From the City Hall firm hired by Mayor Daley and used by City Hall as a means to reward political allies, Richard J. Daley’s administration, for instance, gave the right to sell flight insurance to a company that had hired Daley’s City Council floor leader, Thomas Keane, and it handed millions of dollars in construction work to another company that employed Keane.

Since then, as annual flights have grown to about 900,000 and City Hall has received vastly more money to spend at the airport, the basic formula at O’Hare hasn’t changed much.

O’Hare’s budget for the coming year is $511 million, which is paid for by airline landing fees, terminal rentals, concessions charges and parking revenues—though not by property taxes. Another $506 million is set aside for construction projects, paid for by bond issues, federal grants and a passenger ticket tax.

O’Hare helps Daley at election time. Airport vendors and other business tied to O’Hare—and their executives and lobbyists—donated about $360,000 to Daley’s campaign in an 18-month period beginning in July 1998. Daley was re-elected in February 1999.

And Daley’s political machine, as well his loyalists and friends, benefits from the jobs and contracts that flow from O’Hare’s tendrils. He has hired nearly 60 percent of the 1,900 employees who work for the city’s Department of Aviation, which manages O’Hare, Midway and Meigs Field, according to a Tribune review of payroll records.

His administration has hired campaign workers and the sons, wives and brothers of his key political allies. For instance, the City employed the son of Cook County Sheriff Michael Sheahan, also named Michael Sheahan, in 1992. A campaign worker for O’Hare board chairman Shahn is now the $65,000-a-year coordinator of security projects at O’Hare and Midway.

The city has also brought; in the brother of Ald. Patrick Levar (45th), who heads the City Council’s Aviation Committee. Hired in 1990, Michael Levar is now a $77,500 supervisor of construction and maintenance at O’Hare.

Dominic Longo, a longtime Democratic operative who was convicted of vote fraud in 1984, was hired to supervise truck drivers at the airport one year after Daley was elected in 1989. He was moved to another city department five years later amid allegations that he sold jobs and pressured workers to buy tickets to campaign events for Daley and others. Longo has denied the charges.

But the money paid for salaries is a fraction of the dollars paid to contractors for everything from engineering and architecture to snow removal: For example, the Aviation Department has contracts with 29 architects and engineers for $546 million, $36 million worth of contracts for snowmelting and removal, and $660,000 for seasonal decorations.

Crandum & Brown, the city’s long-time aviation planning consultant, provides a case study in how politics and contracts mingle at O’Hare.

The Cincinnati-based firm, which is now paid $12 million a year and has played a crucial role in the city’s efforts to block Peotone, operated on the same no-bid city contract from 1968 to 1995, when it got another no-bid deal.

Besides donating to the mayor’s campaign and charities overseen by Daley’s wife, the Hartford Omni O’Hare, a local airport consultant who had been the city’s top airport lobbyist, worked for Crandum & Brown. Daley’s political consultant and Gery Chico, now chairman of the Chicago school board, lobbyists for United States at City Hall.

A long battle—the fight for a third airport

Given the success of O’Hare—as an important hub in the nation’s transportation system, as an economic engine and as a source of patronage and contracts—it’s not surprising that both Daleys wanted new airports, so long as they were subject to mayoral control.

But the push for a third airport has always boiled down in politics, statistical sleight of hand and mixed signals from Washington, D.C. In the late 1960s, the elder Daley proposed building a major jetport on land-fill on Lake Michigan, an idea that never flew because of cost and environmental concerns.

The idea of a third airport didn’t gather steam again until the mid-1980s, when state officials were looking for sites for a third airport to relieve O’Hare, on the orders of the Federal Aviation Administration. The sites were on land held in trust for areas south of Chicago, including Peotone.

City officials had publicly argued that O’Hare and Midway could handle the region’s aviation growth. But, privately, consultants were urging city officials to immediately find a Chicago site for a third airport so they wouldn’t lose out to the suburbs.

The proposed new airport would be controlled by a regional authority consisting of state officials, local lawmakers and, perhaps, Daley appointees.

In July, Daley dropped a bombshell, announcing plans for a $6 billion new airport at Lake Calumet on the city’s Southeast Side.
The mayor argued that the new airport would take pressure off O'Hare and appease the northwest suburbs that were opposed to O'Hare expansion. He proposed to pay for the airport with a passenger ticket tax higher than the one in New York, that burning off a million acres of Peotone, and Kurland declined to comment.

Contributing to the lack of progress toward a Peotone airport was fierce opposition from the northwestern counties, which dominate O'Hare and voted not to use a third airport.

In 1995, United spearheaded a "Kill Hare" coalition that included a letter from 16 airline executives to then-Gov. Jim Edgar voicing their displeasure, according to records.

American also sent a representative to Downstate chambers of commerce to recruit allies in its opposition to Peotone. The airline also has urged its employees who live in the northwest suburbs to press local officials to drop out of the Suburban O'Hare Commission, a coalition of suburbs that staunchly oppose O'Hare expansion.

The airport would improve the airlines because they control 85 percent of the flights at O'Hare and, without a new airport, none of the other large carriers has an entree into the Chicago market.

But, once again, passengers are the losers in this economic equation. Many studies, including those by the U.S. General Accounting Office, show that passengers pay substantially more at airports dominated by one or two major airlines.

**Statistical shell game—ups and downs**

The City of Chicago's political success in holding off a Peotone airport can also be traced to a powerful tool: questionable statistics.

For years, Chicago officials have engaged in a statistical shell game to mask the need for a new airport and to hide O'Hare's capacity woes.

As Jay Franke, Daley's first aviation commissioner, wrote in an interview, "Forecasts are generally made to order." Franke was ousted in 1992.

In the debate over airports, the key numbers are forecasts of how many passengers are expected to fly out of an airport. By comparing predicted demand to an airport's capacity—many flights an airport can handle without excessive delays—airport officials try to determine whether a new runway or a new airport is needed.

Daley has said O'Hare Forecasts by aviation consultants have repeatedly indicated since 1980 that O'Hare is running out of room. But this became a problem when Peotone emerged as the leading option.

City officials have used a grab bag of tricks to fix the problem. They have changed the formula for devising forecasts and tossed aside forecasts that didn't match their arguments.

And they have insisted that O'Hare can handle more flights because of anticipated improvements in air traffic control that haven't yet materialized, records show.

For example, a 1993 forecast by Landrum & Brown showed the airport would help his district.

The consultants finally delivered a forecast that the city could not only live with but trump. The new figures were 20 percent lower than the previous prediction.

The forecasting change was made possible in part by the city's political clout, but more so by the FAA's manipulation of the numbers. Landrum & Brown plugged a population forecast into its formula that was lower than many other population estimates. The FAA had predicted for the Chicago area's population to grow at about half the rate of previous years—had the effect of dampening the aviation forecast.

Before 1993, the FAA had predicted 61 million passengers for the year 2015 in its 1995 study, it now predicted only 46 million passengers in its revised forecast. (Last year, almost 36.3 million passengers boarded planes at O'Hare.)

A realistic forecast proves a new rural airport is not necessary for the region, Landrum & Brown concluded in a summary of its findings.

"Though it's too soon to say if Landrum & Brown's prediction is off the mark, one thing is certain: The population number it used was far too low. Already, the population in the Chicago region has exceeded the forecast for 2007 that Landrum & Brown used for its study, according to estimates by the U.S. Census Bureau.

"Mayor Daley said just go looking for low numbers," said Suhail al Chalabi, a state aviation consultant. "Nobody has used numbers this low before."

Officials at World Gateway and Landrum & Brown declined to comment.

Despite some misgivings, the FAA accepted the city's lower forecast. But even though its forecasts show that the number of passengers at O'Hare will grow twice as fast in the next 15 years as the city predicts, the FAA officials believe it won't be a problem.

The problem is one of political intrusion rather than technical limitations, according to the technical review, the FAA officials believe it won't be a problem. The key is the FAA's manipulation of the numbers.

"The FAA is a political agency," one FAA official admitted.

**Changing positions—running from runways**

The latest position out of City Hall is that it won't stand in the way of Peotone—"They can go build it," the mayor now says—and that the runways at O'Hare are unnecessary.

The Daley administration now says it can meet demand at O'Hare through a $3.2 billion investment program that the FAA says will not cost the city anything. The plan is under review by the FAA. It calls for new terminals, parking spaces and expanded light-rail service.

"The FAA is not calling for new runways, and city officials contend O'Hare has sufficient capacity through 2012. Officials, however, decline..."
to say exactly how many planes the airport can handle, and some experts think O'Hare is out of room now.

"On the whole, the system works awfully well," Tornow said in a recent interview. "I think the leadership was well informed and professional." Tornow, a former airport commissioner, was not available to comment for this story.

"But increasingly, court officials and legislators are saying that the opposition to new runways rests with the governor's office, and a Republican has been governor since 1995.

"While Chicago remains mired in political gridlock, mayors and other governmental officials across the nation have risked the political capital to increase capacity at their major airports. Among the 27 hub airports in the U.S., 17 have built new runways, five runways extensions and a total of four new runways, five runways extensions and one runway reconstruction at nine of the 27 hubs airports.

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is locating new jobs out of state, Chairman and CEO William Aldinger informed Mr. Ryan. When Prospect Heights-based Household has been expanding, he said, it’s been expanding by leaps and bounds.

That message is every bit as ominous as it sounds for the Chicago-area economy. A decade of scorched-earth political warfare over O’Hare has done nothing to take a toll, threatening the city’s status as the nation’s transportation center and its draw as a corporate headquarters center.

Now, the engine that has generated an estimated 500,000 jobs and $35 billion a year is at risk of losing momentum. And continued congestion could cost $1 billion a year, according to an analysis by Deloitte & Touche LLP (Crain’s, July 31).

Terrible reputation

In the marketplace, the perception is that Chicago’s aviation market is going through is “terrible,” says Stephen Stoner, a facilities location expert who heads the U.S. real estate consulting practice for Arthur Andersen LLP. “If I were the group,” he adds, “confirmation that a problem exists comes from a surprising source—Mr. Edcarr, a Republican known for his supposed anti-Chicago attitude and support for a third airport at Peotone.”

The former governor says he quietly attempted to negotiate a pact with Mr. Daley, but Mr. Aidinger informed Mr. Ryan. When Prospect Heights-based House-Port, headquarters and services center.

A key and fast

which draws on passengers from feeder cit-

stands to lose the large number of destina-

tion 52 percent by early in the next decade,

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ting stature.

Clearly, business, jobs and investment aren’t coming to Chicago—at least not to the extent they might be, had government leaders resolved the flight over whether to add

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O’Hare or build a new airport in Peotone. In the end, they may have to do both. In the meantime, cities such as Denver are not standing still.

“Could Chicago lose critical mass as a business services center? It’s a strong possi-

bility,” says William Testa, senior econo-
mist for the Chicago Fed. “The city of Chicago and the Federal Reserve Bank of Chicago. “Everything that’s growing (in the Chicago economy) is depend-

ent on that engine called O’Hare Airport.

Alone in a hole

The situation is so troublesome that former Gov. Jim Edgar for the first time is revealing that he tried to cut an airport ex-

pansion deal just before he left office two years ago. Pressure is rising fast on Mr. Ryan and Mayor Richard M. Daley to finish the jobs.

Most of the evidence of damage is so far circumstantial. Few business people will talk about why they chose to locate a new facility elsewhere. But as former Chicago Aviation Commissioner Jay Franke puts it, “By the time you know for sure you’ve been hurt in this business, it’s too late. It will take 15 years to dig out the hole.”

How deep is the hole? Though some data are debatable, a general trend is clear:

“The city is losing marketshare in the na-
tional passenger volume growing at just two-thirds the national rate in the past four years and do-

domic enplanements—the number of people board-

ing planes

—

hurt in this business, it

The shortage of runway space—“capacity con-

straint”—has certainly been a problem, but it isn’t the only cause of O’Hare’s woes. Loo-

the number of people

s declin-

ing stature.

But at the center of the problem is the need for one or more runways, which would offset or ease the other constraints as O’Hare gears up for possible expansion with the scheduled lifting of flight slot controls in 2001.

The region needs new runway capacity,” argues Chicago attorney Joseph Karaganis, who has made a career fighting O’Hare but does not dispute the notion that something must be done. “The question is where to put them.”

Two major studies in recent years con-

cluded that the local economy would take a big hit if the airport capacity problem were not solved. The first was a 1996 Dallas/Fort Worth report by the Regional Economics App-

lications Laboratory (REAL), a joint ven-

ture of the University of Texas and the Federal Reserve Bank of Chicago. REAL concluded that allowing airport ca-

pacity to grow as the market demands would create up to 55,000 jobs in aviation-related fields alone by 2018, and add $15.7 billion in direct value to the metro-Chicago hike is slightly more than 13 percent, near the 9 national average, Mr. al Chalabi concedes—But Midway soon will hit capacity and be unable to capture O’Hare overflow, he argues, and the O’Hare increase largely is driven by international, not do-

—

contrary to expectations.

Aviation Department reports indicate that O’Hare’s domestic business almost certainly fell for the second year in a row, down 12.2 million passengers, or nearly 2 percent, and that the number of O&D enplanements is at its lowest level since 1995. Remarkably, that flat-to-down performance came during, a period of unparalleled prosperity, when air travel nationally was rising 2 percent to 3 percent a year.

Runways not the key, city says

The city’s Aviation Commissioner Thomas Walker reads the figures differently. Chi-

ago’s aviation market is “mature,” he in-

sists, and O’Hare won’t need any O’Hare is losing its role as a major international airport. O’Hare has been held back not by a runway shortage but by federal slot rules, argues Mr.
Walker, whose boss, Mayor Daley, has made it clear the city does not want to discuss runways now. In fact, Mr. Walker says, "the runway capacity we have isn't matched" by the number of gates, taxis and other ground facilities needed to handle the planes that do land.

O'Hare plans to remedy that situation with its $3.5 billion World Gateway plan, which will add two terminals and up to 32 gates, Mr. Walker says. Even so, O'Hare will grow more slowly than other U.S. airports, he concludes, because there just aren't that many more destinations to serve, or that many which are underserved.

Ramon Ricondo, a consultant who works for O'Hare and the now-defunct Braniff Airways, says he hears one statement a lot from top lines and the now-defunct Braniff Airways, has no way to add Chicago capacity right away. "They are making an attempt to add Chicago capacity, but other airports are getting business that O'Hare is losing."

Mr. Walker says he worries that United and American fighting so hard to get more oates because of the number of available gates, taxiways and runways now. In fact, Mr. Walker says, with one major carrier or another temporarily moving traffic to suit another temporarily moving traffic to suit its particular needs.

"If O'Hare was less desirable," Mr. Ricondo concludes, "you wouldn't see United and American fighting so hard to get more gates here."

But other data released by Mr. Walker's department indicate that O'Hare's hub business has been down over an extended period, dropping from 60 percent of the airport's domestic and international traffic in 1975 to 41.6 percent to 53.5 percent last year.

As serious as O'Hare's problems are, the mayor mostly responds with a ripple effect—"we should be driven," he says, with one major carrier or another temporarily moving traffic to suit its particular needs.

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are under increasing pressure to work things out now, while they still can.

Though the mayor flatly denies that he met with Mr. Edgar to discuss airport issues in 1990, when Mr. Edgar was president of the Civic Committee of the Commercial Club of Chicago, says the big-business lobbying group helped arrange the meeting and that Mr. Edgar briefed him on its outcome two or three days later.

I never ever had a conversation with him on that subject, Mr. Ryan says. And if I could work with Mr. Ryan on a compromise, he says, ‘I don’t know. This is the governor’s standoff.’

What is the mayoral reticence?

Some say Mr. Daley never got over his bad airport experience of several years ago, when the parent firm of the Boston firm was shot down, and is unwilling to expend more political capital. Other political insiders say Mr. Daley’s mind is on a more practical matter: tens of millions of dollars in jobs and contracts that friends and associates control at O’Hare. But the mayor may not be able to buck much longer. With Republicans, rather than the anti-Peotone Clinton White House, now running the U.S. Department of Transportation, Mr. Daley runs the risk of the GOP winning approval to build Peotone without giving O’Hare anything.

The pressure on Mr. Ryan is even more acute because of par excellence, Mr. Ryan could cut the mother of all deals on Chicago aviation expansion because his district is far enough from its mid-continent hubs, United Airlines might be said to be a one-party city.

But at O’Hare, United’s operations and enplanements—the number of passengers boarding planes—are up just 1 percent, Mr. Knight says.

Since United still wants to grow its high-margin international business in Chicago and to serve as many local residents as possible on their domestic trips, something has to give. The mayor is said to be leaning toward a new hub service, in which out-of-towners fly here to get a flight to a third city. That service has been growing about 4 percent a year for the past five years—about the same as in other airlines’ mid-America hubs, such as Detroit, according to Mr. Knight. Much of that service is provided by regional jets, which carry fewer passengers but require almost as much runway space as large aircraft.

“The percentage of our passengers that are local in Chicago has been increasing,” Mr. Knight says, jumping from 38 percent in 1994 to 44 percent now. “That means connecting with lost jobs, market share and tourism. Of course, a new runway at O’Hare was choking on congestion, delays and gridlock.

As recently as last month, the mayor and the airlines no longer can be seen dangling alibis to consultants, lobbyists and public relations firms to force-feed incorrect data to the public and the federal government, supporting the mayor’s position that the city needs no new capacity. All the while, O’Hare was choking on congestion, delays and gridlock.

Ray Hare get a new runway

Mr. Knight does have a little good news for passengers are paying for a new airport but getting increased fares, the 6-year-old Denver International, Mayor Daley says the new runways for Chicago deserve a new deal. Daley opened up overpriced O’Hare.

Consequently, passengers are paying a new airport but getting increased fares, cutbacks and congestion at O’Hare.

Hastert could weigh in

There is one other key figure: U.S. House Speaker J. Dennis Hastert, R-Yorkville.

Unlike powerful DuPage County politicians such as Illinois Senate President James ‘Pate’ Philip and U.S. Rep. Henry Hyde, R-Addison, he tends to favor O’Hare expansion because his district is far enough from the airport to be insulated from noise problems but close enough to share its economic benefits. If the city, as part of a runway deal, agrees to add a western entrance to O’Hare—just minutes away from Mr. Hastert’s district—the speaker might bite, insiders say.

Bottom line: “A deal is possible. There’s probably as good a chance now as ever,” says one top Springfield source. “At some point, I think the governor will be willing to talk...But will Mr. Daley talk, too?”

DENVER’S SKIES FRIENDLIER AS UNITED EXPANDS

With 450 departures a day from O’Hare International Airport and its corporate headquarters just a few blocks away from the terminals, United Airlines might be said to have a special interest in Chicago’s aviation system. But when it comes to growing its mid-continent hubs, United’s rising star is located a thousand miles away from its homeport, in Denver.

United has added dozens of flights at Denver International Airport since 1995, while its O’Hare operations and passenger flow have barely edged up.

“Our ability to grow (O’Hare) has been limited,” says Kevin Knight, United’s vice-president in charge of route development, blaming a lot of the problems on the way O’Hare has been built. “There’s something to be said for having a little more international competition.”

Mr. Knight does have a little good news for O’Hare. For at least the next five years, its passenger facility charge receipts will remain United’s single largest hub.

Meanwhile, he has a sharp reply to contentions by city officials that Chicago is a “mature” market in need of little new service: “I couldn’t agree with that. This is a viable, growing market.”

[From the Chicago Sun-Times, Feb. 17, 2001]

**CONGRESSIONAL RECORD—HOUSE**

**H5161**

*MAYOR STANDS EXPOSED ON AIRPORT*

(By Jesse L. Jackson, Jr.)

Mayor Daley is standing on a third airport in Chicago reminds me of the fabled emperor with no clothes.

No matter what the emperor said, believable or not, his followers displayed blind loyalty.

In the late 1980s, Daley mocked the idea of a third airport, calling it unnecessary. In 1990, he did an about-face and proclaimed that Chicago needed another airport or else the city would “continue to lose business to Denver, Dallas, Atlanta and others.” Two years later, in another reversal, Daley declared that Chicago had enough airport capacity for another 20 years.

So, throughout the ’90s, the city paid hundreds of millions of dollars to consultants, lobbyists and public relations firms to force-feed incorrect data to the public and the federal government, supporting the mayor’s position that the city needs no new capacity. All the while, O’Hare was choking on congestion, delays and gridlock.

As recently as last month, the mayor and the airlines no longer can be seen dangling alibis to consultants, lobbyists and public relations firms to force-feed incorrect data to the public and the federal government, supporting the mayor’s position that the city needs no new capacity. All the while, O’Hare was choking on congestion, delays and gridlock.

Two days later.

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Consequently, passengers are paying a new airport but getting increased fares, cutbacks and congestion at O’Hare.

Fortunately, there is an alternative. The State of Illinois has proposed building a third airport near Peotone. As proposed, the inaugural airport could be built faster, cheaper, cleaner and safer than a new runway at O’Hare.

With Peotone’s stock suddenly rising with the new administration in Washington, Daley and his supporters in business and the media are promoting a compromise. Many are advocating that O’Hare get a new runway in exchange for Peotone getting off the table. Of course, getting O’Hare makes Peotone unnecessary for at least several more years.

I oppose such a deal. The city has strained its finances and bickered and the mayor is not in a mood of opportunity long enough. The region is paying with lost jobs, market share and tourism. Passengers are paying with high fares and poor service.

For the sake of safety and fairness, Peotone must be the taxpayers’ first priority. Because the naked truth is, the city, the mayor and the airlines no longer can be blindly trusted to ensure that Illinois gets the best.
A MESSAGE FROM THE MAYOR
(By Richard M. Daly)
Chicago's Southeast Side, along with the entire Calumet region, has been in a state of economic decline since the steel industry and its related businesses left the area.

The loss of this industrial base proved devastating to many thousands of families forced to endure years of harder times.

Over the years, there were many promises of revitalization and major new industry. None of them amounted to anything.

There are two realistic futures for this area.

One is to continue struggling, fighting for dwindling resources that will never be enough to restore the area to economic and environmental health.

A comprehensive clean-up of the industrial pollution alone would cost hundreds of millions of dollars that simply are unavailable from the federal government.

The other future is one that offers tremendous hope—the prosperity of hundreds of thousands of new jobs and an economic rebirth that includes a clean-up environment.

It is a future that will cost billions of dollars to create. And there is only one possible way to raise this money: the Lake Calumet Airport.

While my airport proposal is good for the entire City of Chicago, it is the Calumet region that will most benefit.

Construction and operation of this international airport will create a huge economic engine that will put new life into this region.

It will bring new prosperity to the entire area, making it the most dynamic in the state.

The economic benefits of this project are so immense—we are talking billions of dollars each year—that it will present no difficulty to create new communities for those residents who must someday relocate nearby.

These communities can even be modeled after what is now in place—if that is what the residents desire.

To do all this, it’s that big a project.

Chicago is a city of neighborhoods and of families. Many Southeast Side residents have roots in the area going back generations.

All of this can be preserved, both in the city and throughout the Calumet region, as the new airport takes shape.

I wouldn’t have it any other way.

A few elements of the airport believe the area is being asked to sacrifice itself for the good of the rest of Chicago.

I ask no sacrifice other than to give up the false promises of the past, in favor of a real future for the community and all who call it home.

LAKE CALUMET AIRPORT: THE FUTURE OF CHICAGO

Chicago's O'Hare International Airport is again the busiest in the world for 1990, but this coveted bid did not come by chance. Chicago worked hard to become the transportation hub of the nation.

Competition in the aviation world is more intense than ever. Today other cities aggressively pursue this prestigious leadership position in the nation's air transportation system and the jobs and economic benefits that go with it.

Not all passengers using Chicago airports begin or end their trips here. About half are connecting passengers using the major airline hub known as O'Hare.

This arrangement not only makes them customers of the airport bringing in revenue, but also makes available a huge selection of direct destinations for Chicagoans to points around the world. This, in turn, makes Chicago a very attractive location for business and industry that rely heavily on convenient passenger and air freight service.

Aviation leadership means a great deal to Chicagoans. If the new airport is not built, the city's local airline will have to go to Denver, Dallas, Atlanta and others that more aggressively compete with new and improved facilities. Should airline business go elsewhere, Chicago will lose many of the jobs it now enjoys.

The central position occupied by Chicago in the nation's aviation system has been extremely important to the economic growth and development of the entire region. The economic impact of O'Hare—the state's seventh-largest economic complex—so immense, than $9 billion each year and the airport supports over 180,000 jobs. The Lake Calumet Airport will be larger in size and generate even greater economic benefits and jobs.

Forecasts for the future of air travel indicate that Chicago's present airports will not be able to handle the increased demands of air transportation in the next century. As demand for air service increases, delays and congestion at Chicago's airports are getting worse. As a result, the share of business handled by Chicago already has begun to decline.

In 1986, the Illinois Department of Transportation began a feasibility study for a third Chicago airport. Clearly they demonstrated that the location that would provide efficient service to the most passengers is between Chicago's Loop and Gary, Indiana.

Chicago Mayor Richard M. Daley proposed the Lake Calumet airport site as the best means for revitalization of the north-eastern Illinois and north-western Indiana region. Located halfway between the Loop and Gary, it is ideally situated to attract a significant share of Chicago's air transportation market.

New organizations including the Chicago Sun-Times, Crain's Chicago Business, the Chicago Tribune and the Southtown Economist have recognized the benefits of the Lake Calumet Airport concept, as have a broad cross section of community, labor and business leaders.

Sponsored by the states of Illinois and Indiana and the City of Chicago, a major study is now underway of five new airport sites: the Chicago Lake Calumet location; expansion of O'Hare Airport; Rockville Township in northwest Kane County; Peotone, Illinois in Will County; and a location on the Illinois-Indiana state line east of Beecher, Indiana—also in Will County.

The results of this study, to be completed in Fall 1991, will compare the suitability of these sites as airports under established financial, environmental, social and technical criteria. The Bi-State Airport Policy Committee, made up of the appointed representatives of the three sponsors, will review these findings and decide which to be developed as an airport for the region.

The advantages of the Lake Calumet site are that it addresses the region's need for a new airport, not only by attracting passengers, but also by improving the environment (see "Airport to provide health and environmental benefits", page 2). These advantages make it better.

The lead time for developing a major airport is very long—15 years or more. Several complex steps must be taken after site selection is completed. They include: master planning, environmental review, financing, land acquisition, site preparation and construction.

The expenses are enormous. At a cost of $5 billion, only location with the financial re-

sources to cover such expenditures can realistically aspire to build an airport in today's environment. Chicago is the only site with that capacity.

The airport will allow Chicago to retain its leadership in aviation well into the next century and continue to enjoy the many economic benefits inherent in that position.

1927—"Chicago Airport" (now Midway) opens as the first municipally owned and operated airport in United States.

1973—Midway Airport, the birthplace of municipal aviation, becomes the world's busiest airport, serving 100,847 passengers annually.

1989—Midway Airport continues as the world's busiest airport, serving 29 million passengers annually.

1990—On February 15, Mayor Daley unveils his proposal for the Lake Calumet Airport to ensure Chicago's aviation leadership into the 21st Century.

AIRPORT WILL GENERATE NEW JOBS

As the residents know, the Lake Calumet area has been in an economic slump that has lasted for nearly two decades. Since many steel mills, factories and neighborhood businesses were closed, many former workers have had to take lower paying jobs.

Despite the many promises of jobs from some local politicians over the years, nothing has been found to replace the good-paying jobs that used to be plentiful for area residents.

This is why the Lake Calumet Airport project is so important for the area. It brings far more than just an airport. It will revitalize the Southeast Side of Chicago and the entire Calumet region. The airport will generate thousands of jobs and business opportunities.

The Lake Calumet Airport will provide an economic rebirth for an area with a rich heritage founded on a strong work ethic. The airport is expected to generate nearly $14 billion each year and bring approximately 200,000 new jobs to the region once it becomes operational in the year 2010. The jobs include every line of work in the aviation industry, airport facilities and the new housing and business developments that will spring up around the airport. These jobs will offer competitive wages.

The Mayor is committed to establishing a program that gives residents from the affected communities the first opportunity to train and apply for these jobs.

The city will develop a comprehensive job training and employment program by working with unions, business developers, women's organizations and local community leaders in schools. City colleges and vocational schools will be encouraged to establish courses to train residents for the jobs that will be needed at the airport and in the many spin-off businesses.

The city will encourage business development to support the airport operations. Contractors for the numerous project tasks will be selected, in part, based upon their commitment to support the local employment pool.

PARTIAL LIST OF THE JOBS THAT SUPPORT AIRPORT OPERATIONS

<table>
<thead>
<tr>
<th>Occupation</th>
<th>Middle Range Earnings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ticket Agent</td>
<td>$26,208 - $34,996</td>
</tr>
</tbody>
</table>

July 23, 2002
Aviation demand is derived from a few basic factors:

1. The national/international growth in aviation.
2. The socio-economic dynamics and growth of the region.
3. The location/desirability of the region for providing connecting flights.
4. The ability of the region to accommodate this demand.
5. The capacity of its airports.
6. The competitiveness of its fares.

**SOUTH SUBURBAN AIRPORT: AVIATION DEMAND IN THE CHICAGO REGION**

**BACKGROUND ASSUMPTIONS FOR DEMAND FORECASTS**

Aviation demand is driven by the following factors:

- **Socio-economic factors**
- **Traffic growth**
- **Aircraft size and efficiency**
- **Technology and infrastructure**

**PARTIAL LIST OF THE JOBS THAT SUPPORT AIRPORT OPERATIONS—Continued**

<table>
<thead>
<tr>
<th>Occupation</th>
<th>Middle Range Earnings</th>
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<td>Line Maintenance Inspector</td>
<td>36,000–44,762</td>
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<tr>
<td>Motor Vehicle Mechanic</td>
<td>30,555–41,808</td>
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<tr>
<td>Aircraft Mechanic</td>
<td>36,400–45,102</td>
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<td>Aircraft Mechanic</td>
<td>30,784–39,278</td>
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<tr>
<td>Ramp Service Helper</td>
<td>20,393–24,378</td>
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<tr>
<td>Aircraft Cleaner</td>
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<tr>
<td>Aircraft Cleaner</td>
<td>15,413–20,600</td>
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<tr>
<td>Computer Systems Analyst</td>
<td>34,684–59,202</td>
</tr>
<tr>
<td>Janitor, Passenger Terminal</td>
<td>11,315–17,756</td>
</tr>
<tr>
<td>Dispatchers</td>
<td>30,640–55,120</td>
</tr>
</tbody>
</table>

*In 1989 dollars.*

**Source:** U.S. Dept. of Labor, Bureau of Labor Statistics.

**SOUTH SUBURBAN AIRPORT: AVIATION DEMAND IN THE CHICAGO REGION**

**AVIATION GROWTH PARALLELS IDOT FORECASTS**

Since their national forecasts of 1994 (base for IDOT forecasts), the FAA has estimated five 12-year national forecasts through 2020, and five terminal area forecasts.

All of the FAA forecasts are higher than the study’s base forecast. Although it continues to contest IDOT’s forecasts, the City of Chicago and its consultants are using forecasts that are nearly identical.

The City and State are using IDOT socio-economic and aviation forecasts for all short- and long-term regional transportation planning.

**CAPACITY CONSTRAINTS JEPARIZE ECONOMIC GROWTH**

The ability of the region’s airports to accommodate demand is a most-serious concern. The Chicago region has reached aviation capacity constraints have dampened regional growth.

Since 1995, O’Hare’s growth in commercial operations has stopped.

Domestic enplanements at O’Hare have declined this year.

Small cities have been dropped from servicing.

Booz Allen says the international market is not being well served.

Fares at O’Hare have risen above the average for large airports.

O’Hare delays have been much greater this year than last; O’Hare’s delays are among the nation’s highest and cascade throughout the nation’s airports.

The FAA has long forecasted such capacity problems and resultant delays. In 1992 it forecasted a doubling of airports with delay problems by 2001.

The forecasts have arrived a bit ahead of schedule. Without additional capacity, the economic well-being of both Chicago and the nation are jeopardized.

**THE GROWING IMBALANCE IN THE REGION’S GROWTH: GROWTH VERSUS JOBS**

1. The Chicago region has grown robustly over the past 25–30 years.
   - Over 3,130 million jobs (1970–96) for the consolidated area.
   - Over 275,000 jobs between 1990 and 1997, alone, for the six-county area.

2. This growth has been uneven. The North has prospered, while the South has languished.

3. The region’s center has migrated from Downtown Chicago (with its excellent public transportation access) to the area around O’Hare (dependent on autos).

4. The City of Chicago lost over 27,000 jobs between 1991 and 1997; 11,000 of these losses were from the South Loop.

5. The suburbs grew by 300,000 jobs. The areas to the north, west and O’Hare-influenced contributed nearly 200,000 of this growth.

6. With 500,000 jobs in Chicago’s CBD, versus 450,000 in North Suburban Cook and 150,000 in Northeast DuPage, the economic center of the region shifted from Downtown to O’Hare.

7. Consequently, residents of the South Side and South Suburbs have commutes to work that are among the nation’s longest.

There is little public transit between suburbs.

8. These same residents do have the region’s highest tax rates; however, without businesses and industries, the residents, alone, must pay for all their services.

**PARTIAL LIST OF THE JOBS THAT SUPPORT AIRPORT OPERATIONS**

**LOCATION DRIVES CONNECTING FLIGHTS**

Because of its central location and high concentration of jobs and population, the Chicago region is a critical location for connecting flights.

The recent Booz Allen study, prepared for the City, forecasts an international growth that is higher than IDOT’s; and claims that high ratios of connecting to O/D are not just desirable, but necessary.

**AVIATION GROWTH PARALLELS IDOT FORECASTS**

Since their national forecasts of 1994 (base for IDOT forecast), the FAA has generated five 12-year forecasts, five long-range national forecasts through 2020, and five terminal area forecasts.

All the FAA national forecasts are higher than the study’s base forecast.

### H5163

**Congressional Record—House**

**Partial List of the Jobs That Support Airport Operations—Continued**

<table>
<thead>
<tr>
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</tr>
</tbody>
</table>

*In 1989 dollars.*

**Source:** U.S. Dept. of Labor, Bureau of Labor Statistics.
Although it continues to contest IDOT’s forecasts, the City of Chicago and its consultants are using forecasts that are nearly identical. The City and State are using IDOT socio-economic and aviation forecasts for short- and long-term regional transportation planning.

Other aviation plans Gary Airport Master Plan; Booz Allen forecasts for O'Hare international are consistent with IDOT forecasts.

**CAPACITY CONSTRAINTS JEOPARDIZE ECONOMIC AND AVIATION GROWTH**

While forecasts are an issue, it is the ability of the region's airports to accommodate demand that is most serious. The Chicago region has reached capacity. Aviation capacity constraints have dampened regional growth: Since 1985, O'Hare's growth in commercial operations has stopped. Domestic enplanements at O'Hare have declined this year. Delays have been significantly greater this year than last. Small cities have been dropped from service.

Booz Allen says the international market is not being well served. Fares at O'Hare have risen about the average for large airports.

**ABILITY TO ACCOMMODATE REGIONAL DEMAND IS DECLINING**

In 1998, (FAA statistics) O'Hare slipped to second place, behind Atlanta's Hartsfield, in enplanements. Capacity limited O'Hare's growth. The City of Chicago claimed that we should, “look at the Chicago aviation system (O'Hare and Midway) which combined, make Chicago the world's busiest system.” Unfortunately, this claim is wrong; but a look at the regional aviation systems in the country shows that Chicago is slipping in accommodating its regional demand. In 1993, the Chicago regional system ranked second, behind New York, only. By 1998, it was about to slip behind Los Angeles, but rallied at year's end. By 2005, however, Chicago will have slipped to fourth, behind New York, Los Angeles and Atlanta.

**MAJOR AIRPORT SYSTEMS**

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<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Chicago (O'Hare, Midway)</td>
<td>33,617 (2)</td>
<td>39,231 (2)</td>
<td>65,551 (3)</td>
</tr>
<tr>
<td>Atlanta</td>
<td>22,282 (2)</td>
<td>35,255 (4)</td>
<td>65,718 (3)</td>
</tr>
<tr>
<td>New York (JFK, Laguardia, Newark)</td>
<td>36,855 (1)</td>
<td>43,895 (1)</td>
<td>70,514 (2)</td>
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<tr>
<td>Los Angeles</td>
<td>31,878 (2)</td>
<td>39,231 (2)</td>
<td>65,551 (3)</td>
</tr>
<tr>
<td>Portland</td>
<td>25</td>
<td>71,372 (2)</td>
<td></td>
</tr>
</tbody>
</table>


Chicago’s slippage, over the five-year period (1993-1998) shown, indicates its inability to accommodate current aviation demands. Chicago’s regional growth, at 16%, lagged far behind Atlanta’s, at 53%.

Chicago also lagged behind the regions that have capacity-constrained major airports—New York, Washington, San Francisco and Los Angeles—because those regions have utilized third and fourth airports.

Regional statistics indicate that O'Hare has slipped behind in operations, as well as enplanements, a clear indication of capacity constraints.

There are no socio-economic reasons for a dampered regional demand.

**OPPORTUNITIES ALREADY HAVE BEEN LOST; OTHERS WILL FOLLOW**

It is always difficult to document events and forecasts that do not materialize. But if you trust your forecasts, some estimates can be made and general conclusions reached.

Over the past decade, the Chicago region has missed the following opportunities:

- When Delta could not accommodate its demand at O'Hare, it moved its Midwest hub operations to Cincinnati, Cincinnati, with a metro area population of 1.929 million in 1980 and 1.969 million in 1999, has watched its airport grow from 2.30 million enplanements in 1986, to 9.237 million enplanements, in 1997; and is forecast to grow to 21.826 million enplanements by 2015.
- Both the U.S. Postal Service and FedEx have built major facilities at Indianapolis Airport. United Airlines built its maintenance facility there, as well. UPS built major facilities at Louisville and Rockford Airports.
- United Airlines, Chicago’s hometown airline, has developed its European hub at Dulles Airport. It now is transferring increasing numbers of connections to Denver, the airport opposed so vehemently.
- Major conventions have been lost, in total or in part, to the Chicago area. An IDOT study showed that average fares from across the country to Orlando and to Las Vegas were lower than to Chicago despite the fact that average distances to Chicago are smaller.
- Chicago, over the past several years, has lost major headquarters. Although many losses were due to acquisitions/mergers, few new corporate headquarters have chosen to locate in the Chicago region. Although proximity to a major airport is one of three factors determining corporate location, such proximity in Chicago is both costly and rare. This region has missed a window of opportunity when: jobs have grown beyond expectation; financing was available; business economic conditions were very good; and commercial development rebounded.
- Without a major investment in airport infrastructure, by 2020 the Chicago region will have forfeited: 30.7 million regional enplanements unaccommodated; 500,000 jobs and attendant economic opportunities lost.

**CHICAGO’S THIRD AIRPORT AND THE FUTURE OF THE CHICAGO REGION: AN OPPORTUNITY FOR SMART GROWTH, INFILL REDEVELOPMENT AND REGIONAL BALANCE**

The Midwest and, in particular, the Chicago Metropolitan Area, has had a remarkable turnaround in economic fortune over the past decade. It has shed its “rust-belt” image and has produced remarkable economic growth.

Between 1990 and 1997, the six-county area grew by 275,000 jobs, a 9 percent increase. Between 1991 and 1997, the City of Chicago lost ground. Between 1991 and 1997, the City of Chicago lost 27,000 jobs; 11,000 were from the South Loop. Every one of the City’s eight major community areas experienced losses, with the exception of North Michigan Avenue and the Northwest area around O’Hare International Airport. The Far South, Southwest and South communities were the biggest losers.

This development trend extended to the suburban area. While the six-county Chicago Area grew by 275,000, the north and northwest suburbs were the major beneficiaries. Chicago, over the past several years, has lost major headquarters. Although many losses were due to acquisitions/mergers, few new corporate headquarters have chosen to locate in the Chicago region. Although proximity to a major airport is one of three factors determining corporate location, such proximity in Chicago is both costly and rare. This region has missed a window of opportunity when: jobs have grown beyond expectation; financing was available; business economic conditions were very good; and commercial development rebounded.

**CONGRESSIONAL RECORD—HOUSE**

July 23, 2002

**H5164**
Ryan, Senate President PatePhillip—plus scores of local mayors, hundreds of local businesses and hundreds of thousands of residents, have joined in the effort to bring the airport to the suburbs. Perhaps, with the airport in place, we can begin to truly balance growth, encourage infill development and share the wealth of the region.

The Planning Process: Twelve Years of Findings

The state agency responsible for planning the region’s transportation infrastructure, the Illinois Department of Transportation (IDOT), has been planning for the region’s aviation needs for the past twelve years. IDOT, and its aviation consultants, are convinced that Chicago’s aviation demands will more than double by 2020. The Federal Aviation Administration (FAA), the Airports Council International (ACI) and other industry groups have forecasted national growth of similar magnitude. For a brief time, the City of Chicago agreed, as well. The Chicagoland Chamber study predicts a five-fold increase in international traffic. IDOT’s studies support the contention that Chicago has an excellent opportunity to be the dominant North American hub for international flights, as well as its premier domestic hub, into the next century. That point has been stated and documented on many occasions by IDOT. The State’s forecasts have been corroborated, independently, by a decade of observations. They are reinforced in the latest study for the Chicagoland Chamber of Commerce. It is agreed, by all key interest groups, that the Chicago region must increase its aviation capacity.

The region cannot double its aviation service without building major new airport capacity. O’Hare and Midway are now at capacity. Enplanements already are being affected with growth limited to increases in plane size or load factor; neither is expected to increase further. The City’s $1.8 billion investment in terminals will not increase capacity. But, the adverse impact on the region already is evident. Businesses and residents are witnessing major increases in fares in the Chicago region, according to IDOT, the U.S. Department of Transportation, and the FAA. Perhaps in response to these obvious constraints, both the Chicagoland Chamber and the Commercial Club of Chicago have begun to address aviation issues. The Chamber calls for O’Hare expansion. The “Metropolis 2020” study also recognizes the need for additional aviation capacity, with a call for a new airport to serve the Central Province. Some South Suburban communities have expressed support for a South Suburban airport. These concentrations, however, have come from the federal government. In the “Year of Aviation”, these funds are expected to increase by 50 percent; and Passenger Facility Charges (PFC) are expected to increase from $3 to $6. Currently, $1 in PFC’s at O’Hare yields $37 million per year. Adding runways at O’Hare costs $100 million in PFC’s annually by 2010. The FAA must provide the needed approvals and normal up-front funding. A Third Airport developmental response to discourage competition.

The DEVELOPMENT ALTERNATIVES

Aviation infrastructure must be expanded—and expanded soon—to bring true competition, lower fares and increased service to Chicago. There are two major alternatives: adding runways to O’Hare; or building the Third Chicago Airport. The two alternatives have far different consequences. The question is: “Will we continue to spend great outlays of public-private funds on an area that is overwrought with both riches and the congestion those riches bring; or do we make those investments in mature urban areas that are wanting for jobs and economic development?”

As is clearly documented by a recent Chamber study, O’Hare’s benefits are conferred, primarily, on the west, north and northwestside of Chicago. O’Hare’s employees reside near it. In addition, it has garnered high concentrations of development. These concentrations, however, have led to congestion and increased land values. High land prices have forced businesses and developers to plan future growth on the most environmentally-sensitive fringes of the region and in the most removed from the region’s central core.

The Two Sides of the Coin

While unprecedented growth takes place around O’Hare, to the north, the three million residents who reside south of McCormick Place are left with long trips to the airport for flights and out of the running for the many jobs it produces. The concentration of businesses and jobs in the South Suburbs provides nearby, inexpensive land for development in the South Suburbs. Residents and the dwindling businesses that serve them, are the highest property tax rates in the State. Because jobs have disappeared, residents have some of the longest trips to work in the nation. Because transit only to the Loop is convenient, recent job losses in that area, as well. (11,000 since 1991; 25,000 since 1981), have resulted in the job searches of the South Side’s residents. For decades, regional planning agencies have called for the development of moderate-income housing near job concentrations. Instead, let us bring the jobs to the residents. Recent public forums on the disparity of property taxes paid in Cook County’s north and south communities have led to the South’s designation as the “Red Zone.” Signifying its concentration of highest property tax rates. This disparity was not always so. It has occurred over the last three decades and proliferated in the last two, as shown below. The “Metropolis 2020” study addresses this disparity, calling for sharing of revenues with the “lesser havens.” The more-responsive, enduring and—ultimately—more-equitable solution is to provide the South Side with the economic opportunities generated by the Third Chicago Airport.

Whether the region expands O’Hare or builds a supplemental airport, O’Hare’s riches will remain and grow. It is currently enjoying a $1 billion public investment to upgrade its terminals. Midway, as well, will continue to thrive, as the recipient of an $800-million public investment. However, this $1.8 billion investment will not increase capacity. The initial infrastructure investment of $500 million ($2.5 billion through 2010) to build the Third Chicago Airport, will. And, it will produce more than just added aviation capacity. The Third Chicago Airport will provide 235,000 airport-related jobs—in the right places—by 2020. Additional airport access jobs will benefit the entire region. In addition, it will reinforce the City of Chicago’s role as the center of the region.

Spokesmen for the incumbent airlines claim that other airlines will not invest in the Third Chicago Airport; this is a traditional response to discourage competition. Furthermore, the financing of any airport comes, principally, from its users. The Third Chicago Airport market comprises 15.5 percent of the region’s business travelers, with a potential for contributing 20 percent. They should not be left behind. Upfront airport development costs, for planning and engineering, and land acquisition, have come from the federal government. In this “Year of Aviation”, these funds are expected to increase by 50 percent; and Passenger Facility Charges (PFC) are expected to increase from $3 to $6. Currently, $1 in PFC’s at O’Hare yields $37 million per year. Adding runways at O’Hare costs $100 million in PFC’s annually by 2010. The FAA must provide the needed approvals and normal up-front funding. A Third Airport developmental response to discourage competition.

Building the Third Chicago Airport—In the name of an existing, mature part of the region suffering losses due to changes in the national/regional economies and lack of access to a major airport. Traffic at O’Hare drives new development farther away from the region’s core—the Chicago Central Area—and its residents and businesses to the South.

A New Approach on environmentally-sensitive areas.

It will compound noise, pollution and traffic congestion; and impose these on hundreds of thousands of additional residents. It will buttress monopolistic behavior by major airlines.

Building the Third Chicago Airport is a true urbanist’s dream. It solves multiple problems with one investment.

It develops an environmentally-sensitive, new airport, that can provide increased capacity for decades to come. It provides nearby, inexpensive land for development.

It brings jobs and development to mature portions of the region.

It allows three airport facilities to function at optimal capacity.

It maintains the Chicago region as the nation’s aviation capital.

If planning already completed, the Third Chicago Airport can be built before additional runways at O’Hare. Resources are available to build the airport.

Federal Funds for airport development will increase by 50 percent.
The U.S. Congress, many businesses and consumers are demanding access to and through the Chicago area.

Ultimately, the passenger pays through Passenger Facility Charges.

CHICAGO’S THIRD AIRPORT AND THE FUTURE OF THE CHICAGO REGION: AN OPPORTUNITY FOR SMART GROWTH, CONGESTION RELIEF AND REGIONAL BALANCE

AN EMerging CONSENSUS

Finally, after nearly nine years of intense debate, there is near unanimous agreement on the need for additional airport capacity in the Chicago region. This is due, in part, to several inescapable facts:

Operations at O’Hare have been at a virtual standstill and capacity constraints have been reached; every day is Thanksgiving eve.

The region’s enplanements have grown only as Midway has been able to take up a portion of the demand unaccommodated at O’Hare; and as small markets are abandoned in favor of large.

International enplanements have grown at rates over 9 percent, annually, but at the expense of domestic.

Domestic enplanements at O’Hare have grown by only 1.9 percent, annually, since 1993; and declined since 1998.

In 1998, Atlanta’s Hartsfield Airport surpassed O’Hare as the nation’s busiest airport; it remained first in 1999 and 2000.

In the SAAD air system (O’Hare/Midway) nearly slipped to third place, behind New York and Los Angeles. It is forecast by the FAA to fall to fourth place (behind Atlanta) by 2010.

In 2000, O’Hare had the nations worst delays.

Now, nearly all those who claimed that Chicago could handle forecasted growth into the foreseeable future, are admitting that the gap between demand and the ability to accommodate it are growing farther apart and at a faster pace.

1998 studies by Booz-Allen & Hamilton (BAH) for the Chicagoland Chamber claim that Chicago’s capture of international traffic—although considerable—is stifled.

BAH’s recent (2000) update for the Commercial Club of Chicago shows an international demand that is even higher than estimated a year ago and higher than estimates made by IDOT.

Overall forecasts undertaken by the City of Chicago—chord recently made public—are similar to the forecasts of IDOT, but with higher connecting volumes.

Both United and American Airlines have called for the construction of an added runway at O’Hare. United funded the 1998 BAH study.

Calls for an added runway also have come from the Chicagoland Chamber, the Commercial Club and the Chicago Tribune.

When the State of Illinois Department of Transportation started planning for the region’s future in 1995, it was suggested that the need would be evident by the turn of the century. Later, detailed forecasts documented an unmet demand of 7.1 million enplanements per year. We have nearly reached that first milestone and the evidence of unmet demand, indeed, is great. Recent studies indicate that, by 2001, the Chicago region will have lost or foregone a large portion (5.1 million) of the 7.1 million enplanement forecast for the Third Airport.

The question no longer is whether or not the region will be able to accommodate the region but, rather, where we should add it.

Whether the region expands O’Hare or builds a supplemental airport, O’Hare’s rich legacy will remain and grow. It is currently enjoying a $1 billion public investment to upgrade its terminals. Midway, as well, will continue to thrive, as the recipient of an $800 million-publicly-funded new terminal. However, in spite of this $1.8 billion investment, the region’s capacity will not be increased.

The structure investment of $500 million ($2.5 billion through 2010) to build the Third Chicago Airport, will increase it, and, it will produce more than just additional aviation capacity. The Third Chicago Airport will provide 235,000 airport-related jobs—in the right places by 2020. Additional airport access jobs will benefit the entire region. In maintaining the City of Chicago’s role as the center of the region’s growth. Furthermore, both businesses and residents of the airport’s environs want it.

Spokesmen for the incumbent airlines claim that other airlines will not invest in the Third Chicago Airport; this is a traditional response to discourage competition. Furthermore, the financing of any airport comes, principally, from its users. The Third Chicago Airport market comprises 16.6 percent of the region’s current air trip users, with a potential for contributing 20 percent. They should not be left behind. Upfront airport development costs, for planning and engineering, are traditionally borne by the federal government. In 2000, these funds increased by 50 percent; and Passenger Facility Charges (PFC’s) increased from $3.00 to $4.50 per trip segment. $1 in PFC’s at O’Hare yields $37 million per year. The Third Airport market contributes nearly one fifth of these funds for O’Hare. At the Full-Build forecast and $4.50 rate, the Third Chicago Airport will generate $75 million in PFC’s annually by 2010. The FAA must provide the needed approvals, and normal upfront funding. Development in the South Suburbs can provide social and economic parity; and it can do it with a hand-up rather than a hand-out.

THE ARGUMENT FOR SMART GROWTH WITH CHICAGO’S THIRD AIRPORT

Independent studies have demonstrated, overwhelmingly, the need for expanded aviation capacity in the Chicago region.

Demand will more than double by 2020.

Existing airports are at capacity.

Needed, is a facility to grow as future demand dictates.

The need is now. The region is beginning to experience the costs of capacity constraints. These are:

Travel delays, often the nations worst.

Dampened aviation growth.

Increased and non-competitive fares.

Lost jobs, businesses and other opportunities.

There are two alternatives for meeting the region’s demand; they are:

Adding runways at O’Hare—an area already well-served and suffering the effects of overdevelopment and congestion; or,

Building the Third Chicago Airport—into the South Suburbs.

Because of planning already completed, the Third Chicago Airport can be built before any other airport; and, it will reinforce the City of Chicago’s role as the center of the region’s growth. Furthermore, both businesses and residents of the airport’s environs want it.

Spokesmen for the incumbent airlines claim that other airlines will not invest in the Third Chicago Airport; this is a traditional response to discourage competition. Furthermore, the financing of any airport comes, principally, from its users. The Third Chicago Airport market comprises 16.6 percent of the region’s current air trip users, with a potential for contributing 20 percent. They should not be left behind. Upfront airport development costs, for planning and engineering, are traditionally borne by the federal government. In 2000, these funds increased by 50 percent; and Passenger Facility Charges (PFC’s) increased from $3.00 to $4.50 per trip segment. $1 in PFC’s at O’Hare yields $37 million per year. The Third Airport market contributes nearly one fifth of these funds for O’Hare. At the Full-Build forecast and $4.50 rate, the Third Chicago Airport will generate $75 million in PFC’s annually by 2010. The FAA must provide the needed approvals, and normal upfront funding. Development in the South Suburbs can provide social and economic parity; and it can do it with a hand-up rather than a hand-out.

The Third Chicago Airport is a true urbanist’s dream. It solves multiple problems with one investment.

It develops an environmentally-sensitive, new airport, that can provide increased capacity for decades to come.

It provides nearby, inexpensive land for development.

It creates jobs and development to mature portions of the region.

It allows three airport facilities to function at optimal capacity.

The region suffering losses due to changes in the South Side.

Residents and businesses nearby want it.

Resources are available to build the Third Airport.

The U.S. Congress, many businesses and consumers are demanding access to and through the Chicago area.

Federal funds for airport development have increased by 50 percent.

Ultimately, the passenger pays through Passenger Facility Charges; PFC’s have increased from $3.00 to $4.50 per trip segment.

At full build, PFC’s will provide $75 million annually, by 2010.

Mr. Speaker, I will state for the record that I am in true opposition to this bill, I therefore claim the time in opposition.

RULES OF THE HOUSE OF REPRESENTATIVES

Rule XV, clause 1

(c) A motion that the House suspend the Rules is debatable for 40 minutes, one-half in favor of the motion and one-half in opposition thereto.

This provision (former clause 2 of rule XXVII) was adopted in 1880 (V, 6821). It was amended and redesignated from clause 3 to clause 2 of rule XXVII in the 102nd Congress to conform to the repeal of the former clause 2, relating to the requirement of a second (H. Res. 5, Jan. 6, 1999, p 1). Before the adoption of this provision in 1880 (V, 6821) the motion to suspend the rules was not debatable (V, 2571). The 40 minutes of debate is divided between the mover and a Member opposed to the bill, unless it develops that the mover is opposed to the bill, in which event the mover provision is divided between the mover and a Member opposed to the bill, unless it develops that the mover is opposed to the bill, in which event the mover provision is divided between the mover and a Member opposed to the bill, unless it develops that the mover is opposed to the bill, in which event the mover provision is divided between the mover and a Member opposed to the bill, unless it develops that the mover is opposed to the bill, in which event
Speaker will accord priority first on the basis of true opposition, then on the basis of committee membership, and only then on the basis of party affiliation, the latter preference being observed in the case of a tie vote (VIII, 3415; Nov. 18, 1991, p. 32530). The Chair will not examine the degree of opposition to the motion by a member of the committee who seeks to move an amendment (Aug. 3, 1959).—When the mover and the opponent divide their time with others, the practice as to alternation of recognitions is not insisted on so rigidly as in other debate (IL 142).—Debate should be confined to the object of the motion and may not range to the merits of a bill not scheduled for suspension on that day (Nov. 24, 1991, p. 32499).

This paragraph formerly included a provision dealing with the Speaker’s authority to postpone further proceedings on motions to suspend the rules and pass bills or resolutions. It was added in the 93d Congress (H. Res. 998, Apr. 9, 1974, pp. 10195–99), amended in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 83–70), and amended further in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16). It was deleted entirely in the 97th Congress (H. Res. 5, Jan. 5, 1981, pp. 98–113) when all of the Speaker’s authorities were consolidated into clause 5 of rule I (current clause 8 of rule XX).

OPENING STATEMENT OPPOSING H.R. 3479

There are many reasons why I oppose H.R. 3479. I want to share some reasons why you too should be opposed to the National Aviation Expansion Act.

1. RESPECT FOR THE INSTITUTION OF THE HOUSE

The Suspension Calendar is reserved for NON-CONTROVERSIAL bills. This is a HIGHLY CONTROVERSIAL bill. This should not be on the Suspension Calendar. It was added in the 93d Congress (H. Res. 998, Apr. 9, 1974, pp. 10195–99), amended in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 83–70), and amended further in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16). It was deleted entirely in the 97th Congress (H. Res. 5, Jan. 5, 1981, pp. 98–113) when all of the Speaker’s authorities were consolidated into clause 5 of rule I (current clause 8 of rule XX).

2. H.R. 3479 DOES NOT REFLECT THE AGREEMENT BETWEEN MAYOR DALEY AND GOVERNOR RYAN

Most of you believe you are voting to codify an agreement between Chicago Mayor Richard M. Daley and Illinois Governor George Ryan. If that’s the case, this is not that deal. Their agreement promised “priority status” for a south suburban airport in Peotone and O’Hare expansion. This bill provides for O’Hare expansion, but does not give “priority status” to Peotone.

3. IF THE ISSUE IS RESOLVING THE AIR CAPACITY CRISIS, THIS BILL IS NOT THE MOST EFFECTIVE OR EFFICIENT WAY TO SOLVE THAT PROBLEM

Both sides agree there is an air capacity crisis at O’Hare. The disagreement comes over how best to resolve it. A new south suburban airport in Peotone offers a faster, cheaper solution, a solution with less pollution and more people solving the problem. What do I mean? I mean after O’Hare expansion is completed—if air travel expands as projected—we’ll still be in the same capacity crisis. Why pay more, take longer, increase environmental problems, put the flying public at greater risk, support a temporary solution, and increase the economic and racial divide in Chicago, when there is a better way of resolving the current aviation capacity crisis?

4. A NEW SOUTH SUBURBAN AIRPORT IS A MORE ECONOMICALLY JUST SOLUTION

O’Hare Airport is the economic magnet that provides jobs and economic security for Chicago’s North Side and the northwest suburbs. Midway Airport is the economic magnet that provides jobs and economic security for Chicago’s southwest side. There is no geographic barrier to economic activity at the South Side and south suburbs. O’Hare expansion puts 195,000 new jobs and $19 billion of economic activity in an area that already has 35 percent more poverty than the southwest suburbs. The beneficiary of O’Hare is Elk Grove Village, a city of 35,000 people where over 100,000 people come to work everyday—three jobs for every one resident. It’s failed to make a campaign pledge opposing expansion of O’Hare, Mayor Craig Johnson of Elk Grove Village, is one of the biggest supporters of Peotone, by contrast, some communities in my district have 60 people for every one job. Finally, just so it just so happens that the areas where O’Hare and Midway Airports are located are primarily where whites live. African Americans live primarily south and in the south suburbs, But African American families need economically stable families and communities, who have a future, and can send their children to college. They’ve even asked Mr. Liptinsky to supply me with the names of the other environmental groups he says support the language in this bill—and he’s failed to do so. O’Hare is already the largest polluter in the Chicago area. Doubling the number of flights into the 7,000 acres that houses O’Hare’s trans-pollution levels will explode. A recent study found there was an excess of 800 new incidences of cancer each year—over and above what would be expected based on the state’s average—in eight northeasten communities downwind of O’Hare. Peotone’s 24,000 acre site has a built-in environmental safety zone.

5. Peotone Is Cleaner

Mr. Liptinsky says fifteen environmental groups, including the Sierra Club, support the language in this bill. He’s implying they’ve endorsed it, but he knows better. They’ve even asked Mr. Liptinsky to supply me with the names of the other environmental groups he says support the language in this bill—and he’s failed to do so. O’Hare is already the largest polluter in the Chicago area. Doubling the number of flights into the 7,000 acres that houses O’Hare’s trans-pollution levels will explode. A recent study found there was an excess of 800 new incidences of cancer each year—over and above what would be expected based on the state’s average—in eight northeasten communities downwind of O’Hare. Peotone’s 24,000 acre site has a built-in environmental safety zone.

6. THIS BILL IS PRECEDENT SETTING

For every children’s health. For too long, the Chicago area has been fractured—divided in two by geography, opportunity and race. In Chicago, the North Side and North-west suburbs—is exploding with growth. With O’Hare having replaced the Downtown Loop as Chicago’s economic center, jobs and investment located near the airport have increased dramatically. Today, some North West suburbs, which are primarily white and affluent, have 3 jobs for every person. This Chicago boasts the best schools, the least crime and the lowest property tax rates.

In sharp contrast, the other Chicago—the South Side and south suburbs—is slumping. South Side neighborhoods and south suburbs, which are predominantly Black and poorer, have 60 people for every one job. Jobs and factories have been replaced with unemployment, welfare and crime; local property values have slumped; and local school funding has withered as prison construction has blossomed. In this Chicago, the lack of jobs and investment is disrupting lives, corrupting children and destroying communities.

Look at this Rand McNally easy find map of Chicag0. It includes O’Hare, but doesn’t include much of the south side and none of the south suburbs. It’s as if Chicago ended at the Museum of Science and Industry.

This tale of two cities is a classic and persistent divide for which Chicago, although not unique, has long been infamous. But make no mistake; as big as O’Hare is, O’Hare expansion is for the state’s largest polluter; and safety is a growing concern because O’Hare is surrounded by
residential neighborhoods. Expansion would only compound these problems.

The question we must ask ourselves is: Do we continue to invest in an area that is over-whelmed with traffic and congestion or do we invest in areas that desperately need jobs and economic development?

I brought with me just some of the many books that have been dismaying of Chicago’s persistent disparities between north and south.

Let me read a passage from just one of these, titled “When Work Disappears.” I, by noted University of Chicago and Harvard University scholar William Julius Wilson. Professor Wilson wrote, “Over the last two decades, the economic growth and job creation in the Chicago metropolitan area have been located in the northwest suburbs of Cook and DuPage County (surrounding O’Hare). African-Americans constitute less than 2 percent of the population in these areas.” He concluded, “The metropolitan black poor are becoming increasingly isolated.

Let’s not add to this hefty volume. Let’s not continue to perpetuate and exploit this divide. Let’s relegate these books to the history section and begin our own chapter of balanced growth and justice in Chicago. I urge a “no” vote on this bill.

**Suspension Calendar Arguments To Be Against H.R. 3479**

The Suspension Calendar is a procedure that allows House members to vote on non-controversial bills—like paying tribute to Ted Williams.

Putting H.R. 3479 on the Suspension Calendar, for House traditionalists and institutionals, ought to strike you as violating the integrity of the established, respected, and utilitarian rules set up in the House. It is inconsistent with the institutional traditions of this body. This is an abuse of power! It is not good for a bill that is under suspension of the rules to ever be brought back in the same manner—not to mention a week later. In the entire 106th Congress, no bill defeated on the Suspension Calendar was brought up again. Six Suspension bills have failed in the 107th Congress—all six during the second session. Two of the six were again under suspension of the rules in regular order. Not one of the six was brought up again under suspension of the rules. This is an arrogant use of power! H.R. 3479 should be a “stand-alone” bill that is fully debated before the House—with the possibility of adding amendments to improve the bill.

Even if you are with this bill on substance you should be against it on process. This makes a mockery of the suspension of the rules, which is reserved for non-controversial bills.

This does not have the full support of the Illinois delegation. In the other body, one Illinois senator staunchly opposes it, and one strongly supports it.

This bill is far from being non-controversial. It is controversial for the Illinois delegation, controversial for the community surrounding O’Hare, controversial for the South Side and south suburbs, and controversial throughout the entire state. The Speaker’s participation and the lobbying effort of the last few days underscores the controversy. It does not conceal, but reveals that this is a controversial issue. It does not obscure it, it underscores it. It’s so controversial that it’s on the front page of the daily newspaper in order to generate discussion and debate, and prevent amendments.

Today’s vote is not about the most efficient way to resolve the airport capacity crisis at Chicago’s O’Hare International Airport. It is not about sound policy and regular procedure, but raw politics and brute political power. This should not be on the Suspension Calendar!

**H.R. 3479 Does Not Reflect the Daley/Ryan Agreement**

This bill has been touted as codifying a secret deal struck between Mayor Richard M. Daley and Governor George Ryan—a deal without public knowledge that has seen the actual plans, and where total costs are still unknown. But this bill is not that secret deal.

The Chicago Tribune reported on December 6, 2001, that Mayor Daley and Governor Ryan had reached “a deal that would build new runways at O’Hare Airport.

The deal also calls for construction of a new airport near Peotone Ryan has wanted. Daley, who has raised concerns that Peotone would compete with O’Hare, agreed to work with the governor to seek federal funds for construction of the third airport.”

In a December 7th AP story, Senator Dick Durbin said, “O’Hare and Peotone are not mutually exclusive. It is not an ‘either-or’ proposition. We need both and we will have both. . . . On Wednesday, Ryan and Daley wrapped up a meeting that would modernize O’Hare International Airport, including east-west parallel runways; construct a south suburban airport near Peotone; and implement a package that Peotone would provide a huge economic boost to the south suburbs and help provide travel access to fast-growing areas like Will County.”

The Chicago Tribune, in a December 11, 2001, editorial, said, “Thanks to Daley and Ryan, the gridlock may finally be broken. The price tag for their accord—$6 billion—have been before the public for five months. It answers the nightmare of flight delays at O’Hare and gives the south suburbs their long-awaited airport, Peotone.”

Despite these reports, and what may be said here on the floor today, this bill does not codify a key part of the agreement reached by Mayor Daley and Governor Ryan.

Mr. Speaker, this bill does not make construction of a south suburban airport near Peotone a federal priority.

While it is important to light that corporate chieftains are cooking books, fudging numbers, and misrepresenting the facts to the public, it is critical that this body, the people’s House, not do the same.

**10th Amendment Arguments Against H.R. 3479**

Even if H.R. 3479 becomes law, a federal court is likely to find it unconstitutional under the 10th Amendment, which gives certain powers exclusively to the States including the power to build and alter airports.

The U.S. Supreme Court stated in Printz v. United States (1997) that “dual sovereignty” is incontestable.

It emphasized that the constitutional structural barrier to Congress intruding on a State’s sovereignty could not be avoided by claiming that congressional authority was: (a) pursuant to the Commerce Power—it will create 195,000 jobs and $39 billion in economic activity; (b) the “necessary and proper” clause of the Constitution—there’s an aviation capacity crisis; or (c) that the federal law “preempted” state law under the Supremacy Clause—that Congress can and does solve the impediments by overriding the state.

In short, all of the arguments for codifying the Daley/Ryan deal in federal law are unconstitutional.

It sets a dangerous precedent by allowing the federal government to pre-empt state law requiring approval of airport construction and expansion—approval that requires the blessing of the state legislature.

This bill converts the concept of dual sovereignty into tri-sovereignty by going beyond states’ rights to city rights. It gives Mayor Daley (and the other local officials in Chicago and the rest of the country) a greater say over national aviation policy than the federal government or the fifty governors.

If this bill passes, it will invade congressional interference on other important aviation issues, leading to a potential rash of demands from various localities for priority status over airfields for airport foreign or unreasonable administrative planning, and the environmental review process. Airport expansion issues are bubbling up everywhere—Boeing Logan’s, New York’s LaGuardia, Cleveland’s Hopkins, Atlanta’s Hartsfield, San Francisco’s SFO, and Los Angeles’ LAX. Will your state legislature be next to lose its power to decide local airport matters?

Indeed, H.R. 3479 stands federalism on its head. It makes as much sense as putting your local police department in charge of homeland security.

**Ronald D. Rotunda, University of Illinois College of Law**

Champaign, IL, March 1, 2002.

Re: Proposed Federal legislation granting new powers to the City of Chicago.

H. J. Res. 1463 (106th Congress).

U.S. House of Representatives.

Washington, DC.

Dear Congressman Jackson: As you know, I serve as the Albert E. Jenner Professor of Law at the University of Illinois Law School. I have authored a leading course book on Constitutional Law. In addition, I co-author, along with my colleague John Nowak, the widely-used multi-volume Treatise on Constitutional Law, published by West Publishing Company. In works, I have taught and researched in the area of Constitutional Law since 1974.

I have been asked to give my opinion on the constitutionality of proposed federal legislation entitled “National Aviation Capacity Expansion Act,” identical versions of which have been introduced in both the Senate and the House of Representatives by Senator DURBIN and Congressman LIPINSKI (S. 1786, H.R. 3479), hereafter the “Durbin Lipinski legislation.”

The Durbin-Lipinski legislation seeks to enact Congressional approval of a proposal to construct a major alteration of O’Hare Airport in Chicago. Upon this legislation focuses on Chicago and the State of Illinois, the issues raised by the legislation have serious constitutional implications for all 50 States.

There are two key components of the legislation that have been the subject of my examination.

First Section 3(a)(3) attempts to give the City of Chicago (a political subdivision and instrumentality of the State of Illinois) the legal power and authority to construct a new airport on state land and to use federal funds for the construction of the airport.

Section 3(b)(1) empowers the City of Chicago, as a legal entity, to create a state of state—state federal law—and Chicago’s authority to build airports is essentially an exception to the state’s authority to build airports is essentially an exception to the State law power delegated to the City of Chicago by the Illinois General Assembly.

The requirement that Chicago first obtain a state permit is an integral and essential element of that delegation of state power. The U.S. Constitution prohibits Congress (1) from invading and commandeering the exercise of state power by (2) from changing the allocation of state-created power between the State of Illinois and
its political subdivisions. The U.S. Constitution, in short, prohibits Congress from essentially rewriting state law dealing with the delegation of state power by eliminating the conditions, restrictions, and prohibitions imposed by the Illinois General Assembly on that delegation. These constitutional restrictions on Congress’ power—which prohibit Congress from requiring or authorizing any change in their state laws governing cities—are often termed Tenth Amendment restrictions.

Simulations of Section 3(f) of the proposed Durbin-Lipinski legislation are necessarily conditioned upon the existence of state law authority of Chicago to enter into an agreement with the FAA Administrator (a federal party) to alter O’Hare without first obtaining a permit from the State of Illinois. But Chicago has no state law authority (under the delegation of state power to build and alter airports) to enter into an agreement to engage in a massive alteration of O’Hare without a state permit. Congress cannot confer powers on a political subdivision of a State where the State has expressly limited its delegation of state power to build airports to require a state permit. Congress has no constitutional authority to create powers in an instrumentality of State law (Chicago) when the very authority and power of Chicago to undertake the actions proposed by the Durbin-Lipinski legislation depends on compliance with—and is contrary to—the mandates of the Illinois General Assembly. For the reasons discussed below, it is my opinion that the proposed legislation is unconstitutional.

**SUMMARY OF ANALYSIS**

The following is a summary of my analysis:

1. Under the governing United States Supreme Court decisions of New York v. United States and Printz v. United States, which are discussed below, the proposed legislation is not supported by any enumerated power and thus violates the limitations of the Tenth Amendment of the Constitution. In these decisions, the Supreme Court held that legislation passed by Congress, purportedly relying on its exercise of the Commerce Power (nuclear waste legislation in New York and gun control legislation in Printz) was unconstitutional because the federal laws essentially commanded state law powers of the States as instrumentalities of federal policy.

2. The same constitutional flaws afflict the proposed Durbin-Lipinski legislation. Central to this analysis is the fact that two provisions (sections 3(a)(3) and 3(f)) that purport to empower or authorize Chicago (a political instrumentality of the State of Illinois, and thus a city that has no authority or even legal existence independent of state law) to undertake actions for which Chicago has not received any delegation of authority from the Illinois General Assembly are directly prohibited by Illinois law when the conditions and limitations of the State delegation of authority have not been satisfied.

3. Under Illinois law, Chicago (like any other political subdivision of a State) has no authority to undertake any activity (including constructing airports) without a grant of state authority from the State of Illinois. Under Illinois law, actions taken by political subdivisions of the State (e.g., the power to construct airports) is in reality a power of the State—not inherent in the existence of the political subdivision. For the political subdivision to have the legal authority to exercise that power, it must be provided by the State in accordance with that power by the State to the political subdivision. Further, it is axiomatic that any such delegation of state power to a political subdivision must be in accordance with and is consistent with all of the requirements of the Illinois Aeronautics Act—implying the requirement that Chicago first receive a permit (a certificate of approval) from the State of Illinois. The Illinois General Assembly has expressly provided that municipal construction or alteration of an airport without such a state permit is unlawful.

4. Section 3(a)(3) of the Durbin-Lipinski legislation expressly authorizes Chicago to undertake the “runway design plan” (a multi-billion dollar modification of O’Hare) without regard to the clear delegation limitations and prohibitions imposed by the Illinois General Assembly. Like New York v. United States, Section 3(a)(3) unconstitutionally empowers Chicago to undertake the actions proposed by Congress to alter O’Hare without a state permit. Even though Chicago is a political subdivision of the State of Illinois, it cannot receive any delegation of authority to undertake any activity (including constructing airports) without a state permit. Congress cannot confer powers on a political subdivision of a State (which has no state law authority under the delegation of authority to undertake any activities) to enter into an agreement to engage in a massive alteration of O’Hare without a state permit.

5. In the case of airport construction, the Illinois General Assembly has enacted a statute that delegated to Chicago (and other municipally owned airports) the authority to construct airports explicitly and specifically subject to certain limits and conditions that the General Assembly imposed. One basic requirement of the Illinois Aeronautics Act is that the State of Illinois has no state law authority to build airports unless Chicago obtains State approval, Section 3(a)(3) purports to infuse Chicago (which has no legal existence independent of state law) with a federal power to build airports and to disregard Chicago’s fundamental lack of power under state law to undertake such actions (absent compliance with state law).

6. Like New York v. United States and Printz v. United States the proposed Durbin-Lipinski legislation unconstitutionally attempts to use a federal law (the Federal Aviation Act) as an instrument of federal power. As the Supreme Court held in New York v. United States, the Tenth Amendment—and the structure of “dual sovereignty” it represents under our constitutional structure of federalism—prohibits the federal government from using the Commerce Power to regulate state law instrumentalities as its agents.

7. Similar problems articulated in New York v. Printz and Printz v. United States the proposed Durbin-Lipinski legislation unconstitutionally attempts to use a federal law (the Federal Aviation Act) as an instrument of federal power. As the Supreme Court held in New York v. United States, the proposed Durbin-Lipinski legislation proposes to authorize Chicago (an instrumentality of state power whose authority to construct airports is an exercise of state power expressly limited and conditioned on the limits and prohibitions imposed on that delegation by the Illinois legislature) as a federal instrumentality to impose substantive obligations on the States when the obligations imposed on the State of Illinois by the Illinois General Assembly. The Durbin-Lipinski legislation proposes to authorize Chicago (an instrumentality of state power whose authority to construct airports is an exercise of state power expressly limited and conditioned on the limits and prohibitions imposed on that delegation by the Illinois legislature) as a federal instrumentality to impose substantive obligations on the States when the obligations imposed on the State of Illinois by the Illinois General Assembly.

8. The Durbin-Lipinski legislation is not a law that applies to the State or its political subdivisions. It creates an instrumentality of federal law which is “generally applicable” i.e., that impose obligations on the States and on private parties alike. See e.g., Reno v. Condon, 526 U.S. 141 (2000) (federal rule protecting privacy of drivers’ records upheld because they do not apply solely to the State); South Carolina v. Baker, 485 U.S. 590 (1988) (state benefits not infringing federal non-discriminatory federal income tax); Garcia v. San Antonio Metropolitan Transit Authority, 498 U.S. 56 (1990) legislation and the structure of federalism as its agents.
Power. Normally, this controversy surrounding the proposed expansion of O'Hare Airport would be left to the state political process. Under Illinois law, the cities in this state are given considerable authority to control aviation and, indirectly, the interests of their citizens and creditors. [Citations omitted.] It would be unnecessary and unprofitable to analyze these decisions or quote from the opinions rendered. We think the following principles have been established by them and have become settled doctrines of this court, to be acted upon wherever the municipal corporations in each state are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as are not absolutely reserved to the Federal government.

The Illinois Aeronautics Act expressly limits Chicago’s Power to Build and Alter. The State of Illinois has delegated to Chicago the power to build and alter airports. But that power is expressly limited by the requirement that Chicago must comply with the Illinois Aeronautics Act. And the Illinois Aeronautics Act provides that Chicago has no power to “make any alteration” to an airport unless it first obtains a permit, a “certificate of approval,” from the State of Illinois. Chicago has not obtained this certificate of approval. That fact is what has led to the proposed federal intervention.

The Federalism Problem. As we pointed out in section 3(a)(3) of the proposed federal law overrides the licensing requirements of §47 of the Illinois Aeronautics Act. The Aeronautics Act provides that Chicago has no power to “make any alteration” to an airport unless it first obtains a permit, a “certificate of approval,” from the State of Illinois. Chicago has not obtained this certificate of approval. That fact is what has led to the proposed federal intervention.

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views the take title provision as lying outside Congress’ enumerated powers, or as infringing upon the core of state sovereignty reserved by the Tenth Amendment, the provision’s nexus with the federal question of sovereignty being one of the central issues under our Constitution.

The proposed Durbin-Lipski legislation is much like the law that six justices invalidated in New York. The O’Hare bill provides that, no matter what the State chooses, “it must follow the direction of Congress.” The New York law, however, was aimed at ending rather than of implementing legislation enacted by Congress.”

The New York went on to explain that there are legitimate ways that Congress can impose its will on the states:

This is not to say that Congress lacks the ability to encourage a State to regulate in a particular way, or that Congress may not hold out incentives to the States as a method of influencing a State’s policy choices. Our cases have identified a variety of methods, short of outright coercion, by which Congress may urge a State to adopt a legislative program consistent with federal interests. Use of these methods are of particular relevance here.

The Court then discussed those two alternative methods of the spending power, with Congress attaching conditions to the receipt of federal funds. The proposed Durbin-Lipski legislation rejects the spending power foundation, where the State has the authority to regulate private activity under the Commerce Clause, we have recognized Congress’ power to offer States the choice of regulating that activity according to federal standards or having state law preempted by federal regulations.” The proposed Durbin-Lipski legislation rejects the alternative method of the spending power foundation, where the State has the authority to regulate private activity.

New York v. United States did not question “the authority of Congress to subject state governments to generally applicable laws.” But Congress cannot discriminate against the States and place on them special burdens. It cannot commander or command state officials to take action as its agents.

Pritz v. United States. Following the New York decision, the Court invalidated another federal statute imposing certain administrative duties on local law enforcement officials, in Pritz v. United States. The Brady Act, for a temporary period of time, required local law enforcement officials to use reasonable efforts to determine if certain gun sales were lawful under federal law. The federal law also “emPOWERed” these local officials to grant waivers of the federally prescribed 5-day waiting period for handgun purchases. Note that the proposed Durbin-Lipski legislation will also “emPOWER” the City of Chicago to do that which Illinois does not authorize the city to do.

To make the analogy even more compelling, the chief law enforcement personal suing the City of Chicago said that state law prohibited them from undertaking these federal responsibilities. That, of course, is the exact position in which Chicago finds itself. State law requires that the city not authorize the city to do that which Illinois does not authorize the city to do.

CONCLUSION

The proposed federal law dealing with the O’Hare Airport expansion is most likely unconstitutional because it imposes federal rules on the relationship between a city and the State that created the city. It subjects Illinois to special obligations, and the federal legislation. Instead, Congress is regulating the manner in which States regulate interstate commerce.

There is no escape from the conclusion that the proposed federal law does not regulate the behavior of private parties in interstate commerce. It does not subject the State of Illinois to generally applicable legislation. Instead, Congress is regulating the state’s regulation of interstate commerce. Congress may not conscript the instrumentalities of state government and state power as tools of federal power. The case law is clear that Congress does not have this power.

Sincerely,

RONALD D. ROTUNDA,
The Albert E. Jenner, Jr. Professor of Law.

MEMORANDUM

July 13, 2002

Re: Impact of the Lipinski/Olberstar Bill on Illinois Law and Unchecked Condernation Powers for Chicago to Condemn Land in Other Communities.

To: Senator Peter Fitzgerald; Congressman Tony Pritz.

From: Joe Karaganis.

Sandy Murdock asked me to give you some background and legal analysis of the language in the Lipinski/Olberstar bill (see $3 of the bill) to create a federal law

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H5171

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override (preemption) of the Illinois Aeronautics Act—specifically as that impact relates to expanding Chicago’s power to engage in widespread condemnation and demolition of residential and business properties in other municipalities outside Chicago’s boundaries.

As you know, on July 9, 2002, Judge Hollis Webster of the Dupage County Circuit Court entered a ruling declaring that Chicago had no authority under Illinois law to acquire property in other municipalities without compliance with Article §§ 47, 48, and 38.01 of the Illinois Aeronautics Act (620 ILCS §47) which requires any municipality to first obtain a certificate of approval from the Illinois Department of Transportation before making any alteration or extension of an airport.

Prior to her ruling, Chicago had proposed to acquire land in Bensenville and Elk Grove (over 500 homes and dozens of businesses) and only after such acquisition and demolition, would IDOT have to hold a hearing in which IDOT would hear evidence and consider whether the harm caused by the acquisition and demolition justified IDOT’s approval of the project. Essentially, without such a hearing, a lien in which IDOT would hear evidence and consider whether the harm caused by the acquisition and demolition justified IDOT’s approval of the project would be placed on a lien in which IDOT would hear evidence and consider whether the harm caused by the acquisition and demolition justified IDOT’s approval of the project—thus placing the lien on the property.

Beyond the enormous legal implications of this action, the practical effect of the Lipinski (and Durbin) legislation is to do exactly what Judge Webster said Illinois law prohibits:

1. The Lipinski (and Durbin) legislation will “authorize” Chicago to condemn land in other municipalities without first obtaining a certificate of approval from IDOT. It is important for you to understand that the provisions of the Illinois Aeronautics Act (as well as Durbin’s) will not simply federally destroy key provisions of the Illinois Aeronautics Act (namely §§47, 48, and 38.01). The Lipinski legislation has the effect of destroying the entire framework that Illinois has created under the Illinois Constitution and Illinois Municipal Code for preventing abuses of the state law condemnation power by municipalities. Here is the Illinois constitutional and statutory framework as upheld and followed in almost all of the 50 states (and in at least 49 of the 50 states) any powers delegated to a municipality by the General Assembly under this constitutional provision are narrowly construed and limited to the specific and express delegation of authority in the Act.

2. The Illinois General Assembly has delegated to Chicago the authority to condemn lands in other municipalities for airport purposes that is expressly delegated to Chicago by the laws of the State of Illinois. Section VII of the Illinois Constitution and Article VII, Section 7 of the Illinois Constitution. Under long standing Illinois law (‘Dillon’s rule’), followed in almost all of the 50 states, any powers delegated to a municipality by the General Assembly under this constitutional provision are narrowly construed and limited to the specific and express delegation of authority in the Act. Section VII of the Illinois Constitution and Article VII, Section 7 of the Illinois Constitution. Under long standing Illinois law (‘Dillon’s rule’), followed in almost all of the 50 states, any powers delegated to a municipality by the General Assembly under this constitutional provision are narrowly construed and limited to the specific and express delegation of authority in the Act.

As Senator Fitzgerald has pointed out in his remarks in his recent colloquy with Senator Durbin, the Lipinski (and Durbin) legislation would enable the Mayor to condemn property anywhere in Illinois, including the Illinois General Assembly, and Illinois Constitution and Illinois Municipal Code. As we have said before, such radical action is a blatant violation of the federalism/Tenth Amendment Structure of the federal Constitution. But even if Congress did have such power, should Congress be overriding state constitutions and municipal codes to give federal “authorization” to one municipality (the Mayor of Chicago) to condemn land in one municipality to the limits on that municipality’s delegated powers created by that state’s constitution and statutory code? And even if the Mayor could do all this, would there be any authority to condemn land in any other municipality in that state—in total federal preemption of that state’s constitution and municipal code?

As we have said before, such radical action is a blatant violation of the federalism/Tenth Amendment Structure of the federal Constitution. But even if Congress did have such power, should Congress be overriding state constitutions and municipal codes to give federal “authorization” to one municipality (the Mayor of Chicago) to condemn land in one municipality to the limits on that municipality’s delegated powers created by that state’s constitution and statutory code?

Postscript: There is another aspect of the Lipinski preemption which may be of interest. The Lipinski bill proposes to preempt §§ 47, 48, and 38.01 of the Illinois Aeronautics Act, 620 ILCS 5/47. This section requires Chicago to obtain IDOT approval for any grant of federal funding to be used on airport projects which the Illinois General Assembly has authorized Chicago to construct. This is an important financial oversight tool (created by the Illinois General Assembly as a condition of a grant of authority to build airports) which allows the Illinois General Assembly to engage in financial oversight of airport actions by Chicago. Given the widespread abuses in contract awards that have been documented at O’Hare, the Lipinski (and Durbin) legislation will literally “open the chicken coop” to widespread potential for corruption.

GOOD GOVERNMENT VS. CITY HALL

It’s hard to pinpoint Chicago City Hall’s position on airports because it changes about as often as the wind in the Windy City.

In 1988, City Hall opposed a new airport or O’Hare expansion, saying they were unnecessary. In 1990, City Hall said a new airport was needed and proposed building one on the South Side near Lake Calumet. In 1994, City Hall abandoned the Lake Calumet Airport proposal and once again claimed no new runways were needed.

Just last year, the Mayor held a press conference to reiterate that O’Hare could handle all regional capacity needs until 2012, and that no runways were needed. Then in 2002, the Mayor changed course again and said six new runways were needed at O’Hare immediately. We don’t need it. We need it. What is it?

Through all the flipflopping, one factor has remained consistent. That is City Hall’s desire to protect concentrated patronage at O’Hare. The Chicago Tribune last year won a Pulitzer Prize for writing about what it called in one editorial: “Daley and the Mayor of O’Hare. Sporled, I ask for unanimous consent to enter this editorial into the record.”

The Tribune’s continuing series recounted numerous insider deals that enriched the Mayor’s family, friends and contributors. And these aren’t penny-ante deals. For example, the City handed out $400 million to 30 enmeshed firms in long-term contracts—when the City denied it was working on expansion plans. A longtime mayoral friend was paid $1.8 million to arrange a meeting with a congresswoman. Another rich man $600,000 to lobby for O’Hare, even though he wasn’t a lobbyist. Meanwhile, airport vendors, concessionaires and businesses tied to O’Hare gave the mayor $569,000 in campaign gifts, according to the Tribune.

More recently, Chicago unveiled plans to spend $1.3 billion for terminal improvements at O’Hare. After viewing the plan, U.S. Transportation Secretary Norman Mineta remarked that the massive project included “not one dime for new capacity.” Mineta noted, “O’Hare will have the finest food court in America.”

Now the City says trust us to build six new runways for billions of dollars. The bottom line is Hall’s repeated flip-flopping; its insider deals; and decades of deceit on this important issue have left it with little credibility.

I oppose such a deal. The City has strained its credibility and blocked the doorway to opportunity long enough. The region is paying with lost jobs, high fares, poor service and general corruption.

This airport dispute is about good government. A third airport would protect taxpayers’ interests and improve service, while also resolving our nation’s aviation crisis quicker, cheaper, safer and cleaner.

CONSUMER PROTECTION FARES

The O’Hare expansion plan is an anti-consumer measure.

Two airlines—American and United Airlines—control roughly 90 percent of the O’Hare market. Combined, they have a monopoly.

Due to a lack of competition, fares at Chicago O’Hare continue climbing higher and higher. In the last six years, O’Hare fares were 21 percent above the national average. Today, they are 31 percent...
above the national average. In real terms, Chicagoans today pay more than $1 billion a year in overcharges to use O'Hare.

The Secretary of Transportation in Illinois often asks about his travel from Springfield Illinois to Washington. If he flies from Springfield to O'Hare and then to Washington, it costs him about $400. However, if he flies from Springfield to Hare and then flies to Washington—on the exact same plane—it costs him nearly $1,500, or three times more. That’s because Springfield has competition from those one can choose to fly through Chicago or St. Louis. The poor traveler in Chicago has few options. And he or she pays mightily.

O’Hare’s concession fares have been the subject of analysis in recent years by the General Accounting Office, the U.S. DOT and the State of Illinois, among others. Each study concluded that O’Hare fares are considerably higher than average simply because of a lack of competition.

A lack of competition has also resulted in airlines reducing service or methodically abandoning service to less-profitable markets, which severely hurts the economy of small and mid-sized cities. For example, in the 1990s O’Hare has terminated service to more than a dozen markets, from South Carolina to North Dakota.

Will adding new runways at O’Hare increase competition or lower fares? It’s unlikely.

A few years ago, Congress lifted the restrictions on commuter flights at O’Hare—typically in the name of increasing competition. However, the vast majority of the new slots were snapped up by commuter airlines, a process that has complicated in Chicago with disinterment was accused of snatching limbs and yanking out teeth, supposedly for research, and later of hiding corpses to enhance the value of the body, thus he decided who would pay for the corpse of a deceased family member, and the rest of it is hand digging, what was described as a “mock funeral.”

There were also reports of coffins being accidentally pulverized by machinery.

"That was a royal mess," said Bob Sell, referring to a large, flatter buffer for runways.

The notion of someone going to the cemetery and putting a shovel to my family member’s grave is simply not true. At least two airlines—Spirit and Virgin—have said they would love to fly out of a third airport. Moreover, last summer the CEO of American Airlines, Donald Carty, said American would use Peotone.

This airport debate is about consumer protection. A third airport will increase competition, which will reduce fares, while also resolving our nation’s aviation crisis quicker, safer, cheaper, and cleaner.

STOP O’HARE EXPANSION — LIFT 2,000 SOULS REST IN PEACE

DEAR COLLEAGUE: Two historic cemeteries stand in the path of the runways proposed under a plan to expand O’Hare International Airport. For this and many reasons more, we urge you to oppose H.R. 3479 or any legislation that would essentially force the Federal Aviation Administration to tear down and reconstruct O’Hare. We believe this legislation is constitutionally suspect, deeply divisive, environmentally flawed, wasteful and dangerous.

Many of you might be wondering why this issue should matter to you. Well, the answer is simple. If this atrocity could happen in our backyard, it could happen in yours! Just ask any Chicagoan today about his travels from Springfield Illinois to Washington. If he flies on the exact same plane, it costs him nearly $1,500, or three times more. That’s because Springfield has competition from those one can choose to fly through Chicago or St. Louis. The poor traveler in Chicago has few options. And he or she pays mightily.

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Twice this month, a guard approached a St. John's visitor at the cemetery, questioned the person and asked that they “sign in.”

In the first instance, the visitor said, he was interrupted while praying at a grave site, and after refusing to sign in was met by five Chicago police cars on the access road. The visitor was the pastor of the church that owns St. John’s.

Just before being confronted—on Wednesday, after the judge’s ruling—the minister was supposed to find four O.R. Colan employees nosing around graves at St. John’s, apparently taking down names from headstones, although they had no permission to be there.

“They said they were doing a study,” Sell said. “They’re trespassing on private property.”

Merriam did not return phone calls. City officials were at a loss to explain.

But Roderick Drew, a spokesman for Daley, said Friday that there’s been a “change in policy” that “nobody will have to sign in any more.”

“Anybody who wants access to that cemetery during those posted hours will not be stopped from standing in,” he said, adding that the sign has “turned out to be a much greater inconvenience to the people who access it.”


doubling the traffic in the air space around O’Hare from 900,000 to 1.6 million operations will make flying into O’Hare less safe for the public—hardly noncontroversial for the power—most noncontroversial for the those having to live in the increased pollution.

This bill will increase environmental pollution—O’Hare is already the number one polluter in Illinois—hardly noncontroversial for the the suburban communities surrounding O’Hare would be.

Under the framework of federalism established by the federal constitution, Congress is without power to dictate to the states how the states delegate power—or limit the delegation of that power—in any of those subdivisions. Unless and until Congress decides that the federal government should build airports, airports will continue to be built by the states subject to severance of political, state law preempted airspace, law and by-passing the Illinois General Assembly—where we have the right to vote for an airport. If Congress were to limit the delegation of state law to build airports, it would be ultra vires. If Congress were to limit the delegation of state law to build airports, it would be ultra vires.

Future compliance by the political subdivisions of the sovereign condition imposed by the State legislature as a condition of delegating the state law authority to build airports is an essential element of that the political subdivision would continue to have the option to build an airport non-controversial?

The Chicago Tribune won a Pulitzer Prize for documenting a scheme surrounding the City’s new airport and past O’Hare construction, expansion, vender, service contracts. By passing this bill—and removing the Illinois Aeronautics Law and the Illinois General Assembly—we are in effect sanctioning more “seize” to be found around O’Hare construction, vender, and service contracts. Once when is such potential “seize” become non-controversial for Congress?

I don’t consider the Federal Government running over any future Governor of Illinois, the Illinois General Assembly, the Illinois Aeronautics Law, and the 10th Amendment of the U.S. Constitution—to build an airport—non-controversial.

Finally, we are finding out how controversial this bill is as Judge Holist Webster on July 9, 2002, stopped the City of Chicago from running rough-shod over their northwestern suburbs by trying to take up and tear down homes and businesses to make room for O’Hare expansion. This is just one of many controversial lawsuits that will file in the future if this bill passes and becomes law.

How is tearing down and rebuilding O’Hare—which will be three times as expensive, take three times longer, be less protective of the environment, make the skies less safe, and be a less permanent solution than building an airport in the first place? I say, solve the current air capacity crisis by building Peotone first, faster, cheaper, and safer, then evaluate what needs to be done with O’Hare.

H.R. 3479 falls woefully short of providing an adequate, equitable solution. Please know that I do not oppose fixing the current air capacity crisis surrounding O’Hare. But I have many, many grave concerns about this specific expansion plan. Concerns about environmental impact. About federal preemption and those laws that I have written in the future if this bill passes and becomes law.

Although I oppose this bill for many reasons, I rise today to discuss an important element of this bill—controversiality. The attempt to rebuild and expand O’Hare Airport—Congress is inappropriately violating the Tenth Amendment.

In other contexts—specifically with regard to certain human rights—I believe that the Tenth Amendment serves to place limitations on the federal government with which we are in the U.S. That the States land, individuals, and human rights, I believe new amendments must be added to the Constitution to overcome the limitations of the Tenth Amendment. However, building airports is not a human right. Therefore, in the present context, I agree that that building airports is appropriate within in the purview of the States.

I believe that Congress has, by Congress to strip the authority of Governor Ryan and the Illinois Legislature over the delegation and authorization to Chicago of state power to build airports. Just as the States land, individuals, and human rights, I believe new amendments must be added to the Constitution to overcome these limitations of the Tenth Amendment. However, building airports is not a human right.

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Therefore, in the present context, I agree that building airports is appropriate within in the purview of the States.
It is important to note that Congress can regulate—but not affirmatively command—the states when the state decides to engage in interstate commerce. See Reno v. Condon, 528 U.S. 312 (2000). In Reno, the Supreme Court upheld an act of Congress that restricted the ability of the state to distribute personal drivers' license information. But Reno did not invalidate command Congress to a state to affirmatively undertake an activity desired by Congress. Nor did Reno involve (as proposed here) an injunction by the Congress into the delegation of state power by a state legislature—and the state legislature's express limits on that delegation of state power—to a state political subdivision.

H.R. 3479 would involve a federal law which would prohibit a state from restricting or limiting the exercise of the power by a state's political subdivision. In this case, the proposed federal law would seek to bar the Illinois Legislature from delegating the power to build an airport or runways—and especially the limits and conditions imposed by the State of Illinois on the delegation of that power to Chicago. This law is clear that Congress has no power to intrude upon or interfere with a state's decision as to how to allocate state power.

A state's authority to create, modify, or even eliminate the structure and powers of the state's political subdivisions—whether that be Chicago, Benson or Elmhurst—is a matter left by our system of federalism and our federal Constitution to the exclusive authority of the states. As stated by the Seventh Circuit in Commissioners of Highways v. United States, 563 F.2d 292 (7th Cir. 1981) (quoting Hunter v. City of Pittsburgh, 207 U.S. 161, 178 (1907)):

"Municipalities are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. These powers may inure or withdraw all such powers, may take without compensation such property, hold it itself, vest it in others, or, in other words, may intrude upon or otherwise facilitate the operation of the entire state with another municipality, repeal the charter and destroy the corporation. All of these may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme; the legislative body, in exercising its powers, appearing upon the field to find the State, with no tribunal of review or limitation imposed by the Illinois Legislature on the terms of that state law delegation of authority would likely destroy the delegated or limited exercise of the power by the Illinois Legislature to Chicago—leaving Chicago without delegated state legislative authority to build runways and terminals at O'Hare or Midway. The requirement that Chicago receive a state permit is an express condition of the grant of state authority to serve as a 'Fortress Hub.' An attempt to remove that condition or limitation would mean that there was no continuing valid state delegation of authority to Chicago to build new runways would be ultra vires under state law as being without the required state legislative authority.

Clearing the deck against Peotone. What we do not need at this critical juncture is favoritism or interference from politicians and profit-oriented airlines to stack the deck against and eliminates any equal and unequable tracks. That is my opinion. That is also the opinion of the Congressional Research Service, whose analysis I will provide for the Members.

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Thus, I urge members to reject this unprecedented, unwise, and unconstitutional bill.

TESTIMONY OF CONGRESSMAN JESSE L. JACKSON, JR. BEFORE THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, UNITED STATES CONGRESS

OVERIGHT HEARING ON THE STATE OF COMPETITION IN THE CHICAGO AIR TRAVEL MARKET—JUNE 14, 2000

Mr. Chairman, Ranking Member Conyers, members of the Judiciary Committee, thank you for the opportunity to present my concerns about monopoly power in the airline industry—particularly the apparent agreement by the so-called "Big Seven" major airlines not to compete in each of other's Fortress Hub markets. I know much of the discussion at today's hearing will focus on the recently announced merger between United and US Air and the potential responsive mergers among American and Northwest and between Delta and some other major airline.

That these mergers are anti-competitive and should be prohibited is self-evident. While I believe that potential or actual mergers, I believe it important to focus on today's monopoly environment in the airline industry. It is true that the proposed mergers will make the currently competitive industry more competitive.

But what needs to be emphasized is that today—even if the proposed or potential mergers never reach fruition or are ultimately rejected—the major airlines have already created a monopoly-like system of Fortress Hubs that represents a blatant violation of federal antitrust laws. The estimates are correct, these current monopoly abuses at Fortress Hubs are costing air travelers—especially business travelers—billions of dollars each year.

Therefore my remarks will focus on the antitrust violations of the current Fortress Hub system created and maintained by the major airlines. That the proposed or potential mergers are an unacceptable expansion of monopolization is a given. But this Congress need not wait for the Department of Transportation to implement these enterprise. By prohibiting or potential mergers never reach fruition or are ultimately rejected—the major airlines have already created a monopoly-like system of Fortress Hubs that represents a blatant violation of federal antitrust laws. The estimates are correct, these current monopoly abuses at Fortress Hubs are costing air travelers—especially business travelers—billions of dollars each year.

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Fortress Hub markets by the major airlines constitute "per se" violations of federal antitrust laws. As set forth in the Suburban O'Hare Commission report, a multitude of Supremes has uniformly found horizontal geographic market allocations—such as is present in the geographic allocation of Fortress Hub markets—at "per se" violation of federal antitrust laws.

4. The Fortress Hub Monopoly System Costs Travelers—especially business travelers—billions of dollars per year in excess fares.

The concentration of market power in the hands of one or two airlines in a single geographic area powerfully leads to over-valuation by the dominant carriers to raise prices to higher levels than would be the case if there was significant competition in that market. The General Accounting Office (GAO) has warned us for years that concentration of market power in one or two airlines is led and will lead to significantly higher prices than would otherwise be the case with aggressive competition.

The State of Illinois has produced two studies and the nation has sacrificed the premium paid by travelers at Fortress O'Hare alone is on the order of several hundred million dollars per year—monopoly overcharges on the travel to and from United and American because of the lack of significant competition in the O'Hare market. Extended nationally, these monopoly overcharges could exceed several billion dollars per year being paid by the nation's air travelers. The segment of the traveling public that bears the brunt of these monopoly overcharges is the business traveler. The anecdotal evidence is overwhelming that the time-sensitive business traveler is most vulnerable to overvaluation by the dominant airlines. The construction of new competitive capacity in the South Suburban Chicago Airport illustrates the widespread adverse consequences of this illegal conduct.

By seeking to expand United and American's dominance of the regional Chicago market through a major expansion of O'Hare—the 'World Gateway' airport—based on their ability to control the construction of new competitive capacity in the South Suburban Chicago Airport illustrates the widespread adverse consequences of this illegal conduct.

My point is that the major airlines' passion for protection and expansion of the Fortress Hub monopoly system has consequences far beyond the business traveler. These include:

Severe environmental impacts on communities around the airport. The O'Hare area communities will be subjected to more noise, more air pollution, and more safety hazards because United and American want to maintain their control at O'Hare—where by design they are keeping open new hub-and-spoke competition—rather than at a new regional airport where a major new competitor could enter the region.

Serious economic decline in the communities in this region. By seeking to force travelers to the "underrate" Fortressed Hub at O'Hare, United and American (along with their colleagues at the ATA) are causing serious economic injury to the northern counties of Illinois. As you know, Chairman Hyde and I each represent a part of Chicago and its suburbs. What you might not know is that the hub of business travel in the Northern counties (the O'Hare area) is O'Hare Airport. There are roughly equal numbers of people living in the south suburbs, which I represent, and the northwest suburbs which Chairman Hyde represents. However, during the past ten years, eighty percent of the new jobs created in the Chicago region were in Mr. Hyde's district while my district lost jobs.

3. The Federal Government Has Assisted In the Growth and Expansion of the Fortress Hub Monopoly System

It is obvious that the Department of Justice has broad law enforcement powers to correct many of the abuses of the Fortress Hub system. But there is another aspect of federal power that has actually been used to nurture and expand the Fortress Hub monopoly system: the current federal programs for financial assistance to airports.

The federal government—through either the Airport Improvement Program (AIP) or the Federal Aviation Research Program (FAR)—awards or authorizes the expenditure of billions of dollars for airport development. Yet it is clear that little effort has been made by the Department of Transportation to ensure that these billions of federal taxpayer dollars are used to enhance competition and to deter monopoly. Indeed, there is strong evidence that the Office of Aviation Transportation has acted in collusion with the Fortress Hub major airlines to expand the Fortress Hub monopolies and to discourage new competition.

This neglect of the antitrust implications of federal airport funding policy is vividly illustrated in the Administration's bizarre use of federal funding power in Chicago.

First, the Administration has repeatedly denied planning and development funds for a new regional airport which could support major airline competition to American. The Administration has done so on the basis of the so-called "extra-legal claim that before a new airport could be built, there must be a "national consensus"—a code phrase for Mayor Daley's approval. No such requirement exists in federal law.

Second, the Administration is proceeding forward with Chicago's (and United and American's) design for a so-called "World Gateway" program at O'Hare which is designed to expand and solidify the current hub-and-spoke dominance of United and American in the region. As currently proposed, the DOT is being asked to approve or authorize billions of dollars to build a Fortress Hub expansion designed by United and American to keep out new hub-and-spoke competition. Both of these actions by DOT are inter-related. Starving the new regional airport will ensure that no significant new competition comes into the region while funneling billions in taxpayer dollars into United's and American's expanded Fortress O'Hare will only increase the monopoly problem in Chicago.

Mega-Mergers Will Only Make The Problem Worse

My discussion above makes it clear that we already—independent of the proposed and potential mega-mergers—have enormous problems with anti-trust violations in the airline industry's Fortress Hub system, problems that cost the traveling public billions of dollars, in overcharges each year. These current problems stem from a concentration of market power in the hands of a few. It is obvious that the mega-mergers will only make an already terrible situation even worse.

CONCLUSION AND RECOMMENDATIONS

Based on my own analysis and that of the Suburban O'Hare Commission, I conclude that the evidence is overwhelming that the major airlines have developed a Fortress Hub system that enables individual airlines to dominate geographic markets and charge exorbitant monopoly prices. I further conclude that as part of their program to maintain and expand this illegal system, the major airlines have acted in concert not only with each other's Fortress Hub markets for lucrative business travel markets—with the result that business travelers are overcharged billions of dollars per year. I further conclude that the current government's program to expand the Fortress Hub system constitutes a per se violation of federal antitrust laws. Given these conclusions,
I make the following recommendations to this Committee:

It is obvious that the proposed and potential "mega-mergers" should be stopped. I respectfully ask that the Committee join with me in asking the Department of Justice to initiate an investigation into the collective refusals of eight major airlines to compete against each other in each other's Fort-

Hare markets.

I respectfully ask that the Committee join with me in asking the Department of Justice to initiate a civil action in federal court to break up the Hare Hub, geographic mar- ket allocation by the major airlines and to prohibit the continued violation of the antitrust laws by the major airlines to compete in each other's Hare markets.

I respectfully ask that the Committee join with me in the following recommendation to the Department of Transportation: Until completion of construction of a new Chicago regional airport, the existing capacity of Hare should be reallocated from its cur- rent dominance by United and American into a shared capacity allocation program that reserves a significant share of Hare's capacity (e.g., 40 percent) for new 1 competitive en- trants. And by new competitive entrants, I do not mean affiliates of United and Amer- ican.

STATEMENT OF U.S. REPRESENTATIVE JESSE L. JACKSON, JR. BEFORE THE U.S. HOUSE AVIATION SUBCOMMITTEE—WEDNESDAY, AUGUST 1st, 2001 WASHINGTON DC

I want to commend and thank Members of the Committee on Commerce, Science and Transportation for this opportunity to discuss Chicago's aviation future. As you may know, I ran on this issue in 1995, and I have supported expanding aviation capacity by building a third regional airport in Peotone, Illinois.

Let me begin with a personal anecdote that, I believe, illustrates where we're at. In my first term as a special election and on December 14th, 1995, I intervened in the O'Hare Office. Congressman Lipinski, my good friend from Chicago's South Side, said to me that Hare was the seventh or eighth time I shook hands on the subject of "qualified state law" in the House of Representatives. He told me then: "Young man, I want you to know that I can be very helpful to you during your stay in Congress, but you're never going to get that new airport you spoke about during your campaign." Since then, Congressman Lipinski has been helpful and we've worked together on many important issues. But, he's also made good on his word in the Hare Stalehouse.

It is this rigid stance by many Chicago of-

Hare officials that's allowed a local problem to esca- late into a national crisis. Once the nation's worst choke point—overpriced, overburdened and over-
CRS concludes that the bill “provides for the Administrator’s review of the Peotone Airport project (and) provides for the expansion of O’Hare. The provisions appear to opt out of the APA, by way of the ‘cheaper, quicker, safer, and more permanent plan’ not drafted in parallel language, and provide different directions to the Administrator.”

CONGRESSIONAL RESEARCH SERVICE, February 6, 2002.

MEMORANDUM
Subject: Examination of Certain Provisions of H.R. 3479: National Aviation Capacity Expansion Act
To: Hon. Jesse L. Jackson, Jr., Attention: George Seymour
From: Douglas Reid Weimer, Legislative Attorney, American Law Division

This memorandum summarizes various telephone discussions between George Seymour and Rick Bryant of your staff, and Douglas Weimer of the American Law Division—

ANALYSIS

The chief purpose of the bill is to expand aviation capacity in the Chicago area, through a variety of means. Section 3 of the bill deals with airport redesign and other development projects of similar kind and character. The provisions appear to opt out of the APA in a peculiar manner and that similar legislative language is used to implement the various projects. The news articles that you have cited concerning the bill tend to support this interpretation and the bill language of two particular subsections—(e) and (f)—of Section 3, which are considered below.

(e) SOUTH SUBURBAN AIRPORT FEDERAL FUNDING.—The Administrator shall give priority consideration to a letter of intent application submitted by the State of Illinois or a political subdivision thereof for the construction of the south suburban airport. The Administrator shall consider the letter not later than 90 days after the Administrator issues final approval of the airport layout plan for the south suburban airport. If enacted, this bill language would relate to the Federal Aviation Administration to be constructed at Peotone. The “Administrator” refers to the Administrator of the Federal Aviation Administration. The Administrator is directed to give priority consideration to a letter of intent application (‘application’) submitted by Illinois, or a political subdivision for the construction of the “south suburban airport,” the proposed airport at Peotone.

The Administrator is given specific directives concerning the application and for the time and place of publication. Concern has been expressed that the Administrator is given certain duties and directions, but that there is no specific language to ensure the Administrator will comply with the congressional mandate, if the Administrator does not choose to follow the Congressional direction.

July 23, 2002
(3) The Administrator is authorized and directed to acquire in the name of the United States all land, easements, rights-of-way, rights of entry, or other interests in land or property for the runway reconfiguration plan under this section, subject to such terms and conditions as the Administrator deems necessary to protect the interests of the United States.

(4) Chicago shall be deemed the owner and operator of each element of the runway reconfiguration plan under section 40117 and chapter 471 of title 49, United States Code, notwithstanding any other provision of this section or any of the provisions in such title referred to in that section.

The Administrator is directed to construct the O'Hare runway plan as a Federal project if certain conditions are met: (1) construction of the runway design plan has not begun and is not expected to begin by December 1, 2004; (2) Chicago agrees to the runway plan as a Federal project without cost to the United States, with certain exceptions; (3) Chicago enters into an agreement to protect Federal Government interests concerning construction, operation, and maintenance of the runway project; (4) the agreement provides that Chicago take over the ownership and operation control of each element of the runway design plan upon its completion; (5) Chicago, independently, provides, without cost, the land, easements, right-of-ways, rights of entry, and other interests in land/property as are required to allow the construction of the runway project as a Federal project and to protect the interests of the Federal Government in its construction, operation, maintenance, and use; and (6) the Administrator is satisfied that the total costs will be derived from the usual sources used for airport development projects of similar kind and scope.

Paragraph 2 provides that the Administrator ‘‘may’’ make an agreement with Chicago, whereby Chicago will provide the work described above in paragraph (1) for the benefit of the Administrator. It should be noted that the use of the word ‘‘may’’ would appear to make this language optional, and would not necessarily require the Administrator to enter into such an agreement with Chicago.

Paragraph 3 authorizes and directs the Administrator to acquire in the name of the United States all property interests needed for the redesign plan, subject to the terms and conditions that the Administrator feels are necessary to protect the interests of the United States.

Paragraph 4 provides that Chicago will be deemed to be the owner and operator of each element of the runway reconfiguration plan, notwithstanding any other provision of this section.

Discussion has focused on the different legislative language used in subsection (e) and (f). Subsection (f) specifically states that the Administrator ‘‘shall construct’’ the runway redesign plan; however, there is no parallel language in subsection (e) requiring the construction of the south suburban airport in subsection (e). The provisions of the subsection appear to be independent of each other and provide very different directions to the Administrator. Hence, it may be interpreted that subsection (f) would authorize runway construction (if certain conditions are met), and subsection (e) is primarily with regard to the consideration of an airport construction plan.

It is possible that the Administrator’s actions in implementing the redesign plan, if enacted, may be subject to judicial review. Judicial review of agency action/inaction provides control over administrative actions. Judicial review of agency action/inaction may provide appropriate relief for a party who is injured by the agency’s action/inaction. The Administrative Procedure Act (‘‘APA’’) provides general guidelines for determining the proper court in which to seek relief. Some statutes provide for specific judicial review for agency actions. Subsection (h) of the bill provides for judicial review of an order issued by the Administrator. The bill provides that the bill may be reviewed as provided in the provisions contained at 49 U.S.C. §46110. If the Administrator does not issue an order and judicial review is not possible under this provision, then it is possible that ‘‘nonstatutory review’’ may occur. When Congress has not created a special statutory process, the injured party may seek ‘‘nonstatutory review.’’ This review is based upon some statutory grant of subject matter jurisdiction. Therefore, a party who wants to invoke nonstatutory review will look to the general grants of original jurisdiction that apply to the federal courts. It is possible that an available basis for jurisdiction in this case—if the Administrator does not carry out his/her Congressional mandate—may be under the general federal question jurisdiction statute which authorizes the federal district courts to entertain any case ‘‘arising under’’ the Constitution or the laws of the United States. An action for review of an action is usually the most direct way to obtain nonstatutory review of an agency action. Hence, it is possible that an action could be brought under this statute to compel the Administrator to comply with the provisions contained in the bill.

CONCLUSION

This memo has summarized staff discussion concerning certain provisions contained in the proposed National Aviation Capacity Expansion Act. Subsection (e) provides for the Administrator’s review of the Peotone Airport project as a Federal project for the expansion of O’Hare. The provisions appear to operate independently of each other, are not drafted in parallel language, and provide different directions to the Administrator. The Administrator is given certain responsibilities under both subsections. Congress possesses plenary oversight authority over federally funded projects. This would provide oversight Administrator is given certain responsibilities under both subsections. Congress possesses plenary oversight authority over federal projects. This would provide oversight over the Administrator and his/her actions. A judicial proceeding may be possible against the Administrator and his/her actions to fulfill the statutory responsibilities provided by the bill.

Sincerely,

H. J. Jackson, Jr.,
Member of Congress.
Under the framework of federalism established by the federal constitution, Congress is without power to dictate to the states how they shall delegate power—or limit the delegation of power to the political subdivisions. Unless and until Congress decides that the federal government should build airports, ports, and other public works, it will have to work with the states, their political subdivisions, and other agents of state power as an exercise of state law and state power. Further compliance by the political subdivisions with the federal government's requirements is imposed by the States as a condition of delegating the state power. If Congress strips away a key element of state law delegation, it is highly unlikely that the political subdivisions would continue to have the power to build airports under state law. The political subdivision's attempts to build runways would likely be ultra vires (without authority) under state law.

Under the Tenth Amendment and the framework of federalism built into the Constitution, Congress cannot command the States to undertake an activity. Nor can Congress intrude upon or dictate to the states, the prerogatives of the states to allocate and delegate state power—either directly by the state or by delegation of state authority to its political subdivisions.

As stated by the United States Supreme Court in Printz v. United States, 521 U.S. 898, 918 (1997) (emphasis added).

It is incontestable that the Constitution established a system of “dual sovereignty.”


Although the States surrendered many of their powers to the new Federal Government, they retained “a residuary and inviolable sovereignty.” The Federalist No. 39, at 245 (J. Madison). This is reflected throughout the Constitution’s text.

Residual state sovereignty was also implicit, of course, in the Constitution’s conferral upon Congress of not all governmental powers, but only discrete, enumerated ones. Art. I, § 8, which implication was rendered express by the Tenth Amendment’s assertion that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

At 918-919.

This separation of the two spheres is one of the Constitution’s structural protections of liberty. “Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent an accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.”


The Supreme Court in Printz went on to emphasize that this constitutional structural barrier to the Congress intruding on the States could not be avoided by claiming either that the congressional authority was pursuant to the Commerce Power and the “necessary and proper clause” of the Constitution; or that the federal law was “preempted” state law under the Supremacy Clause. 521 U.S. at 923-924.

It is important to note that Congress can regulate—but not affirmatively command—the states when the state decides to engage in interstate commerce. See Reno v. Condon, 528 U.S. 141, 161 (2000). There, the Court upheld an act of Congress that restricted the ability of the state to distribute personal drivers’ license information. But Reno did not involve Congress requiring of Congress to a state to affirmatively undertake an activity desired by Congress. Nor did Reno involve (as proposed here) an intrusion by the Federal Government into the delegation of state power by a state legislature—and the state legislature’s express limits on that delegation of state power—to a state political subdivision.

H.R. 2107 would involve a federal law which would prohibit a state from restricting or limiting the delegated exercise of state power by a political subdivision. In this case, the proposed federal law would seek to bar the Illinois Legislature from deciding the allocation of the state’s power to build an airport or runways—and especially the limits and conditions imposed by the State of Illinois on the delegation of that power to Chicago. The law is clear that Congress has no power to interfere with a state’s decision as to how to allocate state power.

A state’s sovereignty to create, modify, or even eliminate the structure and powers of the state’s political subdivisions—whether that subdivision be Chicago, Bensenville, or some other political subdivision of the state, violates federalism and our federal Constitution to the exclusive authority of the states. As stated by the Seventh Circuit in Commissioners of Highways v. United States, 653 F.2d 292 (7th Cir. 1981) (quoting Hunter v. City of Pittsburgh, 207 U.S. 161, 178 (1907)): Municipal corporations are political subdivisions of the State, created as convenience agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State.... The State, therefore, at its pleasure may take or withdraw such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, or even eliminate the structure and powers of the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do it by way of exercise of the constitutional power to create, modify, or even eliminate the structure and powers of the state’s political subdivisions.

COMMISSIONERS OF HIGHWAYS, 653 F.2D AT 292.

Chicago has acknowledged that Illinois has the delegations and powers and sends service and operate airports to its political subdivisions by express statutory delegation. 65 ILCs §11-102-1, 11-102-2 and 11-102-5. These state law delegations of state authority and runways are subject to the Illinois Aeronautics Act requirements—including the requirement that the State approve any alterations or additions to the airfields or runways. Any attempt by Congress to remove a condition or limitation imposed by the Illinois Legislature on the terms of that state law delegation of state authority and an attempt by Congress to remove a condition or limitation would mean that there was no continuing valid delegation of authority to Chicago to build airports. Chicago’s attempts to build new runways would be ultra vires under state law as being without the required state legislative authority.

Very truly yours,

JESSI L. JACKSON, JR.,
Member of Congress.

H. RES. 2107


To: Hon. ANDREW H. CARD.
Chief of Staff to the President.

The White House,

To: Hon. HENRY HYDE. Member of Congress.

The White House,

Ladies and Gentlemen,

The purpose of this letter is to schedule a meeting with you and Secretary Mineta to discuss the situation. Enclosed is a detailed memorandum summarizing our views on the need to build a new regional airport now and, for the same reasons, we believe that construction of one or more new runways at O’Hare would be detrimental to the public health, economy and environment of the region.

As set forth in that memorandum:

1. The new runways can be built faster at a new airport as opposed to O’Hare or Midway.
2. More new runway capacity can be built at a new site than at O’Hare or Midway.
3. The new runways can be built at far less cost at a new airport than at O’Hare or Midway.
4. Construction of the new capacity at a new airport will have the most positive impact on the environment and public health than would expansion of either Midway or O’Hare.
5. Construction of the new capacity at a new airport offers the best opportunity to bring major new competition into the region.
6. The selected alternative cannot be expected to enable O’Hare and construction of a new airport.

New runways at O’Hare would doom the economic feasibility of the new airport, guarantee its characterization as a “white elephant” and instead reinforce the monopoly dominated United and American Airlines in the Chicago market.

The memorandum contains a series of related questions and a detailed list of suggestions that would ensure the rapid development of major new runway capacity in the Chicago region, open the region to major new competition, and achieve the objectives in a low-cost, environmentally sound manner.

I would appreciate the opportunity to discuss these matters with you and Secretary Mineta at your earliest convenience.

Very truly yours,

HENRY HYDE.

JESSE JACKSON, JR.
Re Key Points Why Chicago Region Needs A New Airport—And Why New O'Hare Runways Are Contrary To The Region and Nation’s Aviation Best Interests

To: William D. Deluca

From: Congressman Henry Hyde, Congress-
man Jesse Jackson, Jr.

January 31, 2001

This memorandum summarizes progress in the debate over new airport capacity expansion in the Chicago region.

For the reasons set forth herein, we are convinced that building a new regional airport now and, for the same reasons, believe that construction of one or more new runways at O’Hare would be harmful to the public health, economy and environment of the region.

The debate can best be summarized in a simple framework.

Does the Region need new runway capacity now? Unlike The City of Chicago—which has for more than a decade privately known that the region needs new runway capacity while publicly proclaiming that new runway capacity is not needed—bipartisan leaders like Jesse Jackson, Jr. and myself have openly acknowledged the need for, and urged the construction of, new runway capacity in the region.

The need for new runway capacity is not a distant phenomenon; we should have had new runway capacity built several years ago. While 20 year growth projections of air travel demand show that the harm caused by this failure is only now beginning, the available information suggests that the region has already suffered serious economic harm for several years because of our past failure to build new runways. If the answer to the runway question is yes—and we believe it is—the next question is where to build the new runway capacity and especially, the issues, facts and impacts to the pros and cons of each alternative.

The alternatives for new runway capacity in the region are straightforward: (1) build new runways at a new airport, (2) build new runways at O’Hare, (3) build new runways at Midway, or (4) a combination of all of the above. Given the facts and alternatives, the following facts are clear:

1. The new runways can be built faster at a new airport as opposed to O’Hare or Midway. No matter how efficiently new runways are constructed (as well as paper and regulatory planning) the new runways can be built faster at a “greenfield” site than they can at either O’Hare or Midway.

2. More new runway capacity can be built at a new site than at O’Hare or Midway. Given the space limitations of O’Hare and Midway, it is obvious that more new runways (and therefore more new runway capacity) can be built at a new larger greenfield site than at O’Hare and Midway. We acknowledge that additional space can be acquired at Midway or O’Hare by destroying densely populated surrounding residential communities—but only at tremendous economic and environmental cost.

3. The new runways can be built at far less cost at a new airport than at O’Hare or Midway. Given the significant public taxpayer resources that must be used for any of the alternatives—and the relative scarcity of public funds—the Bush Administration should compare the costs of building new runway capacity (and associated terminal and access capacity) at a new airport vs. building the new capacity at O’Hare or Midway.

4. Construction of the new capacity at a new airport will have far less impact on the region than at O’Hare or Midway. The new runways would not encroach on already congested runways and would not require expansion of either Midway or O’Hare. Midway, and later O’Hare, were sited and built at a time when concerns over environment and public health were not nearly as great as they are today. As a result, both existing airports have virtually no “environmental buffer” between the airports and the densely populated communities surrounding the airports. In contrast, the site of the new South Suburban Airport has, by design, a large environmental buffer which will ameliorate most, if not all, environmental harm at all public health risk from the site. Indeed, prudence would suggest an even larger environmental buffer around the South Suburban site than is now contemplated. We can create the same or similar environmental buffer around O’Hare or Midway—but only at a cost of ten of billions of dollars and enormous social and economic disruption.

5. Construction of the new capacity at a new airport offers the best opportunity to bring major new competition into the region. When comparing costs and benefits of alternatives, the Bush Administration must address the existing problem of monopoly (or duopoly) at O’Hare and Midway, and the economic penalty such high fares are inflicting on the economic and business communities in our region. Does the lack of significant additional competition from United and American to charge our region’s business travelers higher fares than they could if there was significant additional competition in the region—what is the economic cost to the region—in both higher fares and lost business opportunities—of the existing “Fortress O’Hare” business fare dominance of United and American?

The State of Illinois has stated that existing “Fortress O’Hare” business fare dominance of United and American costs the region many hundreds of millions of dollars per year. Bringing in one or more significant competitors to the region would bring enormous economic benefits in increased competition and reduced fares.

And the only alternative that has the room to bring in significant new competition is the use of the site of Chicago’s proposed World Gateway program—a site in the suburbs of Chicago that could be developed in a new airport.

The selected alternative cannot be expansion at O’Hare and construction of a new airport. The dominant O’Hare airlines are pushing their suggestion: add another runway at O’Hare and allow a “point-to-point” small airport to be built at the South Suburban Site.

That is not an acceptable alternative for several reasons:

First, it assumes massive growth at O’Hare, as it is based on the assumption that all transfer traffic growth will go to O’Hare. If that assumption is not made, airlines will not choose to use O’Hare and will not accommodate the additional flights that O’Hare will not accommodate the additional flights that O’Hare will not accommodate the additional flights that O’Hare will not accommodate the additional flights that O’Hare will not accommodate the additional flights that O’Hare will not accommodate the additional flights that O’Hare will not accommodate the additional flights that O’Hare will not accommodate the additional flights that O’Hare will not accommodate the additional flights that O’Hare will not accommodate the additional flights that O’Hare will

Second, this alternative destroys the economic justification for the new airport. With massive new capacity at O’Hare, there would be increased competition, not decreased competition.

Third, assuming the new airport is built anyway, as a “compromise”, this alternative guarantees that the new airport will be a “white elephant”—much as the Mid-America airport near St. Louis is today because of the Fortwest Hub practices of the major airlines. New O’Hare—like Dulles International as long as Washington National was allowed to grow. With limits on the growth of National finally recognized, Dulles is now the thriving East Coast Hub for United.

RELATD QUESTIONS

If the Region needs new runways, what is the sense of spending over several billion dollars—much of it public money—to build the new runways at O’Hare. If we decide that new runway capacity should be built elsewhere? If the decision is to build the new runways at O’Hare, then much of the 5 billion dollar terminal and roadway expansion proposed for O’Hare may be justifi-
ed.

But if the decision is that the new runway capacity should be built elsewhere, then the proposed multi-billion dollar O’Hare expansion makes no sense. We will be spending billions of dollars in taxpayer funds for a massive project that standing alone—without new runways—will not add any new capacity to our region.

The airlines know this fact and that is why they support their surrogates—the House Transportation Committee and the Chicagoland Chamber—are pushing for new runways.

If the Region needs new runways and we wish to explore the alternatives beyond O’Hare, the Bush Administration must acknowledge the need for, and urge the construction of, new runway capacity in the region. The future of our region is at stake.

Based on information available, we believe that the cost of the new O’Hare expansion would exceed ten billion dollars. These costs should be compared with the costs of a new airport.

Are the delay and congestion problems ex-
perienced at O’Hare self-inflicted? Sadly, while Chicago and the major O’Hare airlines advocated lifting of the “slot” restrictions at O’Hare and other major “slot” controlled airports, the Clinton Administration and others ignored the warnings of Congressman Jackson, and myself that the airport could not accommodate the additional flights without a chaotic increase in delays and congestion. Indeed, the chaos we predicted has come true and we now have a “Camp O’Hare” where air traffic is managed by cancel-
cation rather than by adequate service.

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perienced at O’Hare self-inflicted? Sadly, while Chicago and the major O’Hare airlines advocated lifting of the “slot” restrictions at O’Hare and other major “slot” controlled airports, the Clinton Administration and others ignored the warnings of Congressman Jackson, and myself that the airport could not accommodate the additional flights without a chaotic increase in delays and congestion. Indeed, the chaos we predicted has come true and we now have a “Camp O’Hare” where air traffic is managed by cancel-
cation rather than by adequate service.

Just because our warnings were ig-
nored, that it can handle congestion and delay can immediately be reduced to accept-
able levels by reducing the scheduled air traffic to the level that can be easily accom-
mmodated by O’Hare with no unacceptable delays. The delay chaos was self-in-
flicted by ignoring the flashing warnings put
out by the FAA and other experts. The solution can be easily administered by the FAA recognizing—as it has at LaGuardia—that limits must be placed on uncontrolled airline desired flight levels.

Should the short-term “fix” to the delays and congestion include “capacity enhancement” through air traffic control devices? Absent the FAA having incentivized and permitted a variety of operational devices designed to allow increased levels of departures and arrivals in a set period of time, the FAA knows “incremental capacity enhancement”—focus on putting moving aircraft closer together in time and space—to squeeze more operations into available runway slots. Unfortunately, this squeezing is done in low visibility, bad weather conditions because these are the conditions where FAA wants to increase capacity.

While the air traffic controllers remain mute on the safety concerns raised by these procedures, the pilots surely have not. We have seen the volume of traffic at O'Hare pick up and exceed anyone's expectations, so much so, that on occasion mid-air were reported. O'Hare is at maximum capacity, if not over capacity. It is my opinion that it is only a matter of time until two airliners collide making disastrous headlines.

Captain John Teering, Senior AA Airline Captain with 31 years experience flying out of O'Hare January 1969 letter to Governor Ryan

Paul McCarthy, ALPA's [Airline Pilots Association] executive air safety chairman, condemned the incremental capacity enhancements as threats to safety. Each one puts a small additional burden on pilots and controllers, he said. Taken together, they reduce—particularly at multiple runway airports, to the point that they invite a midair collision, a runway incursion or a controlled flight into terrain.

Aviation Week, September 18, 2000 at p. 51 (emphasis added)

It is clear that FAA's constant attempts to squeeze more and more capacity out of the existing overloaded runways—through such "enhancement" procedures as the recently announced "Compressed Arrival Procedures" and other ATO changes—is incrementally reducing the maximum capacity in so cherishable "incremental capacity enhancement" procedures to safety their to them.

The answer to growth is new runways at a new airport—not jamming more aircraft closer and closer together at O'Hare. The answer to delays and congestion with existing overloaded runways is to reduce traffic levels to the capacity of the runways without the need to jam aircraft closer and closer together.

The current level of operations at O'Hare (and Midway) generate levels of toxic air pollutants that expose downwind residential communities to levels of these pollutants that are several times greater than USEPA cancer risk guidelines! Though our residents have complained for years about toxic air pollution from O'Hare, none of the state and federal agencies would pay attention.

Recently however, Park Ridge funded a study by two nationally known expert firms to determine the impact of toxic air pollution emissions from those facilities. The study was funded to determine the impact of toxic air pollution emissions on health to conduct a preliminary study of the risks to surrounding residential communities. Recently however, Park Ridge funded a study by two nationally known expert firms to determine the impact of toxic air pollution emissions from those facilities. The study was funded to determine the impact of toxic air pollution emissions on health to conduct a preliminary study of the risks to surrounding residential communities. That and does not mean simply listing what comes out of the air. The facilities are also entitled to know how much toxic pollution comes out of O'Hare, where the toxic pollution from O'Hare goes, what are the consequences when it reaches downwind residential communities, and what are the health risks posed by those O'Hare pollutants at the concentrations in those downwind communities?

Should not something be done to control and reduce the already unacceptable levels of toxic air pollution coming into downwind residential communities from O'Hare's current operations?

Should not the relative toxic pollution risks to surrounding residential communities be created by the alternatives of a new airport, expanding O'Hare, or expanding Midway be added to the analysis and comparison of alternative operations?

What about the monopoly problem at Fort- reSS O'Hare and what should be done about it? We have already alluded to the factor of monopoly in creation in choosing alternatives for new runway capacity. But the monopoly problem at O'Hare will be relevant even if no new airport is built. The entire design of the proposed World Gateway Program is premised on a terminal concept that solidifies and expands the current markets of dominance of United and American at O'Hare and in the Chicago air travel market.

What can the Bush Administration do if indeed the monopoly or fare problem at O'Hare or monopoly dominance is costing Chicago area business travelers hundreds of millions of dollars per year? When these questions were raised in the Suburban O'Hare Commission report, If You Build It We Won't Come: The Collective Re- fusal Of The Major Airlines To Compete In Chicago, the airlines responded with smoke and mirrors. First they produced glossy charts showing that more than 70 airlines serve O'Hare. What they neglected to show was that United and American control over 80% of those flights with the remaining 60 plus airlines operating only a small percentage. Similarly, the airlines and Chicago talked about the competitive low fares charged to passengers. What they emphasized, however, were the new services in advance. The major business travel organizations representing business travel managers report that business travelers predominantly use one airline and that they have to respond on short notice to business needs. An examination of fares for unrestricted business travel from Chicago to major business markets shows that their routes are dominated by United and American and that they charge extremely high "lock-step" fares to business travelers to these business markets.

Finally, the airlines and Chicago argued that O'Hare is “competitive” with fares charged to business travelers in other For- tress O'Hare markets. Indeed, a comparison of fares to business travelers shows that a passenger from a "spoke" city—e.g., Springfield, Illinois—pays a lower fare for a trip to O'Hare and then to Washington D.C. than a Chicago based traveler who gets on the same plane to Washington. Why? Because the Springfield traveler has the choice of flying one of the other three hub carriers while the Chicago based business traveler is locked into Chicago.

Where are the antitrust enforcers to break up the monopoly power of these carriers? Equally important, in addition to antitrust enforcement powers, the federal government has enormous leverage to break up the cartels through the funding approval process of the Airport Improvement Program (AIP) and Passenger Facility Charge (PFC) programs. Yet billions of federal taxpayer funds go to United and American without so much as a raised eyebrow.

What about Noise? Shouldn't we be happy to exchange some soundproofing for new runways at O'Hare? The City of Chicago has a residential soundproofing program which was created on the advice of its public relations consultants to create a spirit of “compromise” that would lead to acceptance of new runways at O'Hare.

But here are some facts that are little publicized:

1. Most of our residents feel that soundproofing—while improving their interior quality of life—essentially assumes that we will give up living-out-of-doors or with our windows open in nice weather.

2. Whereas many major airport cities with residential soundproofing programs are not seeing same level of noise reduction, Chicago's DNL (decibel day-night 24-hour average) or greater, Chicago and the airlines are only committing funds to the 70 DNL level. As much as O'Hare is only allowed to exceed 10 percent of the homes that Chicago itself acknowledges to be severely impacted.

3. Chicago came into our communities asking to put in noise meters as our "real world" data as to the levels of noise. Yet, despite promises to share the data, Chicago refuses to share the data with our communities.

4. Instead of an atmosphere of trust, these tactics by Chicago have created additional animosity as neighbors on one side of an alley or street get soundproofing while their neighbors across that alley or street get no soundproofing. Indeed, Chicago's residential soundproofing program is limited in scope and ignores thousands of adversely impacted homes—has caused even more animosity in our communities.

In short, residential soundproofing is not the panacea that Chicago and many in the downtown media perceive it to be. Moreover, it does nothing to address the toxic air pollution and other safety related concerns of our residents.

Can we have more than one “hub” airport operating in the same city? Faced with the politically inevitable “hub” airport, the airlines for the last two years have been arguing for an expansion of O'Hare (instead of a major new airport) with the argument that another runway is needed for more than one hub airport. Based on that premise, United and American say that the sole hub airport in metro Chicago should be O'Hare. This is simply not correct.

1. There are several domestic and international cities with more than one hubbing airport. Competing airlines create hubbing operations wherever airport space is available. Thus, there are multiple hubbing airports in metro New York (JFK and Newark), Washington D.C., London, and Paris.

2. The Lake Calumet Airport proposed by Mayor Daley would have been a second hub airport. O'Hare is simply no reason—given the size of the business and other travel origin-destination market in metro Chicago—that a
new hub competitor could not establish a major presence at a new south suburban airport.

How do we fund new airport construction? The answer is to collect PFCs and the Illinois General Assembly and the Mayor Daley had for the proposed Calumet Airport. Daley proposed using a mix of PFC and AIP funds to induce carriers to use the new airport. The entire justification for his urging the passage of PFC legislation was to collect PFCs at O’Hare and use them for the new airport. But let us not forget the American claim that the PFC revenues are “their” money. On the contrary, the PFC funds are federal taxpayer funds no different in their nature as taxpayer money than the similar “Air Fares” charged to air travelers. These funds don’t belong to the airlines. They are federal funds collected and disbursed through a joint program administered by the FAA and the airport operator.

Nor are these federal taxpayer funds “Chicago’s” money. Chicago is simply a tax collection agent for the federal government.

But how do we get the funds from O’Hare to the new airport? We do it the same way Mayor Daley is transferring funds from O’Hare, and the same way he proposed getting federal funds collected at O’Hare to the Lake Calumet project: a regional airport authority.

We have respectfully posed some questions and posited some answers for the President’s and your consideration. We believe that a thorough and candid examination and discussion of these questions leads to only one conclusion: we should build a new airport and we should not expand O’Hare.

But more than raising questions, we also have some suggestions for addressing the region’s air transportation needs.

1. Let’s stop the paper shuffling and build the new airport. The program we outline in this letter is virtually identical to the proposal drafted by Mayor Daley for construction of the Lake Calumet Airport. We believe that a cooperative fasttrack planning and construction program for a new airport could see the new airport open for service in 3-5 years.

2. The money, resources and legal authority to build the new airport can be assembled by passage of a regional airport authority bill similar to the airport authority bill drafted in 1992 by Mayor Daley for the Lake Calumet project. So the Illinois General Assembly is a necessary partner in any effort. Our equal claim, even more prominent, is the dominant role of the federal Administration in controlling the use of AIP and PFC funds and in assertive enforcement of federal anti-trust laws. We urge you to work together to create a federal-state partnership to get the job done.

3. Give the O’Hare suburbs guaranteed protection against further expansion of O’Hare. Such guarantees are needed not only for our protection but for the viability of the new regional airport.

4. Provide soundproofing for all of the noise impacted residences around O’Hare and Midway. The new airport addresses future needs; it does not correct existing problems caused by existing levels of traffic.

5. Institute a regulatory program to control and reduce air toxic emissions from O’Hare.

6. Fix the short-term delay and congestion at O’Hare by returning to a recognition of the early Hare concept of one runway serving both Chicago Midway and O’Hare. The delay and congestion, now experienced at O’Hare is a self-inflicted wound brought about by airline attempts to stuff too many planes into an airport. The delays and congestion will be dramatically reduced immediately by reducing scheduled traffic to a level consistent with the exiting capacity of the airport.

7. Demand a break-up and reform of the Fortess Hub anti-competitive phenomenon: both at O’Hare and at other Fortress Hubs around the nation. This can be done with either aggressive antitrust enforcement or with proper oversight of the discussion and implementation of the Barnett proposals.

8. The entire World Gateway Program should be examined in light of the questions raised here and should be modified or abandoned depending on the answers provided to these questions.

We would appreciate the opportunity to discuss these questions with you and Secretary Mineta at your convenience.

CHICAGO URBAN LEAGUE,

Recognizer, Rayburn House Office Building,
Washington, DC.

DEAR REPRESENATIVE LIPINSKI: I am writing to express my concern about your omission of any special provision for a south suburban airport near Peotone from the O’Hare expansion legislation that you are introducing for consideration in the House of Representatives.

The expansion agreement reached last December by Illinois Governor George Ryan and Chicago Mayor Richard Daley was the product of a long and difficult process of political negotiation. To reach this historic and comprehensive agreement, it was deemed essential to include a special measure giving priority consideration to federal funding of airport development in Peotone.

Along with Governor Ryan, Mayor Daley, and a host of state legislators, aldermen, and other civic and business leaders from the Chicago area, I met last February with you and Senator Dick Durbin to plot a strategy to secure federal funding to make O’Hare the airport hub of the nation. Our Chicago delegation of The Campaign to Expand National Aviation Capacity left Washington, DC, with the understanding that you agreed that this goal would be best achieved through a bill that provides for a modernized and expanded O’Hare and funding for a new airport in Peotone. As our delegation indicated in February, modernizing O’Hare is key to the future of every citizen in Illinois. They are the economic engines that create jobs, provide new business opportunities, and make Chicago one of the world’s truly great cities.

In the interest of maintaining a strong Chicago and Illinois coalition in support of airport expansion in the Chicago area, I urge you to consider the Chicago Urban League’s position on this key issue, please do not hesitate to call me at 773-451-3500.

Sincerely,

JAMES W. COMPTON, President and CEO,
Representative Jesse L. Jackson, Jr.

ROSEMARY MULLIGAN,
STATE REPRESENTATIVE, 55th DISTRICT,
ILLINOIS, June 27, 2002.
SUBJECT: Vote “No” on H.R. 3479
Hon. Jesse L. Jackson, Jr.,
House of Representatives, Washington, DC.

DEAR REPRESENTATIVE JACKSON, JR.: As an Illinois state legislator, I would like to use this opportunity to express my concern and opposition to the National Aviation Capacity Act. The issue of expansion of Chicago O’Hare Airport is extremely important but has been so misrepresented that I believe it is imperative that I take the time to make an appeal on behalf of my local residents to each member of the House of Representatives. This plan in the form it has been presented to you contains serious misrepresentations of fact and will inflict harm on the over 100,000 constituents I have taken an oath to protect.

You may not realize that you are building a new airport in the south suburbs of Chicago and it is virtually an outcropping of land annexed by the City of Chicago that is over 90 percent surrounded by suburban municipalities. It is this airport where the people directly impacted by airport activity do not elect the mayor or city officials that make decisions about the airport. Therefore, we have had little control or recourse over what happens at the airport. This plan represents a “deal” between two men and has never been debated or voted on by the Illinois General Assembly!

My family moved to Park Ridge in 1955, long before anyone had an idea of what an overpowering presence O’Hare would become.

In fact, the airport expansion that you are presenting to Congress for approval is a repeat of the Lake Calumet project. So the Illinois General Assembly, with the Illinois General Assembly drafting in 1992 by Mayor Daley for the Urban League is a necessary partner in any effort. Our equal claim, even more prominent, is the dominant role of the federal Administration in controlling the use of AIP and PFC funds and in assertive enforcement of federal anti-trust laws. We urge you to work together to create a federal-state partnership to get the job done.

1. The Daley and Ryan plans both have a set of east/west parallel runways directly north of the terminal and in close proximity to one another. Because of their proximity to each other (1200’) they cannot be used simultaneously for arrivals. They can only be used simultaneously if one is used for departures and the other is used for arrivals, but only during VFR (visual flight rules), good weather conditions. During IFR (instruments) and even under conditions of poor visibility (less than 3 miles) these runways cannot be used simultaneously at all. They basically must be operated as one runway for safety reasons. The same is true for the set of runways directly south of the terminal; they too are only 1200’ apart.

2. Both sets of parallel runways closest to the terminal (the ones referred to in the Ryan plan) are all a minimum of 10,000’ long. This creates a runway incursion problem, which is a very serious safety issue. Because of their length and position, all aircraft that land or depart O’Hare would be required to taxi across either one, or in some cases two runways to get to and from the terminal. This design flaw is in both the Daley-Ryan plan. A runway incursion when an aircraft accidentally crosses a runway when another
aircraft is landing or departing. They are caused by either a mistake or mis-understanding by the pilot or controller. Runway incursions have skyrocketed over the past few years. The FAA’s National Transportation Safety Board identified a list of safety issues that need to be addressed. Parallel runway layouts create the potential for runway incursions; in fact the FAA has a program for air traffic controllers and planners that urges them to avoid parallel runway layouts that force taxiing aircraft to cross active runways. Los Angeles International Airport has been the scene of runway incursions for several years. A large part of their incursion problem is the parallel runway layout taxiing aircraft must use when crossing runways to get to and from the terminals.

3. The major difference in Governor Ryan’s counter-proposal is the elimination of the southern most runway. If this runway were eliminated, the capacity of the new airport would be less than we have now during certain conditions (estimated at about 40% of the time). If you look at Mayor Daley’s plan, it calls for six parallel east-west runways and two parallel northeast-southwest runways. The northeast-southwest runways are left over from the current O’Hare layout. These two runways simply won’t be usable in day-to-day operations and any notion of use in the future is extremely unlikely. Without these runways, the capacity of the new airport will be built, without our input, and then handed to us with expectations that we find a way to make it work. When it doesn’t the FAA (flight standards, airport certifiers, controllers) will be blamed for safety and delay problems.

Sincerely,
CRAIG BURZYN,
Facility Representative
NATCA—O’Hare Tower

[From the Chicago Sun-Times, July 21, 2002]
BUILDING 3RD AIRPORT IS TOP PRIORITY NOW
(By Rep. Jesse L. Jackson)

Unfortunately, the House defeat of the O’Hare expansion bill last week has shifted the debate from “substance” to “power.” The focus now is on machismo: “Does [Rep. William] Lipinski have the power to ram a bill through Congress?” It is not on the real issue: “Who has the best solution to the air capacity crisis?”

All four sides in this dispute agree on the analysis: There is an air capacity crisis at O’Hare. The disagreement comes over how to resolve it.

Many suburbs around O’Hare, for a wide variety of valid reasons, are absolutely opposed to O’Hare expansion. They believe expanding O’Hare will make Peotone unnecessary.

Mayor Daley and the downtown business and media community, who vocally support O’Hare expansion and are attempting to ram it down the throats of everyone else—regardless of who is opposed or why—also believe that the air industry is a subsidized, connected and elite group of business leaders and politicians has an interest in maintaining America’s and United Airlines’ duploidy at O’Hare, where ticket prices are one-third higher than the national average, costing consumers an extra $1 billion. The mayor also has an interest in maintaining his campaign contributors, who, in many instances, are the same businesses connected at O’Hare’s hip.

Others want to expand O’Hare and build Peotone simultaneously. However, Lipinski’s bill removes Peotone as a priority—leaving its proponents with little more than baseless hope and a prayer.

A final group of which I’m a part, wants to build Peotone first, then revisit O’Hare expansion later, because: (a) Peotone offers a faster, cheaper, cleaner, safer, more permanent and just solution; and (b) an evolving Peotone airport, accommodating 1.6 million new flights, would surely make O’Hare expansion unnecessary.

So why spend more money, take longer, increase environmental problems, put the flying public in greater danger, support a temporary crisis management, which is complete, we will be in the same capacity crisis as today—and increase the economic and racial divide in Chicago, when there is a better way of solving the current aviation capacity crisis?

I’m not ignorant about 195,000 new jobs and billions of dollars of investment on the North Side and southwest suburbs around O’Hare. I simply note that Elk Grove Village already has three jobs for every one person.

By contrast, some communities in the 2nd Congressional District have 60 people for every one job. Thus, I’m intelligently for the 286,000 new jobs and billions of dollars of economic activity; that Peotone will bring in and around Chicago. The need is greatest. The Southland needs economically stable communities, and families who have a future and can send their children to college. Peotone also benefits the entire region, state and nation.

Even if H.R. 5419 becomes law, a federal commission is likely to have jurisdiction under the 10th Amendment, which gives certain powers exclusively to the states, including the power to build and alter airports. The U.S. Supreme Court in Printz vs. United States (1997) that “dual sovereignty” is incontestable. It emphasized that the constitutional structural barrier to Congress’s intruding on a state’s sovereignty could not be avoided by claiming that congressional authority was: (a) pursuant to the commerce power—it will create 155,000 jobs and $19 billion in economic activity; (b) a mandatory, necessary and proper’ clause of the Constitution—there’s an aviation capacity crisis, or (c) that the federal law “preempted” state law under the Supremacy Clause—that Congress can use its power to solve the impasses by overriding the state. In short, all the arguments the Daley and Ryan forces have been making are unconstitutional.

Both Mayor Daleys saw the aviation capacity crisis coming. Both proposed a third airport: one literally on Lake Michigan, the other, 20 miles west of O’Hare in Cook County, controlled by the Daleys. However, when the most credible long-term recommendation, Peotone in Will County, Daley didn’t have much of a chance.

Without the years of obstructionist tactics by Mayor Richard M. Daley, protecting his name and parochial interest, the south suburban airport would already be built and today’s aviation crisis averted.

A new airport in Peotone can still be built in one-third of the time, because of the cost of O’Hare expansion, with less disruption and environmental damage, greater public safety and more economic justice through balanced growth in the metropolitan area. Why force through an irrational bill when a more rational, effective and efficient solution to the aviation capacity crisis is available now?

[From the Chicago Sun-Times, Aug. 30, 2001]
GRAVE CONCERNS NEAR O’HARE
(By Robert C. Herguth)

American Indian remains that were exhumed 50 years ago to make way for O’Hare Airport might have to be moved again to accommodate Mayor Daley’s runway expansion plans.

That’s disturbing to some Native Americans, who say they want their ancestors and relics treated with greater respect.

And it’s compelling local opponents of the proposed closure of two O’Hare cemeteries—one of which has Indians—to explore whether federal laws that offer limited protection to Native American burial at one-third of the cost of O’Hare expansion could help them resist the city’s efforts.

“Maybe the federal law might come to our aid,” said Bob Placek, a member of the Potawatomi Cemetery’s board who estimates 40 of his relatives, all German and German-American, are buried there. “The dead folks out there aren’t obstructionists, they’re trying to rest in peace.”

Resthaven is a resting place for European settlers and their descendants and, possibly, the Potawatomi.

It seems unlikely federal law, specifically the Native American Grave Protection and Repatriation Act, would lend much muscle to those opposed to Daley’s plan, which calls for knocking out three runways, building four new ones and adding a western entrance and terminal.

“Primarily, the legislation applies to federal lands and tribal lands,” said Clarice
Smith, deputy regional director for the Bureau of Indian Affairs.

Even if someone made the argument that O'Hare is effectively federal land because it uses federal funds, the most Resthaven proponents could probably hope for is a short delay, a say in how any disturbance takes place and, if they are Indian, the opportunity to claim the bodies of Native Americans.

“They’ve got a hard road,” Smith said of those who might try to halt a Resthaven closure over Indian remains.

When O’Hare was being built five decades back, an old Indian burial ground that had become the area’s cemetery for those who couldn’t afford a place nearby St. Johannes Cemetery, which also is buried at Resthaven, and city officials are trying to make sure on the basis of Indian remains.

Resthaven, and city officials are trying to make sure on the basis of Indian remains. When O’Hare was being built five decades back, an old Indian burial ground that had become the area’s cemetery for those who couldn’t afford a place nearby St. Johannes Cemetery, which also is buried at Resthaven, and city officials are trying to make sure on the basis of Indian remains.

Regardles of the tribe to which the dead belonged, the Forest County Potawatomi Community of Wisconsin, one of several Potawatomi bands relatively close to Chicago, said John Geils, SOC Chairman and president of the Village of Bensenville.

“At a stage of the game, who can determine who they were specifically? But we run into that sort of circumstance in many instances throughout the state of Wisconsin, and some in Illinois, and we take care of them as if they were relatives,” she said. “We’re not all of us all descended from God, so we do the right thing, we take care of anybody and try to see that they’re neither disturbed nor property taken care of.”

“I guess we’d have to keep our mind broad as to what would be done,” Ritchie said. “Nobody wants to like to see graves disturbed, but somebody has already disturbed them once. … I guess what I’d probably do is talk to the tribal elders and spiritual people and other tribes who could be in the area and come to a conclusion of what should be done.”

Bill Daniels, one of the Potawatomi band’s spiritual leaders, said spirits may not look kindly on the graves remaining.

“It’s not good to do that—move a cemetery or just plow over it,” he said.

Daley’s plan, which still must be approved by state and federal officials, also may displace nearby St. Johannes Cemetery, which is not believed to have any Native American bodies.

John Harris, the deputy Chicago aviation commissioner overseeing the mayor’s $8 billion project, said this is the first he’s heard that there might be Indian remains at Resthaven, and city officials are trying to verify it.

“I have no reason to doubt them at this time, but it’s a developed knowledge,” he said. “But whether they’re Indians or not, we would exercise in extreme level of sensitivity the area’s historical significance.”

Others, including Reedkind, have raised the possibility that the cemetery at Resthaven, which used to be home to Potawatomi, Chippewa and other Indian remains, is the area’s cemetery for those who couldn’t afford a place nearby St. Johannes Cemetery, which also is buried at Resthaven, and city officials are trying to make sure on the basis of Indian remains. When O’Hare was being built five decades back, an old Indian burial ground that had become the area’s cemetery for those who couldn’t afford a place nearby St. Johannes Cemetery, which also is buried at Resthaven, and city officials are trying to make sure on the basis of Indian remains.

They said the Chicago region, which used to be home to Potawatomi, Chippewa and other Indian remains, is the area’s cemetery for those who couldn’t afford a place nearby St. Johannes Cemetery, which also is buried at Resthaven, and city officials are trying to make sure on the basis of Indian remains. When O’Hare was being built five decades back, an old Indian burial ground that had become the area’s cemetery for those who couldn’t afford a place nearby St. Johannes Cemetery, which also is buried at Resthaven, and city officials are trying to make sure on the basis of Indian remains.
create six new parallel runways and new terminal facilities. Its promoters hope to achieve nothing less than the circumvention of the existing legal framework for review of airport development projects by the FAA and the elimination of the environmental review process for one of the largest airport expansions in aviation history, the size, scope and cost of which has not yet been publicly disclosed.

The legislation: "Makes it a "federal policy" to construct the O'Hare expansion project (portion of the project to cost as much as 16 billion dollars) and, if construction has not commenced by 2004, requires the federal government to complete the project by December 2005.

Preempts the State of Illinois from exercising its lawful rights under its own laws: Mandates changes to the Clean Air Act implementation plan for the Chicago region should it interfere with the O'Hare expansion plans; and

Short-circuits the environmental review process under NEPA, a requirement applicable to all airport construction projects.

Each of these issues is particularly troubling from an aviation and environmental perspective. For example, the curtailment of the NEPA process calls into question the need for other airport projects to undergo a meaningful review process in order to determine their public benefit and environmental compliance. Furthermore, the legislation would in effect omit the Federal Government from the process of approving a flawed airport development project, and divert needed financial and government resources from other critically needed airport projects throughout the nation.

The legislation is unnecessary. If the project is compelling, it should be able to meet the usual and regular evaluative processes that every other airport project in the country faces. The FAA possesses the special competence and expertise to evaluate airport development projects. It is the agency entrusted by Congress to determine whether this or any other project makes sense for the national air transportation system. The legislation would substantially erode the FAA's independent and deliberative role in reviewing the O'Hare project. Moreover, the bill short-circuits the required review under the National Environmental Policy Act (NEPA), a 30 year old statute with a well defined process to review major federal action of this type.

The legislation also raises many public questions, which requires full debate and public disclosure through the FAA's review procedures. These questions include: Will the air traffic control airspace resources around O'Hare allow the substantial increase in operations (project to increase from 900,000 per year to 1.4 million per year)? Is the FAA's expansion plan the best choice to meet the future needs of the Chicago region?

How much will the O'Hare expansion project cost?

Will six, closely aligned parallel runways (only 1,400 feet apart) be cost effective to maximize capacity?

What will be the impact on surrounding neighborhoods of the proposed project?

Is it possible to tear up two major runways and rebuild four additional runways at the same time O'Hare is attempting to operate at full capacity? What specific, detailed operational plan has been prepared and how does it intend to make these massive alterations while O'Hare continues to function as a key US hub?

Will the funds that must be expended at O'Hare preclude development on Peotone?

Will such mandated funding impact future developments at Midway or Milwaukee or other airports in the Great Lakes region?

What impact would the expenditure of billions of dollars for, and according special congressional priority to, the O'Hare project have on critically needed airport development and aviation security projects for other airports throughout the nation?

It appears that one of the unstated goals of the legislation is to curtail the normal 30 year NEPA mandate that rights all interested parties to have an opportunity to review and comment on the environmental impacts of the proposal. The legislation also makes the decisions now vested by law with the FAA, even though details of the project has yet to be fully disclosed, the purpose and need has yet to be documented, the environmental impacts have yet to be evaluated, the alternatives and cost-benefits have yet to be studied.

This is not streamlining; it is redefining for a single airport. It is unprecedented in the history of civil aviation. A legislative mandate giving O'Hare special priority for approvals and funding for billions of taxpaying dollars without adequate evaluation of dollars for other major airport development projects around the country. If the legislation is enacted, proposed enhancements such as San Francisco, Washington Dulles, Los Angeles, Denver, Seattle, Atlanta, and Dallas-Ft. Worth may experience delays in order to accommodate the preference for Chicago.

The proponents of HR 3479/S 1786 unsuccessfullly attempted to enact this legislation without a hearing last year but that plan of action was soundly rejected by members of the U.S. Senate, who objected to it being added to an appropriations bill without the benefit of a hearing. The speed with which its supporters want this bill to move suggests that they really do want full and open consideration by Congress regarding the substantial questions that surround this bill. Recent history with aviation legislation suggests that the industry's complex economic, policy, financial and environmental issues require thoughtful review, not superficial treatment.

The bill is also unprecedented because it curtails the ability of a state to enforce its own laws against violation of the Tenth Amendment. Every State should be entitled to protect its own laws and is thereby inconsistent with the public interest.

The Senate Commerce, Science and Transportation Committee is likely to hold a hearing on HR 3479/S 1786. We encourage you to urge Chairman Hollings and Ranking Member McCain to conduct a careful and thorough investigation of the legislation.

SOC is an advocate for the expansion of Chicago's aviation capacity. SOC has issued its own fully documented report which sets forth a Plan to Increase capacity in the Chicago region. See enclosures. We urge you to oppose this legislation which would reverse 30 years of precedent and policy under NEPA and aviation law.

Sincerely,

John C. Geils
Chairman.

TESTIMONY OF THE SUBURBAN O'HARE COMMISSION BEFORE THE HOUSE AVIATION SUBCOMMITTEE OF THE HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE—HEARINGS ON H.R. 3479 MARCH 6, 2002

TESTIMONY OF THE SUBURBAN O'HARE COMMISSION

Mr. Chairman, and members of the House Aviation Subcommittee, Suburban O'Hare Commission (SOC), a consortium of 14 local governments adjacent to O'Hare International Airport, representing the interests of nearly 1.5 million people, is grateful for the opportunity to present its views concerning the important national aviation policy and legal issues raised by H.R. 3479.

This legislation is in essence a fast-track a massive new runway redevelopment plan for the Chicago O'Hare International Airport. Its principal purpose and effect would be to circumvent established requirements for review of airport development projects by the Federal Aviation Administration (FAA) and environmental agencies. The effect of the bill would be to silence, though an act of Congress, further public debate concerning the future and direction of Chicago's airport needs. It would effectively curtail the role of the FAA in evaluating and approving airport development projects; it would also have the effect of substantially reducing the protections of NEPA that safeguard the environment and the public interest. H.R. 3479 represents an unprecedented abandonment of the federal laws established by Congress to provide for the reasoned and orderly construction of airports in a manner consistent with the public interest.

At the outset, it is important for you to understand what SOC stands for, and what it opposes. SOC does not oppose airport development, nor the need to improve the capacity and efficiency of Chicago's airport system. To the contrary, there is broad regional consensus—including SOC—that the Chicago metropolitan area needs significant new airport capacity. What SOC does oppose, however, is the single-minded focus on expansion at O'Hare—when there is a better, faster, safer, less expensive, and more environmentally-sound alternative: the construction of a South Suburban Airport at Peotone.

SOC believes that these regional airport development issues are matters to be determined by the Federal Administration, exercising authority charged to it by law. We do not think that the Congress should decide, through political fiat, what does not make sense for the citizens most directly affected by the Chicago region's airport development needs. Congress has neither the specialized aviation and airport environmental expertise of the FAA, nor the local knowledge necessary to make these judgments. Indeed, for Congress to impose its will in the manner proposed by H.R. 3479 would strip away oversight authority of the State of Illinois with respect to airport construction within its borders, and directly violate the 10th amendment.

SOC opposes this bill because it seeks to avoid the careful framework established for review of airport development by the FAA in consultation with stakeholders. And, the bill would result in a major curtailment of the critical environmental review process. The O'Hare redevelopment plan is the largest airport expansion project in aviation history. A project of this size, scope, and cost certainly deserves more than a perfunctory review, which is all the bill would allow. Before turning to such evaluation of the legislation, I would like to highlight a few of our key concerns.
H.R. 3479 is unprecedented in the history of civil aviation. It would:

Declare it to be “federal policy” to construct the O'Hare expansion project (expected to cost billions of dollars on the north end of Chicago) before the City has not commenced construction by 2004, the FAA is required to “consider the [six] runway design plan as a federal policy project.”

Accord the O'Hare runway project special statutory priority over every other airport project in the nation.

Violate the 10th amendment by preempting the State of Illinois from exercising its lawful oversight authority under its own law; involve the FAA in obtaining a unique and special statutory priority to evaluate the air safety, efficiency and public benefit/costs of airport development projects.

Short-circuit the environmental review process under NEPA, which is applicable to all other airport construction projects; make the FAA equivalent to any other airport in the country. This is not a political process. It is an expert political process.

Mandate changes to the Clean Air Act State Implementation Plan (SIP) for the Chicago area by giving O'Hare a blank check to define its own pollution emissions at the expense of other industries.

For these reasons, SOC strongly urges the FAA to take into account the O'Hare runway project priority for approvals and expenditures, and the alternatives and cost-benefits of airport development projects.
expertise, not by Congress. Absent the legislative directive, the FAA might well determine to give Peotone a higher priority than O'Hare, based on very real safety, efficiency, public health and environmental considerations. Under the legislation that would not be possible.

Worse yet, by prejudging the issue and requiring the mandatory federal construction project, Congress would be condemning the Chicago region and the national air transportation system to a future of intolerable delays. Because of air traffic constraints that will be exacerbated by the O'Hare project, a six-runway O'Hare super-hub would be impossible. The most delay-prone airport in the country.

The Achilles heel of the O'Hare redevelopment plan is that the system is guaranteed to collapse in bad weather. Safety standards mandate that the closely-spaced parallel runways could not be used for simultaneous operations when the weather requires pilots to use instrument procedures. This means that half the expensive new concrete poured at O'Hare would effectively be taken out of service exactly when they need it most—to alleviate bad weather backups, which are a leading cause of delays.

Far from enhancing capacity and efficiency, Congress appears to adopt this legislation it would saddle the national air transportation system with an enormously expensive and delay-prone hub that is, in reality, the worst kind of fix. That alone is why SOC believes this is a matter best left to the FAA's expert judgment, instead of the legislative process.

LAYING NEW CONCRETE ON TOP OF FUNCTIONAL EXISTING RUNWAYS FLOUNDS THE COST-BENEFIT TEST, AND DEFENDS THE FEDERAL POLICY TO DEVELOP RELIEVER AIRPORTS

There is compelling evidence demonstrating that the development of a third Chicago airport is a political blunder. Even in the absence of more effective capacity expansion for the region, and could be brought on line more quickly, at less cost, with less disruption to existing operations, and with less environmental impacts, than the proposed manda-

tory development project at O'Hare. Cost estimates for a redevelopment project at O'Hare would cost in the vicinity of 5 billion dollars. Cost estimates for new runways at O'Hare are 8 to 10 billion dollars per runway. Chicago itself estimates that terminal expansion at O'Hare would cost another 8 billion dollars, bringing the total tab for that expansion to a whopping 15 billion dollars. Even this massive figure does not include the additional cost of access roads, parking facilities, and mitigating measures for the immediately impacted communities.

Given that Peotone would provide substantially more new incremental capacity at a substantially lower cost, the FAA's cost-benefit analysis, Chicago would be required to examine various alternatives and consider issues such as whether the addition of new runways at O'Hare is a worse investment than building a new air-

port. SOC submits that the O'Hare construction plan flunks this test.

The FAA's approach provides a “quick fix” to the otherwise fatal cost-benefit problem affecting a large scale redevelopment of O'Hare, by eliminating the FAA's essential “purpose and need” evaluation. The FAA is otherwise required to investigate cost-benefit of airport funding projects, and SOC believes that this type of analysis it should find this one unsatisfactory.

The legislation also contravenes the established federal policy to “give special empha-

sis to ensure that its impact on the environment is studied” (49 U.S.C. § 47106(a)(4)). By concentrating an even-increasing number of airplanes in the finite volume of airspace over O'Hare, Congress would be undermining the FAA's program it mandated the FAA to promote.

Another important consideration for air-

port development funding requires the Sec-

tuary of Transportation to consider the project will be completed without unreasonable delay” (49 U.S.C. § 47106(a)(4)). Attempting a massive redevelopment project at one of the busiest airports in the country is a recipe for project delays and massive disruption to the existing air carrier activities at O'Hare.

II. H.R. 375 SHORTCUTS NEPA AND A HOST OF OTHER STATUTES THAT ARE ESSENTIAL TO THE PROTECTION OF THE ENVIRONMENT AND THE PUBLIC HEALTH AND WELFARE

This is result-driven legislation which has the singular purpose and effect of curtailing the environmental impact analysis and the consequences in order to lay runways and pavement at O'Hare. The legislation would shunt aside vital considerations that under NEPA current legislative support is careful scrutiny by the FAA and other agencies, including such issues as: the tremendous noise impacts over surrounding communities, the massive amounts of carbon and other airborn pollutants that would be emitted into the Chicago-area airspace, the millions of additional gallons in toxic deicing fluid and other chemicals will flow into water-ways, and the impact of the project on wetlands, endangered species and other natural resources.

Even in its current pre-expansion condi-

tion, O'Hare is the largest source of toxic emissions and hazardous air pollutants in the State of Illinois. Moreover, monitoring data shows that O'Hare impacts large num-

bers of Chicago area residents with signifi-

cant and undesirable noise exposure. Adding some 22 or more new runways will make matters much worse. SOC is extremely concerned that the proposed legislation will effectively preclude further consideration of these adverse environmental com-

ments, and curtail thorough evaluation of the public health and environmental consider-

ations NEPA was enacted to protect.

While this legislation pays lip service to compliance with NEPA, there is simply no way that a project of this scope and scale could be subject to meaningful NEPA review because the law requires that all air-

ports before the FAA is compelled to begin runway construction “as a federal project.” Airport development projects of this magnitude will take several years to complete the NEPA process, under current law and procedures.

Thus, while the bill states that implement-

ation of the O'Hare construction plan “shall be subject to application of Federal laws with respect to environmental protection and environmental analysis including NEPA” (§ 3(a)(2)(C)), as a practical mat-

ter the construction deadline would make it impossible for FAA to conduct the necessary NEPA review. Courts have held that when Congress has mandated an impossible deadline, NEPA has, in effect, been legislatively overruled. See, Flint Ridge Development Co. v. Scenic Rivers, 426 U.S. 288, 304 (1976). SOC believes that if Congress were doing this, despite token language to the contrary.

The FAA is the lead agency responsible for coordinating NEPA review of airport construction projects, along with the involve-

ment of other Federal Agencies and the pub-

lic. In exchange for the Transportation Code and NEPA charges the FAA with the duty to objectively and inde-

pendently analyze the proposed airport ex-

pansion. In short-circuiting the development plan at O'Hare by 2004 if the City has not begun construction—effectively eliminates that independance. FAA would do all in its power to avoid the need for con-

struction of O'Hare as a federal project. A statutorily-imposed construction ultimatum by Congress would have the effect of forcing the environmental review process to be so truncated as to effectively preclude mean-

ingful evaluation by the FAA of the environ-

mental consequences.

The massive six-runway redevelopment and expansion plan at O'Hare raises serious and significant adverse environmental ques-

tions bearing on air quality, other pollut-

ants, and noise. If an application has signifi-

cant adverse environmental effects, under the Transportation Code, the FAA Adminis-

trator may grant approval—knowing that no possible prudent alternative to the project exists and that every reasonable step has been taken to minimize the adverse effect. Under current NEPA eff-

orts, the FAA is required to make care-

ful scrutiny by the FAA and other agencies, including such issues as: the tremendous noise impacts over surrounding communities, the massive amounts of carbon and other airborn pollutants that would be emitted into the Chicago-area airspace, the millions of additional gallons in toxic deicing fluid and other chemicals will flow into water-ways, and the impact of the project on wetlands, endangered species and other natural resources.

The legislation raises serious questions about the FAA's ability to conduct an independent review of the massive O'Hare expansion plan. Congressmen Hyde and Congressman Jackson—have come out against further expansion, based, in large part, on the disastrous envi-

ronmental impacts to the region. Allow me to quote here from their open letter to State and Congressional Leaders:

“Rather than build an environmentally sound new airport, Chicago wants to add new runways at O'Hare.

Adding runways at O'Hare would com-

pound what is already an environmental dis-

aster. Even Chicago in its Master Plan ac-

nowledged that adding runways would allow a level of air traffic that would be envi-

ronmentally unacceptable. Despite this en-

vironmental unacceptability, Chicago is ag-

gressively fighting a new airport and is ac-

tively pushing the option of new runways at O'Hare. (Hyde/Jackson Open Letter, October, 1997 at 9.)

These are precisely the type of critical envi-

ronmental issues that NEPA requires to be thoroughly examined prior to a major fed-

eral project. However, NEPA and its companion environmental statutes would be effectively gutted by the proposed legislation. Viable, negative impacts, and indeed, more desirable environ-

mental alternatives exist than re-developing an inherently delay-prone airport in close proximity to the City. This legislation elimi-

nates the FAA, as the lead agency on this project, to short-circuit its environmental review.
NEPA would either be eliminated or so truncated that NEPA review as described above would become meaningless. Congress would decree that NEPA, while not abolished, would not apply to major projects.

NEPA requires federal agencies to prepare an Environmental Impact Statement (EIS) for projects significantly affecting the environment. Projects that have a significant potential for causing adverse environmental effects or a significant outside influence on the federal decision-varying from projects that will fill a critical need to those that will cause a marginal improvement in a resource—must have an EIS prepared. NEPA also requires the public to be given the opportunity to review the EIS and comment on it. The public involvement provided by NEPA is essential in ensuring that the public’s needs, values, and priorities are considered in the decision process.

H.R. 3479 is diametrically opposed to the objectives of NEPA and the important public policies recognized by the Department of Transportation in its Report. For starters, the air space review process for a runway expansion project of this magnitude requires the preparation of an EIS, as well as the opportunity for substantial public involvement. That cannot and will not happen under the timetable contemplated by the proposed legislation, and the public’s right to participate in the NEPA process would be rendered meaningless.

In addition to the FAA’s express NEPA obligations, the Clean Air Act further authorizes the Administrator to conclude that projects not adequately considered under NEPA require an EIS. NEPA review on federal projects for construction and major federal actions that are subject to NEPA. The EPA Administrator is required to determine that a proposed action is not unsatisfactory from the standpoint of public health and welfare, or environmental quality, she must make public the determination and refer the matter to the Council on Environmental Quality for mediation. The mandatory 2004 Federal construction deadline under the legislation for the O’Hare project review will be meaningless.

STATE IMPLEMENTATION PLAN (SIP) CONFORMITY DETERMINATION (CLEAN AIR ACT)

The Chicago O’Hare area is classified as a severe nonattainment area for ozone, and parts of the area are designated as moderate nonattainment for particulate matter. Without amendment of the Clean Air Act, the O’Hare expansion program would face huge financial burdens that would result in unmanageable burdens under that statute.

O’Hare is a huge polluter, and will be far worse if expanded to nearly double the level of flight operations. Air pollution from O’Hare consists of burned and unburned jet fuel aerosols containing dozens of carcinogenic organic compounds—including Benzene and Polycyclic Aromatic Hydrocarbons—which are released into the atmosphere from 900,000 to 1.6 million annually, O’Hare and its immediately surrounding community will experience an inevitable and unacceptable high concentration of Ozone and a host of toxic pollutants hanging in toxic cloud over O’Hare. By contrast, a South Shore expansion would have a significant land buffer to assist in the dispersal of those toxic pollutants and to keep them away from residential areas. No such buffer exists at O’Hare.

As required by Section 176 of the Clean Air Act, the State of Illinois has, after extensive public consultation and comment, developed a State Implementation Plan (SIP), which is the State’s plan to come into compliance with the national air quality standards under the Clean Air Act. The SIP reflects a careful balance between the protection of the public health and welfare from air pollution, on the one hand, and the need for commerce and other activities, on the other hand. Each Federal agency involved in an airport expansion project must make a determination that the proposed action conforms to the SIP.

Because of the huge increase in air pollution, there is a major inherent conflict between the existing SIP and O’Hare expansion.

H.R. 3479 empowers the FAA to immediately move forward with the O’Hare expansion program. Under NEPA, the FAA’s obligation is to consult with others that have expertise relevant to the proposed action. The legislation directs the Administrator of the FAA to waive all NEPA considerations in order to approve the O’Hare expansion. This would make impossible the review process under NEPA. Under normal SIP processes, the City of Chicago (Illinois) and its various agencies, the U.S. EPA, the FAA, other Federal agencies, and the public would have the opportunity to ask the FAA to accommodate O’Hare’s needs while balancing competing interests.

If the legislation is enacted, the City is empowered to define O’Hare’s allocation, without the normal public participation process and without the participation of the State and Federal agencies. Moreover, the legislation directs the Administrator of the FAA to amend the SIP to accommodate O’Hare’s expansion. H.R. 3479 empowers the Environmental Protection Agency to use its powers under the Clean Air Act respecting approval and promulgation of implementation plans to cause or promulgate a revision of such implementation plan sufficient for the runway redesign plan to satisfy the requirements of Section 176(c) of the Clean Air Act. This is unprecedented legislation.

There is no public process, no balancing, only O’Hare claiming for itself whatever level of emissions it wants. The Illinois Department of Transportation has determined O’Hare’s needs (as determined by the City) are accepted as given, and the EPA would force other institutions to reduce their emissions pursuant to the SIP to arrive at the City’s goals. This fails to allow other businesses and the public any opportunity to contribute to or participate in the process. Power companies, railroads, truckers, buses, heavy industry, and the Peotone Airport will, in all likelihood, have their target emissions cut by the EPA to satisfy O’Hare’s runway plan.

H.R. 3479 does not require compliance with the Clean Air Act. The proposed legislation avoids that consultative and deliberative process.

If enacted, this legislation would mandate that no further review of the O’Hare project without consideration of these potential impacts in accordance with established statutory standards.

3. FLOODPLAINS (EXECUTIVE ORDER 11988)

Executive Order 11988 requires Federal agencies to avoid, to the extent possible, the adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative.

For all airport development projects, the FAA is required to: (1) determine if the proposed project is located in a floodplain; (2) identify and evaluate practicable alternatives to the proposed project; (3) develop mitigation measures; and (4) encourage public participation in the review process. If enacted, this legislation would mandate immediate approval of the O’Hare project without even passing consideration of whether floodplains would be affected and measures that could be taken to reduce the impact of the project.

II. H.R. 375 WOULD VIOLATE THE TENTH AMENDMENT OF THE U.S. CONSTITUTION

SOC believes that it is inappropriate and unlawful for the Federal Congress to dictate the siting of Illinois airports and what runways to construct within its borders. Decisions involving airport and infrastructure development have historically been legislatively based. Congress should not strip the State of Illinois of its vested authority to delegate and authorize the City of
Chicago to construct airports in the State. Doing so would be a clear-cut violation of the tenth amendment.

Under the framework of federalism established by the Constitution, Congress is without power to dictate to the States how the States delegate power, or to limit the delegation of power to their political subdivisions. Unless and until Congress takes over complete responsibility to build airports, airports will continue to be developed by state delegated agents, and the exercise of State power and law. Compliance by the political subdivision to which the State delegates authority to construct airports and otherwise control conditions imposed by the State is an essential element of State authority and power.

The proposed legislation would strip away such authority, fundamentally intruding upon the State’s sovereign authority to take action under its own laws. The legislation would prohibit the State from restricting or limiting the delegated exercise of State power by the State’s political subdivision. It would nullify the decision of the State of Illinois legislature allocating authority to construct airports located within the State, particularly the limitations and conditions imposed by the State on the delegation of that power to the State. The Illinois Constitution makes clear that Congress does not have the power to intrude or interfere with a State’s decision as to how to allocate State power.

Under the U.S. Constitution, the State’s authority to create, modify, condition, and impose limitations on the structure and powers of the State’s political subdivisions is a matter left to the exclusive control of the States.

Municipal corporations are political subdivisions of the State, in the same way, and created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the boundaries of the area, unite the whole, or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally. Nothing will prevent the growth of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conferring its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.” Commissioners of Highways of United States, 653 F.2d 292, 297 (7th Cir. 1981). Hunter v. City of Pittsburgh, 207 U.S. 161, 178 (1907) (emphasis added).

The Illinois State law delegating powers to construct or alter airports and runways are subject to the requirements of the Illinois Aeronautics Act. This Act requires that the State approve any alterations of the airport. The proposed legislation is an attempt to remove this State oversight in violation of the Tenth Amendment. The law would command the City of Chicago, which is an instrumentality of the State of Illinois, to do what the State has prohibited it from doing: i.e. expanding the airport without receiving a permit from the city’s sub-State law.

Any airport construction without the required State oversight authority, fundamentally intruding upon the State’s sovereign authority to take action under its own laws. The legislation would prohibit the State from restricting or limiting the delegated exercise of State power by the State’s political subdivision. It would nullify the decision of the State of Illinois legislature allocating authority to construct airports located within the State, particularly the limitations and conditions imposed by the State on the delegation of that power to the City. The Illinois Constitution makes clear that Congress does not have the power to intrude or interfere with a State’s decision as to how to allocate State power.

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IV. CONCLUSION

In conclusion, SOC strongly urges the Subcommittee to reject H.R. 3479. This legislation would dismantle the careful federal framework established to govern the review and approval of airport development projects. The FAA must have the unfettered ability to exercise its expert independent and objective expert oversight functions over airport development projects, and to carry out its environmental review responsibilities under NEPA, to make sure that whatever airport development project will be the best possible solution for the Chicago region and the national air transportation system.

The proposed legislation ties the FAA’s hands by removing the agency’s neutrality and discretion by forcing it to rush headlong toward a mandatory construction of O’Hare Regional Airport. Rational and reasoned evaluation will establish that the development of a new South Suburban Airport is superior to O’Hare in every respect—that a new airport at Peotone would offer more capacity, can be built at less cost, more quickly, and with fewer adverse environmental consequences. These are extremely important considerations which need to be resolved though the established federal review process. Congress not attempt to resolve them here by political fiat.

THE SOUTH SUBURBAN AIRPORT FACT SHEET

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Well, I would like to know who is going to pay for this. We still did not get an answer on that. If United and American are going to buy these bonds that will be issued, why would they not demand their present monopoly, or duopoly? These are questions we do not have an answer to.

The Illinois Municipal Code is what empowers the city. They have no more nor any less rights to do anything unless conveyed upon them through the legislature. This bill seeks to sidestep the balance that we have Washington decide a local issue.

Every Republican I have ever known campaigns on the theory that we are going to cut the Federal Government down to size. Well, I would say to Members, do not ever say that, if you vote for this bill. This is a massive transfer of power to Congress and debilitates, weakens, ignores local government.

Mr. JACKSON of Illinois. Mr. Speaker, I yield back the balance of our time.

Mr. KIRK. Mr. Speaker, I thank my chairman for yielding me time, and I rise in strong support of this legislation.

Mr. Speaker, we have been delayed in the passage of this very important bill, largely due to the respect and admiration we have for one Member of this House, the gentleman from Illinois (Mr. HYDE). He is a hero to me, and our communities and our country owe him much-needed expansion of O'Hare to move forward. I urge my colleagues to join me in supporting this bill.

Mr. MICA. Mr. Speaker, I yield back the balance of our time.

Mr. LIPINSKI. Mr. Speaker, I just want to compliment the leaders of the O'Hare Noise Compatibility Commission and their leaders, Mayor Arlene Mulder and Mayor Rita Mullins, for their ongoing work and commitment to the quality of life issues in our communities.

Mr. Speaker, this is bipartisan legislation, strongly supported by the gentleman from Illinois (Speaker HASTERT), the minority leader, the gentleman from Missouri (Mr. GURKHARDT), the Chamber of Commerce and the AFL-CIO. Even the Sierra Club has no objection to its passage.

Given this unique political alignment, it is clear that this plan’s time has come. I urge adoption of the legislation.

Mr. COSTELLO. Mr. Speaker, I rise today in support of H.R. 3479, the National Aviation Capacity Act. This legislation was introduced by my good friend, Mr. Lipinski, and I would like to thank him for his hard work. I am pleased to join him as a cosponsor of this legislation.

O’Hare is a tremendously important airport in not only Chicago and the Midwest, but also our entire aviation system. It recently reclaimed the title of the world’s busiest airport and is the only airport to serve as a hub for two major airlines. O’Hare serves 190,000 travelers and operates 2,700 flights daily, employs 50,000 people and generates $3 billion to $4 billion to the local economy.

However, O’Hare needs to be redesigned to meet today’s demands. It is laid out with seven runways, six of which interest at least one other runway. The modernization plan would add one new runway. The seven existing runways will be reconfigured to include a southern runway for a total of eight runways, of which six would be parallel. These improvements would have a significant impact on reducing delays and cancellations: bad weather delays would decrease by 95 percent and overall delays would decrease by 79 percent.

On December 5, 2001, Mayor Daley and Governor Ryan reached a historic agreement to expand and improve O’Hare airport. The agreement would modernize O’Hare, create western access, provide additional funds for soundproofing home and schools near O’Hare, move forward with the construction of a third Chicago airport at the Peotone site and keep Meigs Field open until at least 2006, and likely until 2026.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair’s prior announcement, further proceedings on this motion will be postponed.

Mr. MICA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 3479, as amended.

Mr. LIPINSKI. Mr. Speaker, I just want to conclude by saying that I compliment the gentleman from Illinois (Mr. JACKSON) and the gentleman from Illinois (Mr. HYDE) on the very spirited, articulate presentation of their cause. They are both my friends. I have the greatest respect for them. Unfortunately, we disagree on this.
COMMENDING THE HONORABLE JESSE JACKSON, JR., HONORABLE WILLIAM LIPINSKI, HONORABLE JOHN MICA AND HONORABLE MARK KIRK, MEMBERS OF CONGRESS

(Mr. HYDE asked and was given permission to address the House for 1 minute.)

Mr. HYDE. Mr. Speaker, I want to say what a genuine pleasure it is to work with fiery, intelligent, energetic, honorable Congressmen like the gentleman from Illinois (Mr. JACKSON), the gentleman from Florida (Mr. MICA), and the gentleman from Illinois (Mr. KIRK). They are the salt of the Earth. This was a debate on the merits, and, even though they stacked the deck on us, it still was a pleasure.

COMMENDING THE HONORABLE HENRY HYDE AND HONORABLE WILLIAM LIPINSKI, MEMBERS OF CONGRESS

(Mr. JACKSON of Illinois asked and was given permission to address the House for 1 minute.)

Mr. JACKSON of Illinois. Mr. Speaker, I want to say that I have enjoyed the time that the gentleman from Illinois (Mr. HYDE) and I have worked closely to expand aviation capacity at Northwestern Illinois.

I must add that from the very first moment I entered this institution, the gentleman from Illinois (Mr. LIPINSKI) has been a kind of mentor on all aviation issues, basically assuring me that they would be expanded where he wants them to be expanded. I consider him one of my highest friends in the Congress of the United States. I thank the gentleman from Illinois for his kindness.

N O T I C E

Incomplete record of House proceedings. Except for concluding business which follows, today’s House proceedings will be continued in the next issue of the Record.

ADJOURNMENT

Mr. HAYES. Mr. Speaker, I move that the House do now adjourn. The motion was agreed to; accordingly (at 12 o’clock and 13 minutes a.m.), the House adjourned until today, Wednesday, July 24, 2002, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker’s table and referred as follows:


8153. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a copy of the determination and memorandum of justification pursuant to Section 262 of the Export-Import Bank Act of 1945, as amended; to the Committee on Financial Services.

8154. A letter from the Director, Office of Thrift Supervision, transmitting the 2001 Annual Report to Congress on the Preservation of Minority Savings Institutions, pursuant to 12 U.S.C. 1462a(g); to the Committee on Financial Services.

8155. A letter from the Director, Office of Management and Budget, transmitting a report on the Cost Estimate for Pay-As-You-Go Calculations; to the Committee on the Budget.

8156. A letter from the Director, Office of Management and Budget, transmitting a report on the Cost Estimate for Pay-As-You-Go Calculations; to the Committee on the Budget.

8157. A letter from the Secretary, Department of Health and Human Services, transmitting the annual report on the Loan Repayment Program on Health Disparities Research (HDR-LRP) for FY 2001, pursuant to 42 U.S.C. 294d–1—10; to the Committee on Energy and Commerce.

8158. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to Pakistan (Transmittal No. DTC 107-02), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8159. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to India (Transmittal No. DTC 191-02), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8160. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to Pakistan (Transmittal No. DTC 83-02), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8161. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to Pakistan (Transmittal No. DTC 73-02), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8162. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to Pakistan (Transmittal No. DTC 64-02), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8163. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to India (Transmittal No. DTC 99-02), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8164. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to Pakistan (Transmittal No. DTC 106-02), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8165. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to Pakistan (Transmittal No. DTC 65-02), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8166. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 107; to the Committee on International Relations.

8167. A communication from the President of the United States, transmitting a supplemental report, consistent with the War Powers Resolution, to help ensure that the Congress is kept fully informed on continued U.S. contributions in support of peacekeeping efforts in the former Yugoslavia; (H. Doc. No. 107–250); to the Committee on International Relations and ordered to be printed.

8168. A letter from the Assistant Secretary, Policy, Management and Budget and Chief Financial Officer, Department of the Interior, transmitting the Department’s Annual Accountability Report for Fiscal Year 2001; to the Committee on Government Reform.

8169. A letter from the Secretary, Department of Commerce, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

8170. A letter from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting a report pursuant to the Federal Vacancies Reform Act of 2001; to the Committee on Government Reform.

8171. A letter from the Secretary, Department of Housing and Urban Development, transmitting the Department’s FY 2001 Annual Report on Performance and Accountability; to the Committee on Government Reform.


8173. A letter from the Chief Judge, Superior Court of the District of Columbia, transmitting the Court’s report entitled “Supplement to the Family Court Transition Plan”; to the Committee on Government Reform.

8174. A letter from the Chief Judge, Superior Court of the District of Columbia, transmitting the Court’s report entitled “Supplement to the Family Court Transition Plan”; to the Committee on Government Reform.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. MANZULLO:
H.R. 5179. A bill to amend the provisions of titles 5 and 28, United States Code, relating to equal access to justice, award of reasonable costs and fees, and administrative set-lements, and severally referred, as follows:

By Mr. HANSSEN:
H.R. 5180. A bill to direct the Secretary of Agriculture to convey certain real property in the Dixie National Forest in the State of Utah; to the Committee on Resources.

H.R. 5181. A bill to expand the Officer Next Door and Teacher Next Door initiatives of the Department of Housing and Urban Develop-ment to include fire fighters and rescue personnel, and for other purposes; to the Committee on Financial Services.

By Mr. BROWN (for himself, Mr. FRANK, Ms. NORTON, and Ms. ROS-LEHTINEN):
H.R. 5182. A bill to amend the Internal Revenue Code of 1986 to increase the age limit for the child tax credit; to the Committee on Ways and Means.

By Mr. BARCIA (for himself, Mr. LOUVIS, Mr. PASCHEN, Mr. MURTHA, Mr. DINGELL, Mr. CAMP, Mr. ALLEN, Mr. BASS, Mr. QUINN, Mr. KIEELS, Mr. COYNE, Mr. MARKET, Mr. KELDER, Mr. STUPAK, Mr. HOLDEN, and Ms. KILPATRICK):
H.R. 5183. A bill to amend the Federal Water Pollution Control Act to authorize appropriate payment for services; to the Committee on Transportation and Infrastructure.

By Mr. MALONEY of Connecticut:
H.R. 5184. A bill to establish an Office of Audit Review within the Securities and Exchange Commission to oversee the audits of certain private companies; to the Committee on Financial Services.

By Mr. GALLEGLY (for himself, Mr. WELDON of Pennsylvania, Mr. LEWIS of California, Mr. GUDRON, Mr. CAL-VERT, Mr. CANNON, Mr. SOUDER, and Mr. HORN):
H.R. 5185. A bill to remove a restriction on the authority of the Secretary of Agriculture and the Secretary of the Interior to enter into agreements with any Federal agency to acquire goods and services directly related to improving the wildfire fighting capability of those agencies; to the Committee on Agriculture, and in addition to the Committees on Resources, and Government Reform, for a period to be subsequently de-termined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. KINGSTON (for himself, Mr. GUTNECKE, Mr. THUNE, Mr. STUMP, Mrs. JO ANN DAVIS of Virginia, Mr. KENYON, Mrs. MILLER of Florida, Mrs. NORTHUP, Mrs. EMERSON, Mr. CROWLEY, Mr. BARTLETT of Maryland, Mr. BALDACCI, Mr. PAUL, Mr. DUNCAN, Mr. POMEROY, and Mr. HOKSTRA):
H.R. 5186. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the importation of prescription drugs; to the Committee on Energy and Commerce.

By Mr. MENENDEZ (for himself, Ms. ROS-LEHTINEN, Mr. GREEN of Texas, Mrs. CHRISTENSEN, Mr. THOMPSON of Mississippi, Mr. DIAZ-BALART, Mr. SMITH of New Jersey, Ms. LEE, Mrs. JONES of Ohio, Mr. FREST, Mr. CONYERS, Ms. WOOLEY, Mr. RODRIGUEZ, Ms. ROYAL-ALLARD, Mr. BASKIN, Mr. HINOJO, Ms. CUMMINGS, Mr. ACEVEDO-VILA, Mr. PALLONE, Mr. FOSTER, Mr. UDALL of New Mexico, Mr. PAYNE, Mr. BENTSEN, and Mr. ROTH-MAN):
H.R. 5187. A bill to authorize the Health Resources and Services Administration and the National Cancer Institute to make grants for model programs to provide to indi-viduals of health disparity populations pre-vention, early detection, treatment, and appropriate follow-up care services for cancer and chronic diseases, and to make grants re-mittingly determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. HORN:
H.R. 5188. A bill to authorize the Health Resources and Services Administration and the National Cancer Institute to make grants for model programs to provide to indi-viduals of health disparity populations pre-vention, early detection, treatment, and appropriate follow-up care services for cancer and chronic diseases, and to make grants re-mittingly determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. BALDWIN (for himself, Mr. FRANK, Ms. NORTON, and Ms. ROS-LEHTINEN):
H.R. 5189. A bill to amend the Internal Revenue Code of 1986 to scale temporary protection for moderate and lower income workers, and severally referred, as follows:

By Mr. RUCHELLE (for herself, Mr. LANGEVIN, Mr. RAMSTAD, Mr. OWENS, Mr. HONDA, Mr. WAXMAN, Ms. SCHRACKOWSKY, Mr. GEORGE MILLER of California, Ms. NORTON, Mr. DAVIS of Illinois, Mr. FREST, Mr. LANTOS, Mr. FARR of California, Mr. McNULTY, and Mrs. JOHNSON of Connecticut):
H.R. 5190. A bill to amend the Internal Revenue Code of 1986 to expand retirement sav-ings for moderate and lower income workers, and severally referred, as follows:

By Mr. WELDON of Florida, Mr. McGOLLAR, Mr. THIEME, Mr. FITTS, Mr. PENCE, Mr. GREEN of Wisconsin, Mr. PHELS, Mr. TERRY, Mr. OSBORN, Mr. ENGLISH, Mr. WELDON of Florida, Mr. RYUN of Kansas, Mr. DIERHOLZ, Mr. SCHAPPERS, Mr. SULLIVAN, Mr. STEARN, Mr. AKIN, and Mr. PICK-ERING):
H.R. 5191. A concurrent resolution expressing the sense of Congress supporting vigorous enforcement of the Federal obscenity laws; to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subse-quent to the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

MEMORIALS

Under clause 3 of rule XII, memorial were presented and referred as follows:

H.R. 5193: Mr. SHAYS.
H.R. 5194: Mr. TANCREDO.
H.R. 5195: Mr. CANTOR.
H.R. 5196: Mr. SMITH of New Jersey, Mr. REINER, Mr. BOXER, Mr. RYAN of Idaho, Mr. DOOLEY, and Mr. TIAHRT.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolu-tions as follows:

H.R. 5197: Mr. MILLER of Kentucky.
H.R. 5198: Mr. CANTOR.
H.R. 5199: Mr. SMITH of New Jersey.
H.R. 5200: Mr. BLUMENSTEIN.
H.R. 5201: Mr. BLOOM.
H.R. 5202: Mr. WILLIAMS.
H.R. 5203: Mr. DOOLEY.
H.R. 5204: Mr. TIAHRT.

H.R. 5192: Mr. MALONEY of New York.
Amendments Under clause 8 of rule XVIII, proposed amendments were submitted as follows:

H.R. 4628

Offered by Mr. Chambliss

Amendment No. 3: At the end (page 30, after line 7), add the following new title:

TITLE VI—INFORMATION SHARING

SEC. 601. SHORT TITLE.

This title may be cited as the "Homeland Security Information Sharing Act".

SEC. 602. FINDINGS AND SENSE OF CONGRESS.

(a) Findings.—The Congress finds the following:

(1) The Federal Government is required by the Constitution to provide for the common defense, which includes terrorist attack.

(2) The Federal Government relies on State and local personnel to protect against terrorist attack.

(3) The Federal Government collects, creates, manages, and protects classified and sensitive but unclassified information to enhance homeland security.

(4) Some homeland security information is needed by the State and local personnel to prevent and prepare for terrorist attack.

(5) The needs of State and local personnel to have access to relevant homeland security information to combat terrorism must be reconciled with the need to preserve the protected status of such information and to protect the sources and methods used to acquire such information.

(6) Granting security clearances to certain State and local personnel in one way to facilitate the sharing of information regarding specific terrorist threats among Federal, State, and local levels of government.

(7) Methods exist to declassify, redact, or otherwise adapt classified information so it may be shared with State and local personnel without the need for granting additional security clearances.

(8) State and local personnel have capabilities and opportunities to gather information on suspicious activities and terrorist threats not possessed by Federal agencies.

(9) The Federal Government and State and local governments and agencies in other jurisdictions may benefit from such information.

(10) The Federal, State, and local governments and intelligence, law enforcement, and other emergency preparation and response agencies must act in partnership to maximize the benefits of information gathering and analysis to prevent and respond to terrorist attacks.

(11) Information systems, including the National Law Enforcement Telecommunications System and the Terrorist Threat Warning System, have been established for rapid sharing of classified and sensitive but unclassified information among Federal, State, and local entities.

(12) Increased efforts to share homeland security information should avoid duplicating existing information systems.

(a) Sense of Congress.—It is the sense of Congress that Federal, State, and local entities would share homeland security information to the maximum extent practicable, with special emphasis on hard-to-reach urban and rural communities.

SEC. 603. FACILITATING HOMELAND SECURITY INFORMATION SHARING PROCEDURES.

(a) Procedures for Determining Extent of Sharing of Homeland Security Information.—

(1) The President shall prescribe and implement procedures under which relevant Federal agencies determine—

(A) whether, how, and to what extent homeland security information may be shared with appropriate State and local personnel, and with which such personnel it may be shared;

(B) how to identify and safeguard homeland security information that is sensitive but unclassified; and

(C) to the extent such information is in classified form, whether, how, and to what extent to remove classified information, as appropriate, and with which such personnel it may be shared after such information is removed.

(2) The President shall ensure that such procedures apply to all agencies of the Federal Government.

(3) Such procedures shall not change the substantive requirements for the classification and safeguarding of classified information.
(4) Such procedures shall not change the requirements and authorities to protect sources and methods.

(b) PROVISIONS FOR SHARING OF HOMELAND SECURITY INFORMATION

(1) Under procedures prescribed by the President, all appropriate agencies, including those in the community, shall, through information sharing systems, share homeland security information with appropriate State and local personnel to the extent that such information may be shared, as determined in accordance with subsection (a), together with assessments of the credibility of such information.

(2) Such information sharing system through which information is shared under paragraph (1) shall—

(A) have the capability to transmit unclassified or classified information, through the procedures and recipients for each capability may differ;

(B) have the capability to restrict delivery of information to specified subgroups by geographic location, type of organization, position of a recipient within an organization, or a recipient’s need to know such information; and

(C) include a mechanism to allow the efficient and effective sharing of information; and

(D) be accessible to appropriate State and local personnel.

(3) The procedures prescribed under paragraph (1) shall establish conditions on the use of information shared under paragraph (1) to—

(A) limit the dissemination of such information to ensure that such information is not used for an unauthorized purpose;

(B) ensure the security and confidentiality of such information;

(C) protect the constitutional and statutory rights of any individual who is a subject of such information; and

(D) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

(4) The procedures prescribed under paragraph (1) shall ensure, to the greatest extent practicable, that the information sharing system through which information is shared under such paragraph include existing information sharing systems, including, but not limited to, the National Law Enforcement Telecommunications System, the Regional Information Sharing System, and the Terrorist Threat Warning System of the Federal Bureau of Investigation.

(5) Each appropriate Federal agency, as determined by the President, shall have access to each information sharing system through which information is shared under paragraph (1), and shall therefore have access to all information, as appropriate, shared under such paragraph.

(6) The procedures prescribed under paragraph (1) shall ensure that appropriate State and local personnel are authorized to use such information sharing systems—

(A) to access information shared with such personnel; and

(B) to share, with others who have access to such information sharing systems, the homeland security information of their own jurisdictions, which shall be marked appropriately as pertaining to potential terrorist activity.

(7) Under procedures prescribed jointly by the Director of Central Intelligence and the Attorney General, and by such appropriate Federal agencies, as determined by the President, shall review and assess the information shared under paragraph (6) and integrate such information with existing intelligence.

(c) SHARING OF CLASSIFIED INFORMATION AND SENSITIVE BUT UNCLASSIFIED INFORMATION

(1) The President shall prescribe procedures under which Federal agencies may, to the extent the President considers necessary, share with appropriate State and local personnel homeland security information that remains classified or otherwise protected under law and procedures prescribed under the procedures set forth in subsection (a).

(2) It is the sense of Congress that such procedures may include one or more of the following measures:

(A) Carrying out security clearance investigations with respect to appropriate State and local personnel.

(B) With respect to information that is sensitive but unclassified, entering into nondisclosure agreements with appropriate State and local personnel.

(C) Increased use of information-sharing partnerships that include appropriate State and local personnel, such as the Joint Terrorism Task Forces of the Federal Bureau of Investigation, the Anti-Terrorism Task Forces of the Department of Justice, and regional Terrorism Early Warning Groups.

(d) RESPONSIBLE OFFICIALS.—For each affected Federal agency, the head of such agency shall designate an official to administer this Act with respect to such agency.

(e) FEDERAL CONTROL OF INFORMATION.

Under procedures prescribed under this section, information obtained by a State or local government from a Federal agency under this section shall remain under the control of the Federal agency, unless the State or local law authorizing or requiring such a government to disclose information shall not apply to such information.

(f) DEFINITIONS.—As used in this section:

(1) The term ‘‘homeland security information’’ means any information (other than information that includes individually identifiable information solely for statistical purposes) possessed by a Federal, State, or local agency that—

(A) relates to the threat of terrorist activity;

(B) relates to the ability to prevent, interdict, or disrupt terrorist activity;

(C) would improve the identification or investigation of a suspected terrorist or terrorist organization; or

(D) would improve the response to a terrorist act.

(2) The term ‘‘intelligence community’’ has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 403(4)).

(3) The term ‘‘State and local personnel’’ means any of the following persons involved in prevention, preparation, or response for terrorist attacks:

(A) State Governors, mayors, and other locally elected officials.

(B) State and local law enforcement personnel and firefighters.

(C) Public health and medical professionals.

(D) Regional, State, and local emergency management agency personnel, including State adjutant generals.

(E) Other appropriate emergency response agency personnel.

(F) Employees of private-sector entities that affect critical infrastructure, cyber, economic, or public health security, as designated by the Federal government in procedures developed under this section.

(G) The term ‘‘State’’ includes the District of Columbia and any commonwealth, territory, or possession of the United States.

SEC. 604. REPORT.

(a) General Requirement.—Not later than 12 months after the date of the enactment of this Act, the President shall submit to the congressional committees specified in subsection (b) a report on the implementation of section 603.

(b) Congressional Committees.—The congressional committees referred to in subsection (a) are the following committees:

(1) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

(2) The Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

SECT. 605. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out section 603.

SECT. 606. AUTHORITY TO SHARE GRAND JURY INFORMATION.

Rule 6(e) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (2), by inserting ‘‘; or of guidelines jointly issued by the Attorney General and Director of Central Intelligence pursuant to Rule 6,’’ after ‘‘Rule 6,’’ and

(2) in paragraph (3)—

(A) in subparagraph (A)(ii), by inserting ‘‘; or of a foreign government’’ after ‘‘(including personnel of a state or subdivision of a state’’;

(B) in subparagraph (C)(i)—

(i) in subparagraph (A), by inserting before the semicolon the following: ‘‘(i) by inserting ‘‘or of foreign or foreign government’’ after ‘‘to an appropriate official of a State or subdivision of a State’; and

(II) by striking ‘‘or’’ at the end; and

(ii) by striking the period at the end of clause (V) and inserting ‘‘; or’’;

and

(iv) by adding at the end the following: ‘‘(VI) when matters involve a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or other intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, of any appropriate official of a State, local, or foreign government official for the purpose of preventing or responding to such a threat;’’;

and

(C) in subparagraph (C)(iii)—

(i) by striking ‘‘Federal’’;

(ii) by inserting ‘‘or clause (i)(V)’’ after ‘‘clause (i)(V);’’ and

(iii) by adding at the end the following: ‘‘Any state, local, or foreign official who receives information pursuant to clause (i)(VI) shall use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.’’.

SECT. 607. AUTHORITY TO SHARE ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION.

Section 2317 of title 18, United States Code, is amended by adding at the end the following:

‘‘(7) Any investigative or law enforcement officer, or other Federal official in carrying out official duties, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents and such evidence to an investigative or law enforcement officer to the extent that such disclosure is appropriate to the
proper performance of the official duties of the officer making or receiving the disclosure, and foreign investigative or law enforcement officers may use or disclose such contents or evidence to the extent that such use or disclosure is appropriate to the proper performance of their official duties.

(8) Any investigative or law enforcement officer, or other Federal official in carrying out official duties, who by any means authorized by this chapter, has obtained knowledge of any visual, auditory, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to any appropriate Federal, State, local, or foreign government official to the extent that such contents or derivative evidence reveals a threat of actual or potential acts of terrorism, other grave acts of foreign or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, that are necessary in the conduct of that person’s official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and the Director of Central Intelligence shall jointly issue.

SEC. 608. FOREIGN INTELLIGENCE INFORMATION

(a) DISSEMINATION AUTHORIZER.—Section 203(d)(1) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001 (Public Law 107-56; 50 U.S.C. 403d-5d) is amended by adding at the end the following: “Consistent with the responsibility of the Director of Central Intelligence to protect intelligence sources and methods, and the responsibility of the Attorney General to protect sensitive law enforcement information, it is unlawful for information revealing a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or an agent of a foreign power, within the United States or elsewhere, obtained as part of a criminal investigation to be disclosed to any appropriate Federal, State, local, or foreign government official for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person’s official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and the Director of Central Intelligence shall jointly issue.”.

(b) AMENDMENTS.—Section 203(c) of that Act is amended—(1) by striking “section 2517(6)” and inserting “paragraphs (6) and (8) of section 2517 of title 18, United States Code,”; and

(2) by inserting “and (VI)” after “Rule (e)(6)(3)(C)(i)(V)”.

SEC. 609. INFORMATION ACQUIRED FROM AN ELECTRONIC SURVEILLANCE

Section 106k(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806) is amended by inserting after “law enforcement officers” the following: “or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)”.

SEC. 610. INFORMATION ACQUIRED FROM A PHYSICAL SEARCH

Section 305(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1825) is amended by inserting after “law enforcement officers” the following: “or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)”.

H.R. 4628

OFFERED BY: MR. ENGEL

AMENDMENT No. 4: At the end of title III (page 21, after line 11), insert the following new section:

SEC. 311. LIMITATIONS ON ASSISTANCE TO THE PALESTINIAN SECURITY SERVICES

(a) IN GENERAL.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by adding at the end the following new section: “LIMITATIONS ON ASSISTANCE TO THE PALESTINIAN SECURITY SERVICES

SEC. 118. (a) PROHIBITION ON LETHAL ASSISTANCE.—Notwithstanding any other provision of law, no assistance in the form of lethal military equipment may be provided, either directly or indirectly, by any element of the intelligence community to the security services of the Palestinian Authority, or to any officials, employees or members thereof.

(b) REQUIREMENTS FOR OTHER FORMS OF ASSISTANCE.—With respect to forms of assistance other than the provision of lethal military equipment, provided by any element of the intelligence community to the security services of the Palestinian Authority, or to any officials, employees or members thereof, such assistance may only be provided if the assistance is designed to—

(1) reduce the number of security services of the Palestinian Authority to no more than two; and

(2) reform such security services so that its officials, employees, and members—

(A) respect the rule of law and human rights;

(B) no longer fall under the command of, or report to, Yasir Arafat; and

(C) are not compromised by, and will not support, terrorism.

(c) QUARTERLY REPORTS ON ASSISTANCE PROVIDED SINCE 1993.—(1) Not later than 3 months after the enactment of this section, the Director of Central Intelligence shall submit to the appropriate committees of Congress a report that describes all forms of assistance that have been provided to the security services of the Palestinian Authority since the date on which the Declaration of Principles was signed, including the dates on which such assistance was provided and whether any member of the security services of the Palestinian Authority who received any such assistance has committed an act of terrorism.

(2) After the submittal of the report under paragraph (1), the Director of Central Intelligence shall submit to the appropriate committees of Congress a report that comparatively reports on the forms of assistance under paragraph (1) provided during the preceding calendar quarter and progress toward—

(A) reducing the number of security services of the Palestinian Authority to no more than two;

(B) ensuring that officials, employees, and members of such security services are not compromised by, and will not support, terrorism;

(C) reforming the security services of the Palestinian Authority so that they respect the rule of law and human rights; and

(D) ensuring that the security services of the Palestinian Authority are no longer under the control of Yasir Arafat.

(3) Reports shall be submitted in unclassified form, but may include a classified annex.

(d) DEFINITIONS.—In this section—

(1) the term ‘lethal military equipment’ has the meaning given the term for purposes of the Foreign Assistance Act of 1961, and

(2) the term ‘appropriate committees of Congress’ means the Permanent Select Committee on Intelligence and the Committee on Foreign Relations of the Senate.

H.R. 4629

OFFERED BY: MR. GOSS

AMENDMENT No. 5: At the end of title I (page 9, after line 4), insert the following new section:

SEC. 106. LIMITATION ON USE OF CERTAIN APPROPRIATIONS FOR INTELLIGENCE AND INTELLIGENCE-RELATED ACTIVITIES

(a) IN GENERAL.—Subject to subsection (b), the amounts requested for the Defense Emergency Response Fund that are designated for the incremental costs of intelligence and intelligence-related activities in major acquisition programs which have not achieved initial operational capabilities within two years of the date of the enactment of this Act; and

(b) LIMITATIONS.—The amounts referred to in subsection (a) may not be obligated or expended for activities directly related to identifying, responding to, or protecting against acts or threatened acts of terrorism.

H.R. 4628

OFFERED BY: MR. HASTINGS OF FLORIDA

AMENDMENT No. 6: At the end of the title III (page 21, after line 11), insert the following new section:

SEC. 311. SENSE OF CONGRESS ON DIVERSITY IN THE WORKFORCE OF INTELLIGENCE COMMUNITY AGENCIES.

(a) FINDINGS.—Congress finds the following:

(1) The United States is engaged in a war against terrorism that requires the active participation of the intelligence community.
(2) Certain intelligence agencies, among them the Federal Bureau of Investigation and the Central Intelligence Agency, have announced that they will be hiring several hundred new agents to help conduct the war on terrorism.

(3) Former Directors of the Federal Bureau of Investigation, the Central Intelligence Agency, the National Security Agency, and the Defense Intelligence Agency have stated that a more diverse intelligence community would be better equipped to gather and analyze information on diverse communities.

(4) The National Intelligence Agency and the National Security Agency were authorized to establish an undergraduate training program for the purpose of recruiting and training minority operatives in 1987.

(5) The Defense Intelligence Agency was authorized to establish an undergraduate training program for the purpose of recruiting and training minority operatives in 1988.

(6) The National Imagery and Mapping Agency was authorized to establish an undergraduate training program for the purpose of recruiting and training minority operatives in 2000.

(b) SENSE OF CONGRESS.—It is the sense of Congress that:

(1) the Director of the Federal Bureau of Investigation (with respect to the intelligence activities delegated to the Bureau), the Director of Central Intelligence, the Director of the National Security Agency, and the Defense Intelligence Agency should make the creation of a more diverse workforce a priority in hiring decisions; and

(2) the Director of Central Intelligence, the Director of the National Security Agency, and the Director of National Imagery and Mapping Agency should increase their minority recruitment efforts through the undergraduate training program provided for under law.

H.R. 4628

OFFERED BY: Mr. HASTINGS of FLORIDA

AMENDMENT No. 7: At the end of title III (page 23, after line 11), insert the following new section:

SEC. 311. ANNUAL REPORT ON HIRING AND RETENTION OF MINORITY EMPLOYEES by the INTELLIGENCE COMMUNITY.

Section 114 of the National Security Act of 1947 (50 U.S.C. 404a) is amended—

(1) by redesigning subsection (c) as subsection (a); and

(2) by inserting after subsection (b) the following new subsection:

CHAIRPERSON ON HIRING AND RETENTION OF MINORITY EMPLOYEES.—(1) The Director of Central Intelligence shall, on an annual basis, submit to Congress a report on the employment of covered persons within each element of the intelligence community for the preceding fiscal year.

(2) Each such report shall include disaggregated data by category of covered person from each element of the intelligence community on the following:

(A) Of all individuals employed in the element during the fiscal year involved, the aggregate percentage of such individuals who are covered persons.

(B) Of all individuals employed in the element during the fiscal year involved at the levels referred to in clauses (i) and (ii), the percentage of covered persons employed at such levels:

(i) Positions at levels 1 through 15 of the General Schedule.

(ii) Positions at levels above GS-15.

(C) Of individuals hired by the head of the element during the fiscal year involved, the percentage of such individuals who are covered persons.

(3) Each such report shall be submitted in an unclassified form, but may contain a classified annex.

(4) Nothing in this subsection shall be construed to authorize the construction or publication of any similar report required under another provision of law.

(5) In this subsection, the term ‘‘covered persons’’ means—

(A) ethnic and racial minorities,

(B) women, and

(C) individuals with disabilities.

OFFERED BY: Ms. PELOSI

AMENDMENT No. 8: Amend section 501 to read as follows:

SEC. 501. USE OF FUNDS FOR COUNTER-DRUG AND OTHER INTELLIGENCE ACTIVITIES FOR COLOMBIA.

(a) AUTHORITY.—Funds designated for intelligence or intelligence-related purposes for assistance to the Government of Colombia for counter-drug activities for fiscal years 2002 and 2003, and any unobligated funds available to any element of the intelligence community for such activities for a prior fiscal year, shall be available to support a unified campaign against narcotics trafficking and against activities by organizations designated as terrorist organizations (such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia) that take actions to protect human health and welfare in emergency circumstances, including undertaking rescue operations.

(b) REQUIREMENT FOR CERTIFICATION.—(1) The authorities provided in subsection (a) shall not be exercised until the Secretary of Defense certifies to the Congress that the provisions of paragraph (2) have been complied with.

(2) In order to ensure effectiveness of United States support for such a unified campaign, prior to the exercise of the authority contained in subsection (a), the Secretary of State shall report to the appropriate committees of Congress that the newly elected President of Colombia has—

(A) committed, in writing, to establish comprehensive policies to combat illicit drug cultivation, manufacturing, and trafficking, particularly by providing economic opportunities that offer viable alternatives to illicit crops; and to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerrilla organizations;

(B) committed, in writing, to implement significant budgetary and personnel reforms of the Colombian Armed Forces; and

(C) committed, in writing, to support substantial additional Colombian financial and other resources to implement such policies and reforms, particularly to meet the country’s previous commitments under ‘‘Plan Colombia’’.

In this paragraph, the term ‘‘appropriate committees of Congress’’ means the Permanent Select Committee on Intelligence and the Committee on Appropriations of the House of Representatives and the Select Committee on Intelligence and the Committee on Appropriations of the Senate.

(c) TERMINATION OF AUTHORITY.—The authority provided by subsection (a) shall cease to be effective if the Secretary of Defense has credible evidence that the Colombian Armed Forces are not conducting vigorous operations to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerrilla organizations.

(d) APPOINTMENT OF CERTAIN PROVISIONS OF LAW.—Sections 556, 567, and 568 of Public Law 107-115, section 8093 of the Department of Defense Appropriations Act, 2002, and the numerical limitations on the number of United States military personnel and United States individual civilian contractors in sections 1020 and 1220 of Public Law 105-267 shall be applicable to funds made available pursuant to the authority contained in subsection (a).

(e) LIMITATION ON PARTICIPATION OF UNITED STATES PERSONNEL.—United States Armed Forces personnel or United States civilian contractor employed by the United States will participate in any combat operation in connection with assistance made available under this section, except for the purpose of acting in self defense or rescuing any United States citizen to include United States civilian employees, United States civilian employees, and civilian contractors employed by the United States.

H.R. 4628

OFFERED BY: Mr. ROEMER

AMENDMENT No. 9: At the end (page 30, after line 7), add the following new title:

TITLE VI—NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES.

SEC. 601. ESTABLISHMENT OF COMMISSION.

There is established the National Commission on Terrorist Attacks Upon the United States (in this title referred to as the ‘‘Commission’’).

SEC. 602. COMPOSITION OF THE COMMISSION.

(a) MEMBERS.—Subject to the requirements of subsection (b), the Commission shall be composed of 10 members, of whom—

(1) 3 members shall be appointed by the majority leader of the Senate;

(2) 3 members shall be appointed by the Speaker of the House of Representatives;

(3) 2 members shall be appointed by the minority leader of the Senate; and

(4) 2 members shall be appointed by the minority leader of the House of Representa-

(b) QUALIFICATIONS.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 5 members of the Commission shall be from the same political party.

(2) NONGOVERNMENTAL APPOINTEES.—No member of the Commission shall be an officer or employee of the Federal Government or any State or local government.

(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with significant experience and significant depth of experience in such professions as governmental service and intelligence gathering.

(c) CHAIRPERSON; VICE CHAIRPERSON.—

(1) In general.—Subject to the require-

(2) POLITICAL PARTY AFFILIATION.—The Chairperson and Vice Chairperson shall not be from the same political party.

(d) MEETINGS OF COMMISSION.—No meetings of the Commission may be held until after the date of enactment of this Act, 6 or more members of the Commission have been appointed, those members who have been appointed may meet and select a temporary Chairperson and Vice Chairperson, who may begin the operations of the Commission, including the hiring of staff.

(e) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the Chairperson or a majority of the members. Six members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

SEC. 603. FUNCTION OF THE COMMISSION.

(a) In general.—The functions of the Commission are to—
(1) review the implementation by the intelligence community of the findings, conclusions, and recommendations—
(A) the Joint Inquiry of the Select Committee of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives regarding the terrorist attacks against the United States on September 11, 2001;
(B) other reports and investigations of the House Permanent Select Committee on Intelligence of the House of Representatives and the Senate Select Committee on Intelligence of the Senate; and
(C) other such executive branch, congressional, and other commission investigatory findings of any such terrorist attacks or the intelligence community;
(2) make recommendations on additional actions for implementation of the findings, conclusions, and recommendations referred to in paragraph (1);
(3) review resource allocation and other priorities of the intelligence community for counterterrorism and make recommendations for such changes in those allocations and prioritization to ensure that counterterrorism receives sufficient attention and support from the intelligence community;
(4) review and recommend changes to the organization of the intelligence community, in particular the division of agencies under the jurisdiction of the Secretary of Defense and the Director of Central Intelligence, the dual responsibilities of the Director of Central Intelligence as head of the intelligence community and as head of the Central Intelligence Agency, and the separation of agencies with responsibility for intelligence collection, analysis, and dissemination; and
(5) determine what technologies, procedures, and resources are needed for the intelligence community to effectively support and conduct future counterterrorism missions, and recommend how these capabilities should be developed, acquired, or both from entities outside the intelligence community, including from private entities.
(b) DEPARTMENT OF INTELLIGENCE COMMUNITY.—In this section, the term ‘intelligence community’ means—
(1) the Office of the Director of Central Intelligence and the National Intelligence Council;
(2) the Central Intelligence Agency;
(3) the National Security Agency;
(4) the Defense Intelligence Agency;
(5) the National Imagery and Mapping Agency;
(6) the National Reconnaissance Office;
(7) other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;
(8) the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of Energy, and the Coast Guard;
(9) the Bureau of Intelligence and Research of the Department of State; and
(10) such other elements of any other department or agency as are designated by the President, or designated jointly by the Director of Central Intelligence and the head of the department or agency concerned, as an element of the intelligence community under section 3(4)(J) of the National Security Act of 1947 (30 U.S.C. 461a(4)(J)).

SEC. 605. REPORT OF THE COMMISSION.
(a) HEARINGS AND EVIDENCE.—The Commission may, for purposes of carrying out this title—
(1) hold hearings, sit and act at times and places, take testimony, receive evidence, and administer oaths; and
(2) require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents.
(b) SERVICE.—Subpoenas issued under subsection (a)(2) may be served by any person designated by the Commission.
(c) SERVICE.—Subpoenas issued under subsection (a)(2), the United States district courts for the judicial circuits in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear and to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(8) ADDITIONAL ENFORCEMENT.—Sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194) shall apply in the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section.

(c) CLOSED MEETINGS.—Notwithstanding any other provision of law which would require meetings of the Commission to be open to the public, the Commission, or any subcommittee of the Commission, may be closed to the public if the President determines that such portion is likely to disclose matters that could endanger national security.

(d) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to engage in commercial activities for the discharge its duties under this title.

(e) INFORMATION FROM FEDERAL AGENCIES.—The Commission, or any subcommittee of the Commission, may require directly from any department, agency, or instrumentality of the United States any information related to any inquiry of the Commission conducted under this title. Each such department, agency, or instrumentality shall, to the extent authorized by law, furnish such information directly to the Commission upon request.

(f) ASSISTANCE FROM FEDERAL AGENCIES.—
(1) GENERAL SERVICES ADMINISTRATION.—
The Administrator of General Services shall provide the Commission with a reimbursable basis administrative support and other services for the performance of the Commission’s functions.

(2) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States are authorized to provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(g) GIFTS.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, accept, use, and dispose of gifts or donations of services or property.

(h) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

(i) POWERS OF SUBCOMMITTEES, MEMBERS, AND AGENTS.—Any subcommittee, member, or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

SEC. 606. COMPENSATION AND TRAVEL EXPENSES.
(a) COMPENSATION.—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5316 of title 5, United States Code, but at rates to not exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) TRAVEL EXPENSES.—The appropriate executive departments and agencies shall cooperate with the Commission in expediting the offer of employment of Commission members and staff appropriate security clearances in a manner consistent with existing procedures and requirements, except that no person shall be provided with access to classified information under this section who would not otherwise qualify for such security clearance.

SEC. 607. REPORTS OF THE COMMISSION; TERMINATION.
(a) INITIAL REPORT.—Not later than 1 year after the date of the first meeting of the Commission, the Commission shall submit to the President and Congress an initial report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members; and
(b) FINAL REPORT.—Not later than 6 months after the submission of the initial report of the Commission, the Commission

addition, additional personnel as may be necessary to enable the Commission to carry out its functions.

(c) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 58 of such title relating to classification and pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code. Any individual appointed under subsection (a) or (b) shall be treated as an employee of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(d) DETAILS.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall retain the rights, status, and privileges of his or her personal employed intermittently in the Government.
shall submit to the President and Congress a final report containing such updated findings, conclusions, and recommendations described in paragraphs (1) and (2) of subsection (a). The Commission agrees to by a majority of Commission members.

c) NONINTERFERENCE WITH CONGRESSIONAL JOINT INQUIRY.—Notwithstanding subsection (a), the Commission shall not submit any report of the Commission until a reasonable period after the conclusion of the Joint Inquiry of the Select Committee on Intelligence of the House of Representatives regarding the terrorist attacks against the United States which occurred on September 11, 2001.

d) TERMINATION.—

(1) IN GENERAL.—The Commission, and all the authorities of this title, shall terminate 60 days after the date on which the final report is submitted under subsection (b).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the second report.

SEC. 609. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission to carry out this title $1,000,000, to remain available until expended.

H.R. 5005

OFFERED BY: MR. BERERUT

AMENDMENT No. 1: At the end of section 201, insert the following:

(9) Participate and otherwise cooperate with the intelligence community in the tasking or establishment of priorities for the collection of foreign intelligence important for homeland security by those elements of the intelligence community authorized to undertake such collection.

Amend section 212(a)(2) to read as follows:

(2) Requests for the collection and coordination of information.—

(A) Requesting the collection of foreign intelligence by elements of the intelligence community authorized to undertake such collection, Federal law enforcement agencies, and other executive agencies.

(B) Coordinating with elements of the intelligence community, and with Federal, State, and local law enforcement agencies, and the private sector as appropriate.

H.R. 5005

OFFERED BY: MR. ENGEL

AMENDMENT No. 2: At the end of the bill, insert the following new title:

TITLE XI—CHEMICAL WEAPON PRECURSOR LICENSING

SEC. 1101. DEFINITIONS.

For purposes of this title:

(1) The term ‘‘chemical weapon precursor’’ means a chemical agent or a Schedule 2 chemical agent, as such terms are defined in section 3 of the Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 7601).

(2) The term ‘‘licensee’’ means a person holding a license under this title.

(3) The term ‘‘qualified person’’ means a person who is authorized to request such qualifications as the Secretary may, by rule, prescribe to protect the public health and safety from the misuse of chemical weapon precursors.

(4) The term ‘‘private sector’’ means any person who has been convicted of a criminal offense under this title or under any similar or related provision of Federal or State law and shall be a qualified person for purposes of this title.

SEC. 1102. LICENSE REQUIRED.

After December 31, 2002, no person may purchase, sell, or distribute in interstate commerce any chemical weapon precursor unless such person is licensed under section 1103.

SEC. 1103. ISSUANCE OF LICENSEES.

(a) APPLICATION.—Any qualified person may submit an application for a license to purchase, sell, or distribute in interstate commerce a chemical weapon precursor.

(b) ISSUANCE.—Upon receiving an application containing such information as the Secretary may require, the Secretary shall issue a license to such person to purchase, sell, or distribute in interstate commerce a chemical weapon precursor if the Secretary finds that such person is a qualified person and if such person agrees to comply with this title and the regulations under this title.

(c) TERMINATION.—A license under this section shall remain in effect for such term as the Secretary may prescribe, except that the Secretary may at any time revoke such license if the Secretary determines that the licensee has failed or refused to comply with this title or any regulation under this title.

SEC. 1104. REQUIREMENTS FOR MAINTENANCE OF LICENSE.

Each licensee shall comply with each of the following requirements and such other requirements as the Secretary may establish by rule to carry out the purposes of this title:

(1) The licensee shall report any suspicious purchases or sales of chemical weapon precursors.

(2) The licensee shall maintain and make available to the Secretary and to Federal, State, and local law enforcement authorities, and to the Secretary, all records of the purchase, sale, or distribution of chemical weapon precursors. Such records shall be in such form and shall contain such information as the Secretary shall, by rule, prescribe.

SEC. 1105. PENALTIES FOR VIOLATION.

Any person who violates any provision of this title or any regulation under this title shall be subject to a civil penalty of not more than $10,000 for a first offense and not more than $20,000 for a second or subsequent offense. If such violation was intentional, such person shall be subject to a criminal penalty of up to 10 years in prison in addition to such civil penalties.

H.R. 5120

OFFERED BY: MR. PAUL

AMENDMENT No. 3: In section 763—

(1) strike subsection (b) (relating to transfer of appropriations);

(2) in the section heading, strike ‘‘transfer of appropriations’’ (and conform the table of contents accordingly);

(3) strike the subsection designation and caption (and redesignate the paragraphs and subparagraphs as subsections and paragraphs, respectively); and

(4) strike ‘‘paragraph (1)(A)’’ and ‘‘paragraph (1)(B)’’ and insert ‘‘subsection (a)(1)’’ and ‘‘subsection (a)(2)’’, respectively.

In section 811(e), strike the last sentence (referring to section 763(b)).

H.R. 5120

OFFERED BY: MR. BARR

AMENDMENT No. 23: Insert at the end before the short title the following:

Sect. 1. None of the funds made available in this Act under the heading ‘‘Special Forfeiture Fund (Including transfer of funds)’’ to support a national media campaign shall be used to pay any amount pursuant to contract number N00606-02-C0124.

H.R. 5120

OFFERED BY: MR. SANDERS

AMENDMENT No. 28: At the end of the bill, insert after the last section (preceding the short title) the following new section:

SEC. 1. None of the funds appropriated by this Act may be used by the Internal Revenue Service for any activity that is in contravention of section 411(b)(1)(H)(i) or section 411(d)(6) of the Internal Revenue Code of 1986, section 204(b)(1)(G) or 204(b)(1)(H)(i) of the Employee Retirement Income Security Act of 1974, or section 4(i)(1)(A) of the Age Discrimination in Employment Act.

H.R. 5120

OFFERED BY: MR. SANDERS

AMENDMENT No. 27: At the end of the bill, insert after the last section (preceding the short title) the following new section:

SEC. 1. None of the funds appropriated by this Act may be used by the Internal Revenue Service for any activity that is in contravention of section 411(b)(1)(H)(i) or section 411(d)(6) of the Internal Revenue Code of 1986, section 204(b)(1)(G) or 204(b)(1)(H)(i) of the Employee Retirement Income Security Act of 1974, or section 4(i)(1)(A) of the Age Discrimination in Employment Act.

(2) for the issuance of favorable tax-qualified determination letters to employers who convert to a cash balance pension plan, or

(3) to enforce the preamble to Treasury Decision 8660, issued under section 401(a)(4) of the Internal Revenue Code of 1986 on September 19, 1991, which reads as follows: ‘‘The fact that interest adjustments through normal retirement and readjustment accrued in the year of the related hypothetical allocation will not cause a cash balance plan to fail to satisfy the requirements of section 411(b)(1)(H)(i), relating to age-based reductions in the rate at which benefits accrue under a plan.’’

H.R. 5120

OFFERED BY: MR. SANDERS

AMENDMENT No. 29: At the end of the bill, insert after the last section (preceding the short title) the following new section:

SEC. 1. None of the funds appropriated by this Act may be used by the Internal Revenue Service for the issuance of favorable tax-qualified determination letters to employers who convert to a cash balance pension plan.
The Senate met at 9:45 a.m. and was called to order by the Honorable Jack Reed, a Senator from the State of Rhode Island.

PRAYER

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

Almighty God, Power to equalize the pressures of life, we need You! The day stretches out before us. There is more to do than time will allow; there are more people to see than the schedule can accommodate; there are more problems to solve than we have strength to endure. Life becomes a pressure cooker. Thank You for this moment of prayer in which Your peace equalizes our pressure. We press on with the duties of this day knowing that there is enough time today to do what You want us to do. There is no panic in heaven; may there be none in our hearts. Give us the gift of a productive day. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable Jack Reed 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 assistant legislative clerk read the following letter:

U.S. SENATE
PRESIDENT PRO TEMPORE
WASHINGTON, DC, July 23, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable Jack Reed, a Senator from the State of Rhode Island, to perform the duties of the Chair.

Robert C. Byrd, President pro tempore.

Mr. Reed thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The Acting President pro tempore. The Senator from Nevada is recognized.

SCHEDULE

Mr. Reed. Mr. President, there will be a period for morning business until 10:45 a.m., with the first half of the hour under the control of the Republican leader or his designee, and the second half of the hour under the control of the majority leader or his designee.

At 10:45 a.m., the Senate will vote on the cloture motion on the nomination of Richard Carmona to be Surgeon General of the United States. We hope to voice vote the nomination shortly after the cloture vote.

Upon disposition of the nomination, the Senate will resume consideration of the prescription drug bill, with the time until 12:30 p.m. divided between the two leaders or their designees. The Senate will recess, as we do on every Tuesday, from 12:30 p.m. to 2:15 p.m. for our weekly party conferences.

At 2:15 p.m. today, the Senate will resume consideration of the prescription drug bill, with 30 minutes of closing debate on the pending Graham and Grassley prescription drug amendments, prior to two rollcall votes beginning at 2:45 p.m. first on a motion to waive the Budget Act with respect to the Graham amendment, and second on a motion to waive the Budget Act with respect to the Grassley amendment.

MEASURE PLACED ON CALENDAR—H.R. 4687

Mr. Reid. Mr. President, I understand H.R. 4687 is at the desk and due for its second reading.

The Acting President pro tempore. The Senator is correct.

Mr. Reid. I ask that H.R. 4687 be read a second time, and I object to any further proceedings.

The Acting President pro tempore. The clerk will read the bill by title for the second time.

The assistant legislative clerk read as follows:

A bill (H.R. 4687) to provide for the establishment of investigative teams to assess building performance and emergency response and evacuation procedures in the wake of any building failure that has resulted in substantial loss of life or that posed significant potential of substantial loss of life.

The Acting President pro tempore. Objection having been heard, the bill will be placed on the calendar.

RESERVATION OF LEADER TIME

The Acting President pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The Acting President pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10:45 a.m. with Senators permitted to speak therein for up to 10 minutes each.

Under the previous order, the first half of the time shall be under the control of the Republican leader or his designee. Under the previous order, the second half of the time shall be under the control of the majority leader or his designee.

The Senator from Wyoming.

Mr. Thomas. Mr. President, I ask unanimous consent to use some of the time for the Republican side.

* This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
The ACTING PRESIDENT: Mr. President, the Senate has the floor.

Mr. GRASSLEY. Mr. President, our time is very short this morning, so I will be brief. Let me discuss the key criteria Senators should consider.

First, is the drug coverage permanent and dependable? Under the tripartisan amendment, drug coverage would be a permanent part of the Medicare entitlement for the 21st Century.

Second, is the drug coverage adequate, and does it provide prescription drug coverage to all seniors? This bill provides prescription drug coverage to all seniors, and for their drug costs. It gives them access to discounts on prescription drugs. It is more in the private sector, and it is economically as can be done. How will the distribution of drugs be handled by the Government? The other bill will be a part of Medicare and will be handled by the Government.

Third, is the plan bipartisan and well funded? I hope we will give some thought to the only one that is both bipartisan and well funded. It costs in the area of $600 billion. The other one is very expensive, but one quite less expensive than the other. Certainly we need to take a look at the expenses.

The tripartisan plan seems truly to find some common ground between traditional Democrat and Republican views, and that is useful. It reforms Medicare. It provides a prescription drug benefit to ensure that seniors do have coverage more similar to what is available in the private sector and to all seniors, and for their drug costs. It gives them access to discounts on prescription drugs. It is more in the private sector, and it is economically as can be done. How will the distribution of drugs be handled by the Government? The other bill will be a part of Medicare and will be handled by the Government. The other will be a private sector delivery system that will be set up.

In the case of the Government system, of course, whoever does the distribution will not have to make any particular choices with regard to costs or helping to reduce them. But on the other hand, in the private sector the more they can make it economical, the more profitable it will be.

So I am hopeful as we go through this, we can seek to set forth the best proposition that is possible, at the same time taking into account spending, and the spending in the two bills are quite different. The Democrat bill, the Graham bill, over a period of 7 years, is basically twice as expensive as the other bill. It costs in the area of $600 billion. The other one is very expensive as well, about $330 billion over the course of 10 years. Either one is going to be very expensive, but one quite less expensive than the other. Certainly we need to take a look at the expenses.

The tripartisan plan seems truly to find some common ground between traditional Democrat and Republican views, and that is useful. It reforms Medicare. It provides a prescription drug benefit to ensure that seniors do have coverage more similar to what is available in the private sector. It spends $330 billion over 10 years to provide prescription drugs for seniors. Even at that, whoever thought we would be discussing something in the area of $330 billion? Nevertheless, that is the case. The compromise between various proposals.

In addition to simply the drug benefits, it spends $40 billion to make some overdue changes in Medicare Parts A and B, which need to be done. We have not made changes in Medicare for some time. The prices and payments have caused it to be difficult for people to get services. It tends to bring the Medicare system up to actuarially sound and dependable. Under the tripartisan amendment, drug coverage would be a permanent part of the Medicare entitlement, for the 21st Century.

Under the Graham amendment, however, that coverage disappears into a big black hole. The benefit expires the first dollar payments of these kinds. I think first dollar payments are very important in terms of any insurance program. It has a benefit cap. The Government pays 50 percent for seniors with drug costs up to $3,400. It has catastrophic coverage beginning at $3,700. Seniors will then be responsible for only 10 percent of the cost above that. So it is a tough program. It is one of the programs, however, that deals with seeking to solve the problem without excessive expenditure. Low-income assistance below the 150 percent Federal poverty level is good for the 1 percent of the population that is below that. So I hope this proposal could have been more in the committee, and then the committee has come forth with a majority vote.

This is the second time recently we have had bills come to the floor that are complicated and difficult without having had their exposure in the Senate committee.

The energy bill, which we are still involved with, was on the floor for some time, was passed from the committee. It was not allowed to come through a committee recommendation, and the same thing with the Finance Committee. So we find ourselves in a very difficult position.

Nevertheless, that is where we are. We have several proposals before us. One is the Graham-Kennedy-Daschle bill, which was in the committee but apparently would not have received a majority vote in the committee, so it therefore was not brought to a vote. This creates a very large increase of Government bureaucracy and basically undermines controls on pharmaceuticals, has fairly restrictive formulas for the majority of managed-care companies.

The Graham bill has plans to cover at least one name brand drug but not more than two in each therapeutic class. Pharmaceuticals is a difficult issue: How to provide them in terms of distribution, are they a part of this coverage in the case of all they really become part of Medicare?

The competing bill, they have done more in the private sector, and it is separate somewhat. It is a real tough job to encourage people to do it as one of the proposals. How will the generics become hopefully more used and useful than they have in the past and therefore reduce some of the costs? How is the distribution done so consumers have some choices in terms of not only those that are available to them but, frankly, some of us are concerned in States where we have low population whether or not there will be opportunities for consumers to have some choices, whether they will be able to go to their local drugstore, or whether they will all have to be mail-in kinds of things.

So it is a tough decision. There are differences in the two proposals. One will be handled by the Government. The other will be a private sector delivery system that will be set up.

In the case of the Government system, of course, whoever does the distribution will not have to make any particular choices with regard to costs or helping to reduce them. But on the other hand, in the private sector the more they can make it economical, the more profitable it will be.

So I am hopeful as we go through this, we can seek to set forth the best proposition that is possible, at the same time taking into account spending, and the spending in the two bills are quite different. The Democrat bill, the Graham bill, over a period of 7 years, is basically twice as expensive as the other bill. It costs in the area of $600 billion. The other one is very expensive as well, about $330 billion over the course of 10 years. Either one is going to be very expensive, but one quite less expensive than the other. Certainly we need to take a look at the expenses.

The tripartisan plan seems truly to find some common ground between traditional Democrat and Republican views, and that is useful. It reforms Medicare. It provides a prescription drug benefit to ensure that seniors do have coverage more similar to what is available in the private sector. It spends $330 billion over 10 years to provide prescription drugs for seniors. Even at that, whoever thought we would be discussing something in the area of $330 billion? Nevertheless, that is the case. The compromise between various proposals.

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on people who depend on Medicare. How will my colleagues explain to seniors in 2010 that they are out of luck because of a gimmick they used to hide the true cost of their proposal? I ask the Senate to support permanent, dependent, prepaid coverage.

The Graham amendment seriously restricts Medicare enrollees who want access to brand-name drugs. Its restrictive policy will result in long lines for ground-breaking drugs. Why? Because Senator GRAHAM requires Medicare enrollees to use a bureaucratic appeals process in order to get needed drugs that are off the formulary. And it’s not a short list—their formulary denies access to at least 90 percent of brand-name drugs!

We’ve heard a lot about gaps in coverage. Mr. President, here’s the biggest gap of all: the gap between the large number of brand name drugs beneficiaries may need, and the paltry number Medicare would cover under the Graham amendment. Of the 2,500 brand name drugs approved by FDA, less than 10 percent would be covered. What a gap in coverage!

Our amendment, on the other hand, sets policies to ensure that Medicare enrollees get the drugs they need. We do not limit them to an arbitrary number of drugs in each class, as Senator GRAHAM does. We support making generic drugs an option, with lower cost-sharing, but we don’t think depriving seniors of access to brand-name drugs is the way to go about it. So that is a key difference.

Our opponents have talked a great deal about the fact that less than 20 percent of beneficiaries would face a gap in coverage under the tripartisan amendment. But compare that number with the number of beneficiaries who would experience a gap in coverage under their amendment. Under the Graham amendment, fully 100 percent of enrollees would lack full access to brand-name drugs in Medicare. When you lay the two gaps against one another, isn’t it clear that their gap, which will affect all enrollees, is the worse one?

Our bill also delivers a cost-effective, quality benefit. CBO says that the only way to contain the cost of a drug benefit is to ensure that drugs are delivered efficiently.

In turn, CBO says that the only way to have drugs delivered efficiently is to have competition among private plans that stand to make money if they drive hard bargains with drug manufacturers. That’s what our amendment offers.

Now, our opponents have gone on and on about private plans not being willing to deliver a drug benefit. Well, they too rely on a private sector delivery system, although it is non-competitive and thus is so expensive.

We do our best to ensure our delivery system works. Our opponents say that insurers will refuse to participate, even though the government lays $340 billion on the table and bears 75 percent of the economic risk, and even though CBO projects it to work everywhere in the country. But what happens in the off-chance that private plans won’t want to participate?

Well, here’s what will happen. The government has a price mandate in our bill—to make it takes to ensure a drug benefit for every last Medicare beneficiary. If insurers won’t participate at the level of competition we expect, the Secretary must adjust the competition bar downward until they will participate.

At a last resort, we would end up with a Graham-type delivery model in which pharmacy benefit managers are simply government contractors, bearing only minimal performance risk. Put another way, our Plan B is Senator GRAHAM’s approach. So why are our opponents so afraid of that?

Under no circumstances will our bill allow any senior, anywhere, to go without access to a drug plan. It’s an iron-clad guarantee, and it’s right there in our bill.

Now, the Senator from Massachusetts has repeatedly objected to the asset test for the low-income benefit in our bill, as if it’s something new. What a red herring! There has been asset testing for low-income Medicare populations since 1987, under the Qualified Medicare Beneficiary program and the Specified Medicare Beneficiary programs. And Senator KENNEDY and his Democratic colleagues voted for it overwhelmingly. There’s nothing but politics behind those objections.

Another thing the tripartisan amendment offers is an enhanced option in Medicare. The enhanced option will add protection against the devastating costs of serious illness, and make preventive benefits free to help seniors avoid serious illness in the first place. And it is completely voluntary—seniors get to choose, and they don’t need to take it in order to get drug coverage.

What does the Graham amendment have to offer beyond drugs? Nothing. Why would anyone want to deny Medicare beneficiaries the choice of free preventive benefits and better protection against serious illness? I will let the other side answer that.

The choice is clear. The Graham amendment offers drug coverage that swiftly disappears into a black hole, and it has the biggest gap of coverage of all. The tripartisan amendment is the right prescription for 21st century Medicare. Because that is the biggest gap of coverage of all. The tripartisan plan is the right prescription for 21st century Medicare.

I yield the floor.

The ACTING PRESIDENT pro tempore, The Senator from Maryland.

Ms. MIKULSKI. Mr. President, in the last 2 weeks the Senate has taken up two of the most important issues facing the American people. First, we took on the issue of corporate governance. We passed a tough, new regulatory framework to deal with the cro

nymism and corruption in America’s private sector. Now we are moving on to deal with prescription drugs for seniors.

I have talked to many seniors in my State. They are really worried. They are worried about the impact of these scandals and they are worried about the impact of these scandals are having on the market. They are watching the Dow Jones go down along with their life savings. While they see their life savings evaporating, they cannot see the cost of their prescription drugs going up. These two issues are linked. The crisis in corporate governance and the crisis in our markets, and also the whole issue of making affordable prescription drugs available to seniors, are linked together.

Seniors now are talking about their own lives and times and families. The two things they do not want to worry about is that their life savings and the rising cost of prescription drugs. With the evaporation of their savings and the escalation of the cost of prescription drugs, they are really scared.

We have faced many crises in the United States of America this year. We salute our military and others who are working on homeland defense. But we really need to provide another defense, a defense against the loss of jobs and the loss of economic security as well. What we see in our markets, and also the whole issue of making affordable prescription drugs available to seniors, are linked together.

In my own State, what we see is that folks are watching the Dow Jones and the cost of prescription drugs, many families got help from their adult children. But their own adult children are worried about the loss of jobs and the loss of economic security as well. What we see in our markets, and also the whole issue of making affordable prescription drugs available to seniors, are linked together.

We have faced many fears in the American automobile industry, competing against Japanese companies that do not have to pay for prescription drug benefits because they have a national health care system. Steel in my State is in a bad way because of predatory foreign competition. It is struggling to keep its promises to workers and retirees, providing pensions and health care.

What does this show? It shows that the CEOs who do not have service-connected disabilities are turning to VA because of
the prescription drug benefit. The collapse of the system in which they were able to afford that benefit is having them turn to other systems.

We need a prescription drug benefit, and we need it now.

Congress has the possibility of passing a prescription drug benefit, it has to be a meaningful benefit, not just slogans and sound bites. Seniors need a benefit they can count on, and it needs to follow these criteria. First, any benefit we pass has to be voluntary. It must be run by Medicare, not by insurance companies that simply gatekeep, that privatize profits and socialize risks.

The second thing is the benefit must be the same for all seniors, no matter where they live. No benefit should vary from State to State.

Then, who should decide what medications a senior gets? The decision should be made by the doctor, not an insurance gatekeeper. Of course, it needs to be affordable to seniors and also not to be voluntary. It must be run by Medicare, not by insurance companies that simply gatekeep, that privatize profits and socialize risks.

I believe the Democratic plan, the Graham-Miller plan, which I support, meets these criteria. It answers the questions that seniors ask me as I am out and about talking to them.

Who runs it? Our plan is run by Medicare.

Is it available anywhere I live? Our plan says yes.

Who decides what medicines I get? Your doctor.

Is it affordable? You bet. There is no deductible; premiums are $25; copays are defined, specific, and reasonable; catastrophic drug costs are covered if you have to spend more than $4,000 on prescription drugs.

This is what our plan is. It is voluntary. It is available anywhere. It is going to be run by Medicare, not by insurance companies. The other plans fall those criteria and therefore I believe fail seniors. The Republican and tripartisan plans do not provide a benefit under Medicare. They turn it over to the insurance companies. Remember them? They are the same people who brought us Medicare+Choice, and they pulled out, leaving seniors without coverage throughout my State. People had signed up believing it was going to be a benefit, but after they squeezed their profits, they dumped the seniors. We cannot have the same experience in this bill.

Another problem is the benefit will not be the same for all seniors. It will vary according to different plans and different States. If in fact it is going to be a Federal program, it should be uniform and available in every State.

Who decides the prescription drugs? Once again, insurance companies will be the gatekeepers, not doctors, and their decisions will be based on profits, not patient care.

These plans will not be affordable for seniors. They are going to have a high deductible, copayments that fluctuate, and also an enormous, huge gap in coverage. The tripartisan plan—on which I know there was serious effort—leaves people without a drug coverage between the costs of $3,400 to $5,000 a year. For $1,500, you are on your own. These plans raise more questions than they answer. How would a senior know what he or she is getting? How would they know it is covered? Who will make sure that insurance companies stick by the plans they offer? And how do seniors pay for their medicine in the gap months? America’s seniors need their questions answered. They deserve more than that. They deserve—and they need—a real benefit under Medicare.

I know the Presiding Officer could tell me stories he hears in his own State of Rhode Island. I hear them wherever I go in my home State. I hear them from seniors, and I hear them from their families. When you listen to the families, you hear heart-wrenching stories. With the collapse of manufacturing in my State, it is even worse. The fact is that the farmers in my State are facing drought and will have to turn to Federal assistance. The fact is that watermen, who are out there on the Chesapeake Bay during this heat trying to forage for crabs, are foraging for their health care. We have to help meet those needs.

I held a hearing earlier this year on the healthcare benefits of steelworker retirees where I heard from retired steelworkers and their widows. If steel goes under, these people will lose their prescription drug coverage.

I was particularly touched by a story from a steel-widow—Gertrude Misterka. She has diabetes, high blood pressure, high cholesterol, asthma, and periodic chest pains.

She asked her pharmacist how much her medications would cost her without her retiree coverage. He told her—about $5,800. Gertrude may lose her health care from Beth Steel. Under the Republican and the Tripartisan plan, assuming a person from a Maryland insurer, she’d pay a $250 deductible and up to $33 in monthly premiums. That is $646 a year, before buying a single pill, and, she could still have no coverage for total drug costs between $3,450 and $5,500.

How does that help her? She needs a benefit that she can count on. Beth Steel and other American manufacturing companies need the Federal Government to offer a Medicare benefit so their workers are taken care of.

By passing Medicare prescription drug benefit Congress will deliver real security to America’s seniors. Retirement security means more than pension security. Seniors need healthcare security to be at ease in their retirements.

Congress created Medicare as a promise to our seniors. It guaranteed meaningful healthcare coverage. Medicare kept seniors healthy and relieved their fear of being bankrupted by huge hospital bills. But Medicare didn’t keep up with medical advances. To be a meaningful safety net, Medicare must include a prescription drug benefit. To be a meaningful benefit, Congress can’t leave it up to insurance companies. Promises made to our seniors must be promises kept.

I really hope we will pass a senior prescription drug benefit that is meaningful, affordable, available nationwide. I promised that I would truly honor your father and mother. It is a great Commandment to live by, and it is a great Commandment to govern by.

I yield the floor.

The ACTING PRESIDENT pro tem: The Senator from Michigan.

STABENOW. Mr. President, I rise to join with my colleague from Maryland who spoke so eloquently about the need for real Medicare prescription drug coverage. I thank her for her leadership for our seniors over the years, both in Maryland and around the country. I join her today, and I would like to start by sharing some additional stories, some voices from Michigan.

I have been inviting people to join me in a prescription drug peoples’ lobby. One idea of the peoples’ lobby is to counter the huge special interest lobby in the form of the prescription drug lobby that we see every single day. We know there are six drug company lobbyists or more for every Member of the Senate. Yet what we are doing here is so important to people—businesses, farmers, seniors, families—and their voices need to be heard in this debate. I am very confident, if their voices are heard, the right thing will be done.

So I would like to share a story from Christopher Hermann from Dearborn Heights, MI. He writes now as a member of our People’s Lobby:

I am a Nurse Practioner providing primary care to Veterans. I am receiving many new patients seeking pre-scription assistance after they have been dropped by traditional plans and can no longer afford medications. Many of them have more than $1,000/month in prescription costs.

The Vets are lucky! We can provide the needed service. Their spouses and neighbors are not so lucky.

I also have such a neighbor. “All” is 72, self-employed all his life with hypertension. When he runs out of his meds due to lack of money, his blood pressure goes so high, he has to go to the emergency room and be admitted to prevent a stroke. I provide assistance through pharmaceutical programs, but this is not guaranteed each month. We either pay the $125.00 per month for his medications, or Medicare pays $5,000.00 plus each time he is admitted. That’s pretty pretty tough for me.

I would agree with Mr. Hermann that it is pretty simple math, that what we are talking about is saving dollars in the long run by helping people stay out of the hospital and remain healthy. It is important that we be a real program that is defined, that folks can count on every month.

Let me also share a story from Debbie Ford from Clio, MI, who called
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my office. Her 72-year-old mother cannot afford a supplemental, so the family pays for her prescriptions. This is a very common story, as I know the President knows. She is the widow of an ironworker whose pension continued for only 10 years. She gets what an assisted living arrangement costs—energy credits—but no medication assistance. Her Social Security disability is $500 a month. She has resorted to pill splitting and borrowing medication from others who have prescription coverage.

This is the greatest country in the world. This is the United States. We should have folks having to either split pills or borrow medication in order to get what they need to live?

Let me also share something from Myra McCoy of Detroit, MI. She says:

I receive disability due to a number of medical problems; it is not a choice for me. My poor health has been the hardest thing I have ever had to deal with in my life and it started at age 35, my whole life over. I have lost so much and the depression has made it so bad, I'm in so much debt for medication, I have lost complete coverage I can't afford because of my medication.

I've been robbing Peter to pay Paul for medication and trying not to lose my mind in the process. I would talk about this even after ten years. I hope something can be done about the high cost of medication.

We have examples of damaged care, if I could work again I would just to cut the cost of my medication. I would like to know what has to happen to make sure all people get treated fairly?

I thank Myra for sharing this as a part of the People's Lobby.

Now is the time to get it right, to make it fair, to make prices affordable for everybody, and to have a real plan.

What do we have in front of us? We have two kinds of plans: One passed by the House, a similar one called the tripartisan plan supported by my good friend from Vermont and Senator Breaux from Louisiana, joining with the Republicans in this plan; and then we have a plan which is being supported by the Democrats in the Senate.

What are the differences? What does it mean to the people I have been talking about today, and so many others?

The question is, Which plan guarantees seniors a defined benefit and premium? They know they receive the benefit, and they know what the premium will be every month. This is a pretty important issue to folks—to have a regular benefit, and they know what it is, they know what it will cost.

The Democratic plan will provide that. The other plans—Republican or tripartisan—will not.

Seniors receive the same benefit regardless of where they live. That is a very important issue. Whether you are in the upper peninsula of Michigan or the southwestern tip of Benton Harbor, St. Joe or Detroit or Saginaw or Bay City or Alpena, it should not matter where you live, you should be able to have the predictability of knowing the same plan exists with the same premium for you. The Democratic plan does that. The other plan in front of us does not.

Seniors are guaranteed affordable coverage throughout the whole year. People debating this issue have talked about the so-called doughnut hole. People probably think we are debating something, but the reality is, there is a gap in every plan, except the Graham-Miller-Kennedy plan, supported by the majority.

For the other plans, you would be paying all year. There would be part of the year, in some cases a majority of the year—where you would not receive any help, even though you have to continue to pay. I do not think that is a very good idea.

The plan that we have in front of us, the Graham-Miller-Kennedy plan, would guarantee people that if they pay all year, they get coverage all year.

Another important principle: Seniors are guaranteed access to local pharmacies and prescriptions. Under our plan, yes; under the other plan in front of us, no.

And then, finally, seniors retain their existing retiree coverage. This is very important. I have a lot of retirees in Michigan and other states and others, who have coverage and we want to make sure they can keep their coverage. Our plan would say yes to that; the other plan would say no.

On the last point I share that the Congressional Budget Office has estimated that a similar provision to the one that is in the tripartisan plan, a similar provision that was in the House plan would prompt about one-third of the employers to drop retiree coverage. This translates into about 3.6 million seniors who would lose their coverage. That is not a good deal.

What we have in front of us is an optional plan, optional under Medicare, so you can get the full clout of Medicare and get a group discount. People are covered all year. It is affordable. It is reliable. It has a premium of $25 a month. It is clear. Every month you pay you are getting help with your bill. It is a very clear, straightforward effort to make sure that low-income seniors are fully covered, without out-of-pocket expenses.

And we make sure that we keep intact Medicare because one of the real concerns I have, in the long run, is that by fragmenting coverage, through private drug-only insurance plans or HMOs—such as the tripartisan plan does—I am concerned that ultimately we are moving to a privatization of Medicare. It certainly is a step in that direction, which would be certainly something that I would strongly oppose.

So I say to people today—even though we are voting today—if there are not the votes for either of the two plans in front of us, we are going to be beginning to work in a direction to get the kind of plan that we need.

I urge people across the country to get involved and go to a Web site that has been set up—fairdrugprices.org—to sign a petition, to get involved, to share their story, to make their voice heard in this debate.

There is nothing more important than the debate in front of us—to the economy, to the cost of business, to the cost of prescription drugs for our seniors and for our families.

It needs to be done right. We have the right plan. I urge my colleagues to support the Graham-Miller-Kennedy plan. If, in fact, that is not adopted, I urge you to put these principles in whatever plan that we are able to construct.

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

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I ask unanimous consent to speak for not more than 10 minutes.

The ACTING PRESIDENT pro tempore. There are 8 minutes available.

Mr. GRASSLEY. He may have all of that 8 minutes and whatever else the Senate wants to do for another 2 minutes.

The ACTING PRESIDENT pro tempore. The Senator may proceed.

Mr. JEFFORDS. Mr. President, I will proceed for 8 minutes. I first commend all of our colleagues who have devoted so much effort and leadership on the issue we have the privilege of debating today.

It is largely through their collective efforts that we have the chance to provide our seniors with the most significant expansion of the Medicare program in over 35 years an opportunity to provide them with the most important weapon in our healthcare arsenal prescription medicines.

This is an opportunity that we cannot let political differences block from going into law this year.

Many of our colleagues have come to this Senate floor during this debate and voiced their strong objections over specific provisions in both of these measures.

There are honest differences and disagreements over the details of how we should develop this Medicare prescription drug program.

However, it is important that we recognize something that few have mentioned, and that is, there is extraordinary agreement that we should create this benefit.

We are not debating the question of whether but instead, the question of how to best provide medicines for our seniors. Senators from across the political spectrum, liberal to conservative, Republican, Democrat and Independent have declared their support for providing prescription drugs.

We should not let this opportunity pass today because we may not see it again for a very long time.
Today, we will have the opportunity to vote on two approaches for creating this new entitlement.

One approach has been offered by my friends, Senator GRAHAM and Senator MILLER, and others; and it is an approach with merit and one that I gave serious consideration to supporting.

The other measure is one that many have come to call the Tripartisan Medicare bill. It is called the Tripartisan bill because it was developed by Senators who are Republican, a Democrat, and the lone independent in the U.S. Senate.

But that is a bit of a misnomer, because it is not about being tripartisan—or even nonpartisan.

This proposal should not be about politics. It is about providing older Americans with the medicines they need through the best Medicare program we can afford. We can only do that by finding a measure that at least 60 of our colleagues can support. We have to get 60 votes to get it out of here.

I am very proud to join my colleagues here today in support of the bipartisan Medicare bill. It is called the Tripartisan bill because it was developed by Senators who are Republican, a Democrat, and the lone independent in the U.S. Senate.

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I am very proud to join my colleagues here today in support of the bipartisan Medicare bill, the 21st Century Medicare Act. Senators GRASSLEY, SNOWE, BREAUX, and HATCH, and I have dedicated ourselves to this effort.

We have had many policy discussions over the course of the last year and each have made their particular contributions to the underlying bill. I am honored to be a part of this outstanding group of legislators.

I believe our bill is the best opportunity we have to enact a modernized and strengthened Medicare program that will for first time provide a meaningful and affordable prescription drug benefit for all of our seniors.

This measure guarantees the promised care of the original Medicare program created in the mid-1960s and it delivers the benefits of today’s modern health care.

These are the key provisions of the 21st Century Medicare Act.

First, our legislation preserves the traditional Medicare program for our seniors today and tomorrow.

Our bill does not weaken traditional Medicare, make it more expensive or less available.

If the traditional Medicare program is what seniors want then it will be there for them plain and simple—guaranteed.

Second, we create an all new voluntary enhanced fee-for-service part to the Medicare program that provides new benefits such as disease prevention screenings and coverage for catastrophic health care costs while continuing all of the services available under traditional Medicare.

Our enhanced Medicare program protects our sickest seniors from the high costs of repeated hospitalizations that Medicare doesn’t pay for at this time. Our enhanced Medicare program would establish a single, $300 deductible that will save seniors hundreds of dollars in high hospitalization costs.

In addition to better benefits for our sickest seniors, the enhanced Medicare plan provides better disease prevention benefits so our healthy seniors can remain healthy. These benefits, which are not now provided under traditional Medicare, include: tests to detect cancer before it becomes cancer, services to get your cholesterol under control, and vaccines to prevent disease.

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In addition to better benefits for our sickest seniors, the enhanced Medicare plan provides better disease prevention benefits so our healthy seniors can remain healthy. These benefits, which are not now provided under traditional Medicare, include: tests to detect cancer before it becomes cancer, services to get your cholesterol under control, and vaccines to prevent disease.

The other measure is one that many have come to call the Tripartisan Medicare bill. It is called the Tripartisan bill because it was developed by Senators who are Republican, a Democrat, and the lone independent in the U.S. Senate.

But that is a bit of a misnomer, because it is not about being tripartisan—or even nonpartisan.

This proposal should not be about politics. It is about providing older Americans with the medicines they need through the best Medicare program we can afford. We can only do that by finding a measure that at least 60 of our colleagues can support. We have to get 60 votes to get it out of here.

I am very proud to join my colleagues here today in support of the bipartisan Medicare bill, the 21st Century Medicare Act. Senators GRASSLEY, SNOWE, BREAUX, and HATCH, and I have dedicated ourselves to this effort.

We have had many policy discussions over the course of the last year and each have made their particular contributions to the underlying bill. I am honored to be a part of this outstanding group of legislators.

I believe our bill is the best opportunity we have to enact a modernized and strengthened Medicare program that will for first time provide a meaningful and affordable prescription drug benefit for all of our seniors.

This measure guarantees the promised care of the original Medicare program created in the mid-1960s and it delivers the benefits of today’s modern health care.

These are the key provisions of the 21st Century Medicare Act.

First, our legislation preserves the traditional Medicare program for our seniors today and tomorrow.

Our bill does not weaken traditional Medicare, make it more expensive or less available.

If the traditional Medicare program is what seniors want then it will be there for them plain and simple—guaranteed.

Second, we create an all new voluntary enhanced fee-for-service part to the Medicare program that provides new benefits such as disease prevention screenings and coverage for catastrophic health care costs while continuing all of the services available under traditional Medicare.

Our enhanced Medicare program protects our sickest seniors from the high costs of repeated hospitalizations that Medicare doesn’t pay for at this time. Our enhanced Medicare program would establish a single, $300 deductible that will save seniors hundreds of dollars in high hospitalization costs.
will, if passed, bring meaningful relief to Betty. Forced to choose, Betty elected to forego the cholesterol-lowering medication because of its $200 cost. Under the prescription drug program established by the Graham-Miller-Cleland bill, Betty would pay just $40 for the $200 drug—one-fifth the cost.

There would be no deductible to meet first, and there would be no gap in coverage. Over the course of a year, Betty would pay $1,200 just for the two heart drugs I mentioned without coverage. Under the alternative plan, Betty would pay her annual out-of-pocket expenses, even after factoring in the $25 monthly premium, would be just $1,260—a 70 percent reduction in yearly costs. Under the House bill, however, Betty’s annual out-of-pocket expenses for just those two drugs would be $3,500—her savings, just 17 percent.

For Betty, and for the millions like her, I urge my colleagues in this body and in the House to pass the Graham-Miller-Cleland Medicare prescription drug benefit without delay. Anything less is unacceptable.

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

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

Mr. REID. Mr. President, Senator Cleland asked for 7½ minutes and time for the Senator from Missouri, and that is fine. To be fair, we should also give the minority 7½ minutes. I ask unanimous consent that they be given 7½ minutes and that the vote occur at or around 11 o’clock, whenever that time runs out.

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

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

Mrs. CARNAHAN. Mr. President, next week marks the 37th anniversary of the day the Medicare program was signed into law. President Johnson traveled to Independence, MO to sign the bill in the presence of Harry S. Truman, who began the fight for the Medicare program in 1945. I am sure that our effort today to add a prescription drug benefit to Medicare is the type of common sense measure that President Truman would understand. Without this benefit, the Medicare program will not provide seniors with the security and protection its Founders intended.

If you have expensive and debilitating surgery, Medicare will pick up virtually the whole cost. But Medicare will not pay a single cent for prescription drugs that would cure your condition and make the surgery unnecessary. That does not make sense.

So today the Senate has an historic opportunity. People such as Annie Gardner from Columbia, MO will be watching us closely. She is an impressive 63-year-old, retired, mother of five adult children. But she suffers from diabetes and high blood pressure. She lost her health insurance and then could not afford her prescriptions. First she rationed her prescriptions by taking half the prescribed amount, even though she knew, as a former nurse, that this was a dangerous practice. Then she started purchasing the drugs entirely because of other expenses, like fixing her car and paying increased taxes on her house.

In 21st century America, no one should have to make this type of choice. None should be placed in a position to make Medicare the kind of program that we all want it to be. But we have before us two very different plans.

In my view, the benefit plan proposed by my colleagues, Bob Graham and Zell Miller is the superior choice. Their bill would create a benefit program that seniors could afford and could count on regardless of where they live.

Assistance begins with the very first prescription and is the same all year long. Senior will pay a monthly premium and then $10 for generic drugs and $40 for brand name drugs. There are no gaps or limits on the coverage. And once you hit catastrophic cap of $4,000, you do not pay another dime for prescription drugs.

The alternative plan before the Senate is riddled with complexities and gaps. Before getting any benefits, seniors pay a $250 deductible. After that, seniors must pay 50 percent of the cost of their prescriptions. And then, once seniors have paid $3,451 on drugs—which is a great deal of money for virtually all seniors—the coverage simply stops. But seniors still have to continue paying their monthly premium. The coverage does not start up again until seniors have laid out $5,300.

Under this plan, seniors will be paying a different amount almost every month. Some months they will get coverage—others they will not. I do not believe this is what seniors want from a prescription drug benefit.

The same is true with the alternative plan for the treatment of low-income seniors. But our plan would give low income seniors assistance with co-payments and premiums, and 220,000 senior citizens in Missouri would qualify for this assistance. But under the alternative plan, low income seniors will have to pass rigorous assets test.

Mr. President, the reason we are passing a drug benefit is so seniors do not have to sell off their possessions to pay for their prescriptions. I cannot understand why the alternative plan would require low-income seniors to sell off assets to qualify for additional help.

My other concern is that seniors be guaranteed access to a benefit no matter where they live. Under the Graham-Miller plan, all seniors, regardless of whether they live in a rural or urban area, would have guaranteed access to a reliable, affordable benefit administered by the Medicare program.

We all know that the Medicare system is not perfect, but it is reliable, has always been there for our seniors, and always will be there in the future.

The alternative plan we are voting on today, however, creates a risky structure that does not guarantee that all seniors will be able to access the benefit.

Seniors in rural areas would have the greatest risk of being left empty-handed. How do I know this? Because the Republican plan gives government subsidies to drug HMOs to administer the benefit. This is the same system that Medicare-Choice runs on.

Seniors in rural Missouri know that Medicare-Choice programs have shut down all over the state. We do not want the same thing to happen to the prescription drug benefit. Our seniors deserve a dependable benefit, under Medicare, available to all.

Today is the day when we can put this program in place. We have a chance between an affordable, secure, and reliable benefit that will work for seniors—and a confusing plan that will not provide security and stability.

Mr. President, the Irish poet, Seamus Heaney, wrote that:

Once in a lifetime, the longed for tidal wave of justice can rise up . . . and hope and history rhyme.

Today we have a chance to perfect the Medicare Program, and I pray we have the courage to seize the moment. I yield the floor.

PROTECTING WOMEN’S RIGHTS AND HEALTH IN AFGHANISTAN

Mr. REID. Mr. President, under the Taliban regime in Afghanistan, women were forbidden to work or attend school. They weren’t allowed to leave their homes unless they were accompanied by a male relative. For example, women who laughed out loud or wore shoes that made clicking noises could be beaten. There were many other examples of how women were so poorly treated.

After the fall of the Taliban, we heard encouraging news from Afghanistan. Women could go back to work and to school. They were no longer forced to wear burqas; that was a matter of choice.

A recent report from the United Nations found that now nearly 3 million Afghan children are attending school, and 30 percent of these kids are girls.

In fact, women took part in last month’s Loya-Jirga, the Afghan conference to choose an interim government, and four women were appointed to positions in the interim Afghan Government.

Earlier today, I had the pleasure of meeting these courageous women. I met them in the Senate. Habibah Surrabi is Minister of Women and Refugee Affairs in Afghanistan. She was a professor of pharmacy at Kabul University, but was forced to flee when the Taliban took over in 1996. In Pakistan, she worked for refugee organizations where she focused on the rights of women, education, human rights, health care, and sanitation.
After September 11, President Bush promised not only to fight al-Qaeda in Afghanistan but here in Washington to work to restore peace and democracy in that war-torn country. The President promised promoting women’s rights in Afghanistan would be an important part of that mission.

Although the Taliban has been routed and al-Qaeda is on the run, Afghanistan is far from peaceful today. Some say the country is on the verge of a civil war as rival warlords battle for control of the countryside.

Vice President Haji Abdul Qadir was assassinated 2 weeks ago. The international group, Human Rights Watch, reported local warlords are forcing young men to serve in their militias against their will. The United Nations has halted its return of refugees to parts of Afghanistan because of the increased violence.

On top of threats to their safety, families suffer from sabotage and from shortfalls of food, water, and health care because warlords are disrupting humanitarian aid deliveries. These humanitarian aid deliveries are essential. If they cannot be made, then the country cannot proceed.

Unfortunately, the gains Afghan women appeared to be making after the fall of the Taliban in many instances are simply an illusion. Afghan women continue to feel unsafe and most are afraid to remove their burqas. Many of the women who participated in the Loya Jirga a matter of weeks ago have been threatened and intimidated. Violence against women remains pervasive. They have no recourse or protection.

Aid workers, foreigners, and Afghan women and children have been targeted for robberies, assaults, and rapes. I was told by the Minister of Women and Refugee Affairs with whom I met earlier today about some brutal things that have happened in that country, such as a 14-year-old girl raped. I have it in my mind and it is hard to get it out. Women’s rights in Afghanistan will not be secure if there is no law or order.

The Acting President pro tempore. The Senator’s time has expired.

Mr. REID. I ask unanimous consent I be extended an additional 3 minutes and that same time be extended to the Republicans.

The Acting President pro tempore. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I have a Republican member who wishes to speak. I wonder if I can get a Democratic member to speak. If not, I will go ahead. Is there anyone wanting to speak? If they are, I do not want to lose the time.

Mr. REID. How much time do the Republicans have now?

The Acting President pro tempore. The Republicans have 10 minutes.

Mr. GRASSLEY. I will proceed, Mr. President.

The Acting President pro tempore. The Senator from Iowa.

PRESCRIPTION DRUGS

Mr. GRASSLEY. Mr. President, I wish to speak once again, before the vote this afternoon at 2:45 p.m., on the Graham prescription drug bill and point out that that bill sunsets in the year 2010. Also, it omits coverage of most drugs. First of all, the fact the bill sunsets on December 31, 2010, ought to be an overriding factor of how people vote on this amendment.

Pages 78 and 79 of the bill say “drug coverage to go after December 31, 2010.” That is section 1860(k), for people who want to look it up and verify what I am saying.

The Graham-Miller-Kennedy bill would not provide, if enacted, a permanent Medicare prescription drug benefit.

In the tripartisan bill, we are talking about a plan that is permanent. There is no sunset because senior citizens on December 31, 2010, are not going to sunset themselves. They are going to need prescription drugs on January 1, 2001, just as much as they did on December 31, 2010.

There is a bipartisan program that is permanent and continues drug coverage in the future. Why? Because prescription drugs ought to be a part of Medicare as much in the year 2002 as hospitalization was a very important part of Medicare in 1965.

Medicare beneficiaries should understand that there is no guarantee that a prescription drug plan being offered by Senators GRAHAM, MILLER, and KENNEDY, will continue to cover their drug expenses after 2010. Some refer to this as a sunset, but I wish to make clear, as this chart points out very well, that this is just one very obvious big black hole in this program that will sunset in the year 2010. Sunsetting a Medicare Program does not have to be a very strange thing to do. Medicare is an entitlement program.

Dependency has been one of its central features. So why should a new drug benefit be any different than any other program that we have—hospitalization, doctor care, or other provisions in Medicare that we have had since 1965?

There is no need to speculate as to why the sponsors sunset their program in 2010. It is a device to make the costs of the bill appear lower than it otherwise would be. In other words, it is a mere gimmick.

I point out another very crucial flaw with the Graham amendment and restrictive formularies that might keep beneficiaries from getting help with their medications that the doctor and their patient decide is best for them. There is a lower copay for generic drugs. We want to promote generic drugs over patented drugs if that is possible, but for sure we should not in any way limit the availability of drugs as is being done under the Democratic plan.

We have a poster that shows that 100-percent brand name drugs, albeit approved by the FDA, are going to be available under the program we have in the tripartisan bill, but only 10 percent of the brand name drugs are covered by the Graham-Daschle-Kennedy plan, a Government-run process certain to be time consuming and bureaucratic. If a beneficiary wants to appeal the fact that the drug they want and their doctor care, or other provisions in Medicare that we have had since 1965.

There is no need to speculate as to why the sponsors sunset their program in 2010. It is a device to make the costs of the bill appear lower than it otherwise would be. In other words, it is a mere gimmick.
Why should we put people to that test of bureaucratic decisionmaking when we have other programs that are available to make the drug that the doctor wants and thinks best for that patient? We do have that in the tripartisan plan. Controls on the pharmacy marketplace in the program, surely this is the biggest gap in coverage.

In any case, the important point is it is going to take another act of Congress to continue the program once it sunsets in 2010. Once a program like this sunsets, it could be difficult to pass legislation which would be required to extend it. I do not think that is a particularly good deal for our seniors. Having a drug benefit that disappears into a black hole is a terrible idea, as sunsetting is equivalent to disappearing into a black hole.

I would like to have Senators who are still in doubt about how they are going to vote this afternoon look at the Lillian Thomas 21st century Medicare amendment as a reasonable alternative because it is bipartisan, because it is middle ground between the least expensive and the most expensive plans. It is not a big cost to Medicare, and it is someplace that brings permanency and that is predictable well into the future for Medicare. That is what we should have, and that is what we have in the tripartisan drug plan.

Any Senators on my side of the aisle who want to speak should get here soon. I reserve the remainder of my time.

Mr. FEINGOLD. Mr. President, I rise today in strong support of a comprehensive and affordable prescription drug benefit for America’s seniors. At the same time, we must modernize the entire Medicare benefit package by promoting regional equity in Medicare spending to ensure access to Medicare’s basic services.

The absence of affordable prescription drug coverage for most seniors is devastating, and we must address this issue with the same vigor that our predecessors in Congress brought to their effort to enact the original Medicare program.

The addition of a prescription drug benefit will be the largest expansion of the Medicare program since it was initiated in 1965. But we should not simply add a benefit, we must get it right.

Compassion, an affordable drug benefit with an affordable premium and a provision on catastrophic costs that is an insurance policy for all Medicare beneficiaries. While I recognize that the cost of any new benefit will be shared with Medicare beneficiaries, any deductibles or co-payments must be low enough to ensure significant participation in the program.

I am very encouraged that my colleagues from Florida and Georgia have recognized that the importance of a comprehensive benefit through the Medicare program. It is affordable, comprehensive, and reliable. I am particularly supportive of their effort to fund a defined benefit with no deductible.

While I am certainly open to working with my colleagues on the benefit structure, I am very concerned about proposals to enact this benefit outside the Medicare program in part because we do not get to privilege any special interest. Past efforts to offer privatized benefits outside the Medicare benefit structure have simply not worked in Wisconsin.

The Medicare+Choice program has offered a lower cost to Wisconsin seniors. While the structures of some of the private Medicare prescription drug benefits are different from the Medicare+Choice program, I remain concerned that states like Wisconsin will end up with few choices. As with Medicare HMOs in the Medicare+Choice program, Wisconsin seniors will likely be faced with little choice with Medicare prescription drug HMOs.

We must also harness the purchasing power of the Medicare program to ensure that the Federal Government gets a fair price for the prescription drug program. That’s the reason why I support the Hatch-Waxman reforms in the underlying bill. By closing a series of loopholes in the original Hatch-Waxman law, these reforms will increase competition by preventing brand-name pharmaceutical firms from blocking generic drugs from entering the market. While I strongly support the Hatch-Waxman law because it promoted competition and consumer choices, the reforms in the underlying bill will modernize the law and strengthen competition in the marketplace.

If we simply allow pharmaceutical companies to dictate the price of prescription drugs to consumers, the cost of the prescription drug benefit will skyrocket out of control. I am not advocating price controls. But we must ensure that taxpayers and Medicare beneficiaries get a fair price.

And I have further concerns on behalf of American taxpayers, as each of the proposals we are likely to consider actually digs our deficit hole deeper at a time when our budget deficit already is getting worse every day.

In its recently released mid-session review of the budget, the Office of Management and Budget estimates that the budget deficit for the current fiscal year, the one ending on September 30, will be a whopping $166 billion, and that includes the Social Security Trust Fund balances.

If you look at the real budget deficit—the one that does not use the Social Security Trust Funds to help mask our fiscal problems—the figure is $322 billion.

The projected $322 billion deficit for this year is just shy of the $340 billion deficit that we faced when I was first elected to the U.S. Senate in 1992. While we spent the balance of the last decade climbing out of that deficit hole, and in the end, thanks to the virtuous cycle of fiscally responsible budget policies and a growing economy, we were able to balance our books and actually began to pay down some of the massive Federal debt that was racked up during the 1980s and early 1990s.

But in the course of a little over a year, thanks in large part to the fiscaledgeless interest rates last year, the administration and Congress have squandered what was achieved during the previous eight years.

Even OMB’s estimate of the real deficit over the next five years is over $1 trillion! And that estimate may be based on overly optimistic assumptions.

It is against that backdrop that we are now considering Medicare prescription drug proposals. There is no doubt that we need to modernize Medicare by adding a prescription drug benefit. I strongly favor such a reform. But we should find offsets to fund a drug benefit.

I would be far more comfortable if we pay for this new program. Unless we pay for this needed reform, it will always be at risk of being severely cut back or even eliminated. Medicare beneficiaries can not rely on any drug benefit enacted under such circumstances, and we will do a disservice to the elderly.

We must enact a real prescription drug benefit, one that provides meaningful help to seniors, and one which beneficiaries will know will be there for them when they really need it, not months after the beginning of the coverage.

We must address Medicare’s discrimination against Wisconsin’s seniors and average middle class care providers. The Medicare program should encourage the kind of high-quality, cost-effective Medicare services that we have in Wisconsin. By encouraging this high-quality, low-cost care, we may well achieve cost savings to the program and offset part of the cost of a prescription drug benefit.

To give an idea of how iniquitable the distribution of Medicare dollars is, imagine identical twins over the age of 65. Both twins worked at the same company for the same salary, and paid the same amount to Medicare. Entering the market, while I strongly support the Hatch-Waxman law because it promoted competition and consumer choices, the reforms in the underlying bill will modernize the law and strengthen competition in the marketplace.

For example, in most parts of Louisiana, the first twin would have a wide variety of health care choices. Medicare+Choice, Wisconsin HMOs in the Medicare+Choice program, Wisconsin seniors will likely be faced with little choice with Medicare prescription drug HMOs. We must also harness the purchasing power of the Medicare program to ensure that the Federal Government gets a fair price for the prescription drug program. That’s the reason why I support the Hatch-Waxman reforms in the underlying bill. By closing a series of loopholes in the original Hatch-Waxman law, these reforms will increase competition by preventing brand-name pharmaceutical firms from blocking generic drugs from entering the market. While I strongly support the Hatch-Waxman law because it promoted competition and consumer choices, the reforms in the underlying bill will modernize the law and strengthen competition in the marketplace.

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service plan, and, because area health care providers are reimbursed at such a high rate, those providers can afford to offer seniors a broad range of health care services. The twin in Madison would not have the same access to care. We are looking at low Medicare payments in Madison, there is no option to choose an HMO, and there are fewer health care agencies that can afford to provide care under the traditional fee-
for-service plan.

How can two people with different backgrounds, who paid the same amount in payroll taxes, have such different options under Medicare? They can because the distribution of Medi-
care dollars among the 50 States is grossly unfair to Wisconsin, and much of the Upper Midwest. Wisconsin pay payroll taxes just like every American taxpayer, but the Medicare funds we get in return are much less than what other states receive.

The public pay lower rates received in Wisconsin are in large part a result of our historic high-quality, cost-effective practice of health care. In the early 1980s, Wisconsin’s lower-than-average cost was used to justify lower payment rates. Since that time, Medi-
care’s payment policies have only wid-ened the gap between low- and high-
cost states.

I have introduced a package of legis-
sation that will take us a step in the right direction by reducing the inequities in Medicare payments to Wiscon-
sin’s hospitals, physicians, and skilled nursing facilities. At the same time, my proposals would establish pilot pro-
grams to encourage high-quality, cost-
effective Medicare practices. My pro-
posal would reward providers who de-

er high quality at lower cost. It would also require that the pilot states create plans to increase the amount of provid-
ing high-quality, cost-
effective care to Medicare bene-
ficiaries.

Congress must modernize Medicare and add a prescription drug benefit. It should be done in a fiscally-responsible manner. The Medicare payment rates received in Wisconsin are in large part a result of our historic high-quality, cost-effective practice of health care. In the early 1980s, Wisconsin’s lower-than-average cost was used to justify lower payment rates. Since that time, Medicare’s payment policies have only widened the gap between low- and high-cost states.

The issue before us is an important one. And it is important enough to do it right.

Mr. THOMPSON. Mr. President, I rise today to discuss the important issue of adding a prescription drug benefit to Medicare. As part of the debate on this drug pricing bill, we are considering amendments to pro-
vide Medicare beneficiaries with cov-

erage for their prescription drug costs. This would be the largest expansion of any health care program since Congress enacted Medicare in 1965. And as I listen to the debate, I am con-
cerned that this body is ignoring some very serious issues, namely the cost of what we are doing and whether we can afford to take this action given the current budget situation.

I think each of us here today would agree that the Medicare program is outdated. If we were creating this pro-
gram from scratch right now, there is no question that we would include cov-

erage for prescription drugs. Medicines have become integral to the treatment of disease, in many cases replacing more expensive surgical procedures. However, in our desire to address one serious flaw in Medicare, I am concerned that we are missing the broader questions of the impact of our actions on future generations of taxpayers and on the sustainability of the Medicare pro-
gram. We cannot legislate in a vacuum.

I want to begin my remarks by re-
minding my colleagues of the demo-

ographic time bomb we are facing in this country. The first wave of the 76 million baby boomers will begin retire-
ing in 2008. Between now and 2035, the number of Americans over the age of 65 will double. We will go from having 3.4 workers to support Medicare and Social Security beneficiaries today to 2.3 workers by 2035. Not only is the over-65 population growing but they are living longer. Increased life expect-

ancy is a good thing, but it also has se-

rious implications for the Federal budget and entitlement spending.

According to the Medicare Trustees’ most recent report to Congress, the Medicare Part A Trust Fund is sched-

uled to be in a cash deficit beginning in 2016 and will go bankrupt in 2030. Spending on Medicare Part B, which covers outpatient services, is growing at a faster rate than the economy. Over the next 10 years, the Medicare trustees estimate that Part B spending will increase on average by 6.1 percent each year, compared to a growth rate in the economy of 5.1 percent per year. The Congressional Budget Office projects that Federal expenditures on Medicare, Social Security and Medicaid combined will grow from the cur-
rent 7.8 percent of GDP to 14.7 percent of GDP in 2030. I think it’s important to remember that the Federal Government has generally taken no more than 20 percent out of the economy in taxes to fund the government. Entitlement spending is moving dangerously close to that limit.

David Walker of the General Ac-

counting Office testified before the Senate Budget Committee earlier this year, and he warned us that by 2030, ab-

sent any changes to Social Security and Medicare, there will be virtually no mon-

etary leeway for spending such as national defense, education or law enforcement. This estimate does not take into consideration any new spending Congress may authorize, such as adding a prescription drug benefit or increasing Medicare pay-

ments to health care providers. As in-

adequate as the current Medicare pro-

gram may be, it is not sustainable even in its current form.

In addition, I feel compelled to offer additional context to the current debate. We all know that our world and budget sit-

uation have changed dramatically over the past 10 months. The latest projec-
tions from the Office of Management and Budget are that our deficit this year could reach $165 billion. In addi-
tion, the requirements of protecting our Nation and combating terrorism have placed urgent new claims on Fed-

eral resources.

In fiscal year 2002, we will spend at least $29.2 billion on homeland secu-

rity. The supplemental appropriations bill will spend an additional $9 bil-

lion, bringing the total to nearly $38 billion. The President’s budget request for fiscal year 2003 proposes spending of $37.7 billion for homeland security. This amount is double what we were spending on homeland security items prior to the September 11 attacks. The Brookings Institute recently re-

commended funding of $45 billion for fis-
cal year 2003 on homeland security.

We are also in the process of consid-

ering the President’s proposal to create a new Department of Homeland Secu-
rity. The cost of creating this new de-

partment could be $7 billion to $8 bil-

lions. The truth is that we just don’t have a good notion of how much home-

land security spending will cost in the coming years, but we know that the costs will be tremendous, and we know that we must spend whatever it takes.

On top of these security-related claims on our Federal resources, we need to remember that a majority of Congress just voted to increase spend-

ing on farmers by $90 billion above the current level over the next 10 years. I opposed that legislation, because I be-

lieve much of that money would be bet-

ter spent on other priorities, including a prescription drug benefit. And let us not forget that we voted in May to cre-

ate a new, $20 billion federal health care entitlement for workers displaced by trade. These things add up. We’re spending money we no longer have.

I do believe that Congress should ad-

dress the needs of the one-third of sen-

iors who have no prescription drug cov-

erage now. But when I look at the cost of adding a prescription drug benefit, it is clear to me that there is just no in-

expensive way to provide seniors with a meaningful drug benefit. CBO projects that seniors’ spending on prescription drugs over the next 10 years will be $1.8 trillion. That is 21 percent higher than CBO’s 10-year estimate from last year. Although two-thirds of that increase is due to the changing budget window, the low-end of CBO’s estimate for 2002, and adding the higher cost year, 2012, this projection still concerns me.

The various Medicare prescription drug proposals we are debating have 10-

year cost estimates ranging from a low of $150 billion for the Hagel/Ensign, bill to $370 billion for the tripartisan bill, to as much as $600 billion for the Graham/Kennedy bill. And all of these proposals we are debating rely on the accuracy of these numbers?

Last year’s budget resolution set aside $300 billion over 10 years for Medicare modernization and a prescrip-
tion drug benefit. My colleagues on the
other side of the aisle strongly supported that $300 billion number as sufficient to pay for a Medicare drug benefit. If we were to trend that $300 billion forward one year, we would be looking at a $350 billion drug package. This year, the budget resolution that was reported by the Senate Budget Committee, but never passed by the full Senate, contains $500 billion over 10 years for a Medicare prescription drug benefit and for increased Medicare provided payments and for providing health coverage to the uninsured. Is it is that we are even considering a $600 billion bill that would only provide prescription drug coverage?

I am firmly in the camp of those who believe that we should not add a prescription drug benefit to Medicare without also making much-needed changes to strengthen the program. The Medicare and Social Security Trustees advise us that we can make relatively small changes now to put the Medicare and Social Security programs on sound financial footing for the future. But, the longer we wait, the harder it will be. This debate over a Medicare prescription drug benefit provides us with an excellent opportunity to begin taking steps that will make Medicare sustainable over the long term.

I want to commend the members of the tri-partisan group for their efforts to push us on the path toward a strengthened Medicare program. They have worked harder for more than a year to craft their bill to provide a reasonable and permanent drug benefit, unlike the proposal of my colleague from Florida. And, they have drafted the only proposal that makes any meaningful improvements to the Medicare program. I believe that the tri-partisan proposal would provide greater security for today's seniors and for tomorrow's seniors. The new fee-for-service plan, Medicare Part E, would make the transition to Medicare more seamless for those Americans who are beginning to age into the Medicare program by providing them with a benefit that more closely resembles the private health plan they are used to. The tri-partisan bill would also provide seniors with protection from unusually high health care costs for the first time.

I am deeply disappointed that the Finance Committee has not been given the chance mark up either the tri-partisan bill or any other Medicare prescription drug bill. It is a shame that the Majority Leader has decided once again to by-pass the committee process, which might have yielded a product that could garner the 60 votes needed to pass a Medicare prescription drug benefit. Even more important is that we would not be in the current parliamentary situation of needing 60 votes to waive a budget point of order on these bills if the Senate had passed a budget this year.

In the likely event that neither of two comprehensive prescription drug proposals garners 60 votes, then I would hope we could at least pass the Hagel/Ensign proposal. The Hagel/Ensign amendment would provide the neediest seniors with assistance with their prescription drug costs. It would allow all seniors to benefit from group discounts. And, it would provide all seniors with protection from unusually high drug costs. These benefits could be implemented immediately, and the proposal would buy us time to find a bipartisan consensus on an affordable, comprehensive Medicare prescription drug benefit.

I hope we can carry forward the spirit of the tri-partisan group and work together to address the needs of our seniors who lack prescription drug coverage, bring Medicare into the 21st century and set it on sound financial footing, and do so while recognizing the new budget world in which we live.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. CARNAHAN). The clerk will call the roll. The bill clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Madam President, I yield back our 3 minutes.

The PRESIDING OFFICER. All time is yielded back.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF RICHARD H. CARMONA, OF ARIZONA, TO BE MEDICAL DIRECTOR, THE REGULAR CORPS OF THE PUBLIC HEALTH SERVICE, AND SURGEON GENERAL OF THE PUBLIC HEALTH SERVICE

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session and proceed to the cloture vote on Executive Calendar No. 921, which the clerk will report.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on Executive Calendar No. 921, the nomination of Richard H. Carmona, of Arizona, to be the Surgeon General of the Public Health Service:


The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on Executive Calendar No. 921, the nomination of Richard H. Carmona, of Arizona, to be Medical Director in the Regular Corps of the Public Health Service, and to be Surgeon General of the Public Health Service, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

The yeas and nays resulted—yeas 98, nays 0, as follows:

(Rollcall Vote No. 185 Exe.)

YEAS—98

Akaka
Allard
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Boxer
Braun
Brownback
Brown
Bunning
Byrd
Baucus
Campbell
Cantwell
Carnahan
Carper
Chafee
Chambliss
Chambliss
Cheney
Clinton
Cochran
Collins
Conrad
Corzine
Craig
Crapo
Daschle
Dayton
DeWine
DeMint
Domenici
Doan
Durbin
Edwards
Ensign
Enzi
Feinstein
Frist
Gingrich
Gingrich
Graham
Grassley
Gregg
Griffith
Grossman
Grundy
Hagel
Harkin
Hatch
Hollings
Hutchison
Hutchison
Inhofe
Inouye
Jeffords
Johnson
Kennedy
Kennedy
Kerry
Kohl
Landrieu
Leahy
Levin
Lieberman
Lincoln
Lott
Lucan
Lugar
McCain
McCormick
Mikulski
Miller
Moran
Nelson (FL)
Nelson (NE)
Nickles
Reed
Reid
Roberts
Rockefeller
Santorum
Sarbanes
Schumer
Sessions
Shelby
Smith (NH)
Smith (OK)
Snowe
Stabenow
Stevens
Thomas
Thompson
Thurmond
Torricelli
Voinovich
Warner
Weinberger
Wyden
Wyden
NOT VOTING—2

Helms
Specter

The PRESIDING OFFICER. On this vote, the yeas are 98, the nays are 0. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The Senator from Arizona.

Mr. MCCAIN. Thank you, Madam President. It is my understanding we are now in postcloture debate time; is that correct?

The PRESIDING OFFICER. The Senator is correct.

THE ANDEN TRADE PREFERENCE ACT

Mr. MCCAIN. Madam President, I want to take a few minutes to talk about the failure of the Congress to enact the Andean Trade Preference Act, the importance of this issue in our hemisphere, and the absolute criticality of us acting before we go out for the August recess on the Andean Trade Preference Act.

Madam President, America is facing a crisis in its relations with our Latin
neighbors. Political instability and a fierce backlash against free market reforms are hobbling friendly democratic governments across the region, with consequences that clearly endanger the democratic and free market tide that has swept the continent in the past decade. Yet partisan wrangling over other issues has prevented Congress from renewing the Andean Trade Preference Act, even though both Houses have approved it. It is time to stop the political theater and send the President an Andean trade bill, immediately.

Madam President, wrongly, the Andean Trade Preference Act has been linked to the larger issues of trade adjustment authority and other trade issues. I do not know why that is the case.

Mr. REID. Parliamentary inquiry, Madam President.

Mr. MCCAIN. Madam President. I have the floor.

Mr. REID. Would my friend yield?

The PRESIDING OFFICER. The Senator declines the inquiry.

Mr. REID. Will my friend yield for a question to him?

Mr. MCCAIN. What is that?

Mr. REID. The question I have—

Mr. MCCAIN. Do I have the floor, Madam President?

The PRESIDING OFFICER. The Senator from Arizona has the floor and may decline to yield for an inquiry.

Mr. MCCAIN. I decline to yield.

I recognize that only a few years ago we in Washington were congratulating ourselves on living in a hemisphere that, with the exceptions of Cuba and Haiti, had embraced free-dom and free markets after long years of military rule and statist economic policies.

Although there remained deep pov-erty, aggressive free market reforms were seen as the best way to improve the welfare of people across Latin America.

Mr. REID. Madam President, regular order.

Mr. MCCAIN. Expanded trade policies, including the Andean Trade Preference Act, benefit America’s vision of a hemispheric trade area.

Mr. REID. I ask the Chair to call for the regular order.

Mr. MCCAIN. Lent momentum to the Latin reform agenda, which produced real gains in people’s daily lives and provided a critical base for the consolida-tion of democratic institutions and free markets.

The PRESIDING OFFICER. The Senator from Nevada is calling for the regular order in debate. Under cloture, de-bate must be germane.

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

The PRESIDING OFFICER. The Senator from Arizona should confine his remarks to the question before the body.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. REID. Madam President, I ask unanimous consent the Senator from Arizona be extended up to 15 minutes to speak on any subject he desires.

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

The Senator from Arizona.

Mr. MCCAIN. I thank my colleague from Nevada. I intend to be brief.

I do believe this is an important issue. The body is going out at the end of this week—in just 3 days. Unless we act on the Andean Trade Preference Act, it will have significant consequences, both socio and economic, in our hemisphere.

I thank my colleague from Nevada for allowing me this time.

Today, as we look south, the picture is altogether more bleak, and deeply troubling in the eyes of both Ameri-cans and the people of Latin America. Free market reforms are undergoing a crisis of legitimacy as a result of political mismanagement, corruption and cron-yism, and because many of the easy reforms have already been made. It is fair to place part of the blame on a failure to grasp up in parts of Latin America. But almost every government in the hemisphere has been democratically elected, and will be held democratically accountable. What is more worrisome, and within our power, is Washington’s hands-off policy toward some of the very partners we touted only a few years ago as a symbol of Latin America’s success, their policy accomplish-ments made possible with the support of the United States.

Today, as our friends in the Andean region grapple with the problems of poverty, terrorism, drug trafficking, and the forces of political extremism, leaders in Washington squabble over unrelated issues that hold up speed- ing passage of the Andean Trade Preference Expansion Act. This trade mea-sure is not controversial. Were it to face a quorum, many believe, have enriched cor-rupt officials and faceless multinationals, and because many of the state-owned electrical generators. So armed with a metal pot to bang, she joined neighbors in a demonstration so unyielding that it forced President Alejandro Toledo to declare a state of emergency here, suspend the $167 million sale and eventually shake up his cab-inet. “I had to fight,” Ms. Puntaca said proudly. “The government was going to sell our companies and overrule our country. This was my voice, my protest.”

Across Latin America, millions of others are also letting their voices be heard. A pop-u lar and political ground swell is building from the Andes to Argentina against the de-cade-old experiment with free-market cap-italism. The reforms that have upended the state and opened markets to foreign com-petition, many believe, have enriched cor-rupt officials and faceless multinationals, and failed to better the lives of the poor.

Sometimes-violent protests in recent weeks have detailed the sale of state-owned companies worth hundreds of millions of dol-lars. The unrest has left investors jittery, and whipped governments already weakened by recession. The backlash nothing. In Ecuador, political insta-bility grows as the spillover from Co-lombia’s war and the depth of poverty threaten state institutions. In Peru, a democratically elected president who, as an opposition leader, stood down a democracy in Peru. The President has been under pressure to fire the very reformers within his cabinet who hold the key to his country’s development. America is not to blame for every setback on the road to free market, democratic gov-ernance in Latin America. But we are tending to blame when we abdicate our respon-sibility to advance our interests and support our friends with the trade prefer-ences that they believe to be critical to their economic future.

Madam President, on Friday the New York Times ran a front-page story highlighting the growing political in-stability that increasingly haunts Latin American leaders who under-stand that their country’s development hangs in the balance. The reforms that have upended the state and opened markets to foreign commodities, and the disasters that are affecting the very partners we touted only a few years ago as a symbol of Latin America’s success, their policy accomplish-ments made possible with the support of the United States.

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has given rise to leftist politicians who have combined pocketbook issues and economic nationalism to explosive effect. Today the market reforms ushered in by American-trained economists and other globalizers under the banner of the fall of Communism are facing their greatest challenge in the upheavals sweeping the region. ‘The most worrying reading is that perhaps the beginning of the end of capitalism has arrived,’ said Rafael de la Fuente, chief Latin American economist for BNP Paribas in New York. ‘That was before closing the tap. What was an attempt to orthodox economic reforms at the end of the 90’s.’

For at time the policies worked, and many economists say they were successful. The reforms increased competition and fueled growth. Stratospheric inflation rates fell back to earth. Flotation ceremonies were efficient, and banks that created jobs. The formula helped give Chile the most robust economy in Latin America. In Mexico exports quintupled in a dozen years. In Bolivia, poverty fell from 86 percent of the population in the 70’s to 58.6 percent today.

Still, the broad prosperity that was promised remains a dream for many Latin Americans. Today those same reforms are equated with unemployment and layoffs from both public and private companies, as well as recessions that have hamstrung economies.

“We privatized and we do not have less poverty, less unemployment,” said Juan Manuel Guzmán, Bolivia’s most popular indigenous leader who promised to nationalize the drug trade. To make progress in the fight against illegal drug production we must provide alternative and expanded job opportunities to support economic growth and democratic institutions in the Andean region. For the past ten years, ATPA has been a powerful trade tool in the fight against illicit drug production and trafficking by successfully helping our Andean allies (Colombia, Bolivia, Ecuador and Peru) develop legitimate commercial exports as alternatives to the illicit drug industry.

ATPA simultaneously furthers two important policy goals: stimulating legitimate economic growth while destabilizing the drug trade. To make the fight against illegal drug production we must provide alternative and expanded job opportunities to support economic growth and democratic institutions in the Andean region.

In Peru the resistance to privatization and market reforms is especially pronounced and, for its government, puzzling. Unlike most of Latin America, the economy here has steadily grown since Mr. Toledo’s election in June 2001 as the government has concentrated on economic growth while shunning poverty and feelings that entitlements the government once provided have disappeared. Privatization, the sale of state enterprises have left the country with $141 billion in public debt, the banking system in ruins and one in five people unemployed.

On December 4, 2001 the Andean Trade Preferences Act (ATPA) expired. Although the House has voted to extend ATPA, the Senate has not yet acted. Is there a temporary duty deferral in place, but if it is allowed to expire without being reauthorized, thousands of people in the Andean region will suffer—and we will have needlessly lost a valuable tool in our ongoing anti-drug effort.

It is rarer still when such an initiative is allowed to simply slip away due to legislative indifference or neglect. Yet that could be the fate of one of our most effective South American policy initiatives.

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job opportunities in other industries, such as fruits and vegetables, jewelry, and electronics. These new jobs draw workers who otherwise might have been drawn to drug-producing narco-terrorist groups for employment.

Our economy has realized direct benefits from ATPA. Under ATPA, U.S. exports to the Andean region have soared, growing by nearly 65 percent to a total of $3.3 billion in 1999. Now that the House has voted, the Senate should act quickly. The passage of ATPA reiterates our commitment to helping the Andean region develop economic alternatives to drugs. We know that narco-trafficking production in this region is tied to our country’s demand for these poisonous substances. But as we work to cut the demand for drugs in the United States, we must support our southern neighbors in their efforts to build their economies and promote democracy.

Last week the House also passed H. Res. 358, which expressed the support of Congress for the democratically elected government of Colombia and its efforts to counter terrorism. I applaud their actions and wholeheartedly agree that we must actively support our neighbors in Colombia and the Andean region. ATPA is a direct and tangible way to help the United States to demonstrate this support.

Letting ATPA lapse would not just be a missed economic opportunity; it would be a threat to national security. Our goal should be to help these countries create an economic and social environment in which legitimate income, rather than narcotics cultivation and trafficking, can thrive. We have the opportunity to help our neighbors build and expand their economies and democratic institutions. Renewing ATPA is a top regional priority and a top anti-drug priority. I urge the Senate to act quickly.

Mr. MCCAIN. Renewing the Andean Trade bill is the most immediate action we could take to remind our partners in the region of our commitment to reform and free markets. Unfortunately, Congress’ inaction on ATPA is rightly viewed by our friends in the region as a symbol of America’s unfortunate disregard for their plight in this difficult time. It is time we paid attention. I urge the Senate to take action from here in a very different way. It is time we do not pass the Andean Trade Preference Act.

I thank the Senator from Arizona. I will be happy to join him in making that unanimous consent request and ask that our colleagues join us in helping these four allies. I appreciate our friend from Arizona bringing the matter to the attention of the Senate.

Mr. MCCAIN. I thank my friend from Oklahoma. I hope we won’t have to do it. We owe it to these very great allies of ours in a very difficult time to act before we go out. The other body goes out at the end of this week.

I thank my colleague from Nevada for his indulgence. I thank my colleagues for their indulgence, and I yield the remainder of my time.

Mr. KENNEDY. Madam President, I commend our Senate leadership for moving so promptly to the consideration of the nomination of Dr. Richard Carmona to be Surgeon General of the United States.

Today, the U.S. Senate is in the midst of an historic health care debate. So it is appropriate that we consider at this time a nominee to this position of such crucial importance to the public health.

The Surgeon General is our nation’s doctor. He is our country’s principal official on health care and health policy issues. He is the leader of the Public Health Service and the Service’s Commissioned Corps, the nation’s most uniformed service in the United States.

In fact, almost exactly 204 years ago, the Public Health Service was created on July 16, 1798. President John Adams signed a law creating what was then called the Merchant Hospital Service for the care of sick or injured merchant seamen. Boston was the site of the first such facility, but the Service soon extended through the Great Lakes, the Gulf of Mexico and to the Pacific.

As our country grew in the 19th century, so did the Service. It was Service physicians who inspected the immigrants who arrived at Ellis Island. Even then, the Surgeon General was at the forefront of national sanitation campaigns against cholera, tuberculosis, and smallpox.

When the Service was renamed the Public Health Service in 1912, it was the Surgeon General who was at the forefront in combating the great influenza epidemic of 1918. At a time when modern medicine was in its infancy, this epidemic took more than 600,000 lives, the worst epidemic in American history.

I raise this history to make a simple point. The Surgeon General has been, and continues to be, one of the most important job in our National Government. Our Nation has faced extraordinary public health threats in the past, and today, the challenges are just as grave.

Once, the threat was cholera. Today, it is AIDS. Smallpox threatened our cities in the 19th century. Today, it is bioterrorism. It will be the Surgeon General who will continue to promote and protect the health of all Americans.

Over the years, our country has been blessed with courageous and outspoken Surgeons General. They did not allow politics to blunt their work to alert the public to health threats. By speaking the truth about public health, they enabled millions of our fellow citizens to live longer, fuller lives.

We remember Dr. David Satcher’s work on mental health and against the tobacco industry, and Dr. C. Everett Koop’s historic leadership on AIDS. Dr. James Shannon’s pioneering work on Head Start, and, of course, Dr. Luther Terry’s landmark report on smoking.

These are big shoes to fill. But today, our country needs another such champion of public health. We need a strong and independent Surgeon General who will put public health first, and leave politics and ideology well behind.

In this new century of the life sciences, the Surgeon General must help us take the breakthroughs from the lab bench and ensure they improve the lives of all Americans. He must lead our country in preventing tobacco use by our children and youth, expanding access to health care, ending disparities in our nation’s communities, improving childhood immunization rates, preparing for the threat of bioterrorism, and preventing the spread of the AIDS epidemic.

There are heavy responsibilities, and they demand an individual of extraordinary expertise and experience, who has demonstrated a strong commitment to improving the public health.
Dr. Carmona comes to us with an impressive background. He has taken on many important responsibilities. He is a trauma surgeon, a decorated police officer, a former health care administrator, and a former Green Beret. He is a father of four children. In addition to his heroic service in the Army and as a former Green Beret, he has been a police officer, a nurse, and a law enforcement officer. Dr. Carmona made his professional mark in the fields of trauma care and bioterrorism preparedness.

The Committee carefully considered Dr. Carmona’s nomination. In both his oral testimony and in response to written questions from the Committee, he satisfactorily addressed all the tough questions that would be expected for someone nominated to this important position.

Dr. Carmona impressed us with his commitment to prevent health, and made particularly clear his intention to aggressively oppose tobacco use by our children and youth and to combat the health care costs resultant from the use of tobacco. We are pleased to support his candidacy for this position.

Dr. Carmona is a trauma surgeon and nurse by training. But he has assured us that he will also listen to, and learn from, the greater public health community. There is an army of health professionals and educators in our country eager to help him do his job. Theirs is an army waiting to be led in the campaign for better health.

I would close by noting that Dr. Carmona is endorsed by the National Safe Kids Campaign, the National Alliance for the Mentally Ill, the American Medical Association, the American Dental Association, and the National Hispanic Medical Association.

For these reasons, I support Dr. Carmona to be Surgeon General of the United States, and encourage my colleagues to vote in favor of his nomination.

Mr. KYL. Madam President, I rise in support of the nomination of Dr. Richard Carmona to be Surgeon General. He is clearly the person we need at this critical time for this position.

Dr. Carmona is exceptionally qualified for this important position. The President has announced that the new Surgeon General will address a number of important health issues, among them, helping America prepare to respond to major public health emergencies, such as bioterrorism.

Dr. Carmona’s education and extensive professional service prepared him to lead ably on all health issues facing Americans today. He received his medical education from the University of California at San Francisco and a Masters of Public Health at the University of Arizona. He is currently a Clinical Professor of Surgery, Public Health, and Family and Community Medicine at the University of Arizona, as well as Chairman of the State of Arizona Southern Regional Emergency Medical System. Dr. Carmona has published numerous scholarly articles on such varied subjects as emergency care, trauma care and responses to terrorism.

He is also currently a Deputy Sheriff in the Pima County Sheriff’s Department SWAT team and the National Association of Police Organizations named him the Nation’s Top Cop in 2000.

Dr. Carmona has also been an administrator of a community hospital. Additionally, he was a Special Forces Medic and served in Vietnam, where he received the Bronze Star, two Purple Hearts, and a Combat Medical Badge.

As you can see, Dr. Carmona not only has the medical experience to be Surgeon General, but also other expertise that will be necessary for the Surgeon General position at this crucial time. Unfortunately, one of the key areas Dr. Carmona will be involved in is bioterrorism. He will provide valuable leadership in helping to prepare the United States for possible future attacks. It is very important for America to be able to turn to trusted leaders such as those to whom Dr. Carmona and Dr. Carmona has the experience and skills necessary to respond to such events.

I have no doubt that Dr. Carmona will be an excellent Surgeon General and help our nation deal not only with bioterrorism, but other pressing issues such as alcohol and drug abuse, and overcrowding in hospital emergency rooms. Dr. Carmona will also be able to bring guidance in these other critical areas. His experience in trauma care will help guide him in dealing with the multitude of problems that are affecting hospital emergency rooms. I urge every Senator to support his confirmation.

Mr. DOMENICI. Madam President, I rise today in support of Dr. Richard Carmona, the President’s nominee to be the Surgeon General of the United States.

The job of Surgeon General is a challenging and evolving one. The traditional requirements of disease prevention and health promotion continue to be vitally important. We must have a Surgeon General qualified and prepared to address these issues.

However, in this post-September 11 world, being the chief Public Health Officer also involves addressing the very real threat of bioterrorism. Therefore, it is imperative that our Surgeon General have the background and ability to deal with this new threat.

Fortunately, the President selected a candidate for this position who is uniquely qualified in all of these requirements of the job. I won’t attempt to recite all of his numerous accomplishments and qualifications, but I would like to briefly touch on a few, simply to illustrate why I believe this is the right man at the right time for this job.

Dr. Carmona’s educational background, with a medical degree and a Masters in Public Health, provides a solid foundation. It is his experience, however, that solidifies his qualification for this position.

Dr. Carmona has a tremendous amount of hands-on experience as a trauma surgeon, professor, and medical director of the Arizona Department of Public Safety Air Rescue Unit. His experience as a professor at the University of Arizona has given him the opportunity to teach about public health, surgery, and family and community medicine. In addition, he has spent a great deal of time dealing with those more traditional aspects of the job.

As for the more recent responsibilities that come with being named Surgeon General, Dr. Carmona has been involved in the issue of bioterrorism since the mid-1990’s. He has worked to develop seminars on bioterrorism for medical students. Furthermore, he recognizes the importance of coordinating the schools of public health with other local agencies to prevent and respond to potential threats.

While I could spend much more time touting the qualifications of Dr. Carmona, I will instead end by saying I am thankful that this remarkable candidate has answered the President’s call to serve.

As a New Mexican, I am pleased to extend a neighborly welcome to someone else from the great Southwest. As a U.S. Senator, I am proud to cast my vote today in strong support of the nomination of Dr. Richard Carmona to be Surgeon General of the United States.

Mr. MCCAIN. Madam President, I rise in support of the nomination of Dr. Richard Carmona to be Surgeon General of the United States.

Dr. Carmona’s inspiring story is the living embodiment of the American dream. A high school dropout, Richard Carmona first served our nation with the Special Forces in Vietnam, where he became a decorated Green Beret. Upon his return, he obtained his high school equivalency and became the first member of his family to graduate from college. He went on to become a nurse and later enrolled in medical school, specializing in trauma surgery. Upon graduation, Dr. Carmona relocated in Tucson, Arizona, and established southern Arizona’s first trauma center. Later he continued his education, obtaining a master’s degree in public health from the University of Arizona, where he now serves as a member of the faculty. As a professor, Dr. Carmona shares his knowledge and experience in clinical surgery, public health and community medicine with our nation’s future doctors.

In pursuit of these challenges, in 1986, Dr. Carmona joined the Pima County Sheriff’s Department as a surgeon and a part-time SWAT team leader. Obviously, Dr. Carmona is a celebrated Deputy Sheriff. In fact, he has received the honor of “Top Cop” from the National Association of Police Organizations, and is one of the most decorated policemen in Arizona.

In addition to his service, Dr. Carmona is a motivating community leader. He has stressed the importance of local preparedness and warned of the dangers of a biological assault long before September 11. After the terrorist attacks, Dr. Carmona recognized the
psychological impact of the events on Tucson residents, and coordinated a team of mental health experts to assist them in dealing with the associated trauma. Due to his bioterrorism experience, he was also put in charge of implementing southern Arizona’s bioterror and emergency preparedness plans.

Although Arizona will surely miss this phenomenal man, and I know he will miss Arizona, in Richard Carmona, our nation will gain an invaluable leader. With his military and law enforcement background, coupled with his demonstrated commitment to public health and community preparedness, Dr. Carmona is extraordinarily, perhaps uniquely qualified to address the needs of our nation as Surgeon General.

I urge all of my colleagues to favorably support this outstanding nominee.

The PRESIDING OFFICER. Is there further debate on the nomination? If not, without objection, the nomination is confirmed.

The nomination was confirmed.

Mr. KENNEDY. I ask unanimous consent that the motion to reconsider the vote by which the nomination was confirmed be laid upon the table, and the President be immediately notified of the action.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

The Senator from Oklahoma.

PRESCRIPTION DRUGS

Mr. NICKLES. Madam President, how much time remains on both sides on this issue?

The PRESIDING OFFICER. Forty-six minutes.

Mr. NICKLES. Does that include 46 minutes prior to the lunch break? Is it 23 minutes as a side?

The PRESIDING OFFICER. It is evenly divided.

A PRESCRIPTION DRUG BENEFIT

Mr. NICKLES. I will be brief and yield myself 5 minutes.

Madam President, I hope this week the Senate will be able to pass a positive prescription drug proposal. It may be mission impossible. I wish that was not the case.

If we would have done it the ordinary way, the regular way, the way we have handled almost all Medicare bills in the last 20-some years, every single one except for one, it would have gone through the Finance Committee and been reported out with bipartisan support. Finally, that bill would have been the basis, the foundation for reporting a bill that would eventually become law.

Unfortunately, we were not allowed to do that in this case. This particular bill happens to be probably the most important and the most expensive expansion in Medicare history, more expensive than any other changes and amendments we have made to Medicare since its creation in 1965. Yet we have never had a hearing in committee on this proposal or the other proposals. We haven’t had a markup. We had some bipartisan meetings, but we didn’t have a chance to have a bipartisan markup. Maybe we need to look at the product to be reported wouldn’t have been what the majority leader wanted. It would have been a majority of the members of the Finance Committee.

I am very troubled by what we see in the Senate time and time again. If we have a committee that may not report something that the majority leader wants, we don’t let the committee work. That happened earlier this year when we had a very extensive expensive energy bill. Twenty-one members of the Energy Committee didn’t get to offer an amendment. Now we have 19 members of the Finance Committee who have not reviewed this product or didn’t have a markup on this product. We are going to be voting at 2:45 on a bill that was introduced by Senator GRAHAM and Senator KENNEDY and Senator DASCHLE and others. It is 107 pages. The committee has not reviewed this. We didn’t have a hearing on it.

I guess we now have somewhat of a scoring by the Congressional Budget Office, and they say it is $594 billion over the next 10 years. We find out it doesn’t go 10 years. This is a benefit that is started but stopped. It doesn’t start until the year 2005, but it stops in the year 2010. So we are going to pay part of your prescription drugs, but we are going to stop after a few years.

I find that to be very hypothetical at best. In fact, it wouldn’t happen. Once you start an entitlement program, you never stop it, especially one that would be as popular as this.

But what are we starting? Some of us were estimating that the Democrat proposal, as originally outlined—I say “the Democrat proposal”: Senator GRAHAM and some Democrats are supporting other proposals, but the Graham-Kennedy-Daschle proposal was going to be a lot more expensive than $500 billion.

Keep in mind the budget we passed with bipartisan support last year called for $300 billion. Keep in mind the President requested $190 billion. Yet now we find one at 600. I thought it would be more expensive. The reason why it is not is because they decided to ration prescription drugs.

If our colleagues would look on page 62, it says:

The eligible entity [health plan] shall . . . include . . . at least 1 but no more than 2 brand name covered outpatient drugs from each therapeutic class as a preferred brand name drug in the formulary.

In other words, you can come up with one, maybe two drugs in each therapeutic class. For arthritis there must be a dozen drugs. For blood pressure there must be at least eight or nine or ten brand name drugs. Only one or two are going to get payment. The rest of the time, you are on your own.

I am sorry patients, you don’t get any help from the Federal Government. You don’t get any help from this new drug benefit. You are out of luck. You are on your own.

The beneficiary is responsible for the negotiated price of the nonformulary drug:

In the case of a covered outpatient drug that is dispensed to an eligible beneficiary, that is not included in the formulary established by the eligible entity for the plan, the beneficiary shall be responsible for the negotiated price for the drug.

In other words, beneficiary, you pay 100 percent. You choose or take the Government-selected drug, which would be a very small percent. Maybe that would cover about 10 percent of eligible drugs in the entire population. If you don’t get that drug, you are out of luck. You are responsible for 100 percent.

I could go on and on. We are limited on time. I have several speakers on our side who wish to address this. This is one of many serious mistakes that are in this bill. It is one of the mistakes we made by following the process of not marking it up in committee. I am sure if it had been discussed in the Finance Committee, we would have modified it.

Unfortunately, we didn’t have that chance.

If I thought this were going to pass, we would be talking about it a lot more because it has several fatal flaws that would be very injurious to America’s health. It would mean rationing of prescription drugs; certainly something that I don’t want you to do.

I urge my colleagues to vote no on the Graham-Daschle-Kennedy amendment at 2:45.

I yield the floor.

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001—Resumed

The PRESIDING OFFICER. The clerk will report the bill.

The assistant legislative clerk read as follows:

A bill (S. 812) to amend the Federal Food, Drug and Cosmetic Act to provide greater access to affordable pharmaceuticals.

Pending:

Reid (for Dorgan) Amendment No. 4299, to amend title XVIII of the Social Security Act to provide coverage of outpatient prescription drugs under the medicare program.

Hatch (for Grassley) Amendment No. 4310, to amend title XVIII of the Social Security Act of 2001 to permit commercial importation of prescription drugs from Canada.
Mr. HARKIN. If the Senator will yield further—
Mr. HARKIN. I will yield when I get done.
Mr. NICKLES. I would appreciate it, if my colleague is questioning my motives—
Mr. HARKIN. The point is, the Senator from Oklahoma and other people on that side are saying turn it over to the insurance companies. He talks about rationing, but what the Republican want to do is give private insurers a free ride, charge seniors whatever they want, and then they will be able to tell them what drugs they take. That is what the insurance companies do now anyway.

Look at the debate on Medicare. Turn it over to the insurance companies. You can just go back to 1935 and look at the debate on Social Security. We have heard the same echoes all the time down through the years that we can do whatever we want to do it. It is time we make good on the promise to 44 million Americans who rely on Medicare.

The choice is very clear: You either do it under Medicare, which is proven and has a proven track record; it cuts out all of the middlemen in the middle ground and gets the drugs right to seniors, or you can go in the other direction and say we will do it through the insurance companies, which is exactly what the bill on the Republican side proposes to do.

I know a little bit about this personally. My father was quite old when I was born. When I was in high school, my father was already in his late sixties, and he had worked just enough quarters to qualify for Social Security. He worked most of his life in coal mines, but during the war and right after the war he worked enough just to qualify for Social Security. But he would get sick every winter. We didn't have drug coverage. He would go to the hospital, and thank God for the Sisters of Mercy, who would take care of him and send him back home again. I happened to be in the military in 1965 when Medicare passed. I came home on leave and saw my father, and he had his Medicare card. Head held high, he went to the hospital, and of course then Medicare pays for all their drugs.

Mr. NICKLES. Will the Senator yield?
Mr. HARKIN. I said I will yield when I get through with my statement. The Graham-Miller proposal is the one that does it through Medicare. It is the one on which seniors can rely, and it is rock solid.

This is the proposal the Republicans have put forth on this chart.

For example, they say, under their plan, a senior with $1,000 in drug care costs still pays $913. That is 91 percent that they still have to pay. And 18 percent of seniors have drug costs of about $250. Under this, they would pay everything. Eighteen percent have drug costs of $1,000. Under the Republican proposal, they would pay 91 percent, $913. Seventeen percent of seniors have $2,000 in drug costs a year. Under the Republican proposal, they would pay $1,413, or 71 percent. Twenty-three percent of seniors—about one out of four—have $4,000 a year in drug costs. Under the Republican proposal, they would pay 74 percent out of pocket.

What kind of insurance is that, where you are paying 91 percent, 71 percent, 67 percent, or 74 percent out of your own pocket? Would you buy insurance like that?

Mr. NICKLES. Will the Senator yield?
Mr. HARKIN. Would you buy any kind of insurance—say a homeowners policy—and if your house burned down, you would pay 91 percent? Or if your car gets wrecked and it has to be fixed up, you would pay 71 percent of the fees. What kind of insurance proposal is that?

It is nonsense, not insurance. It is just another rip-off for the drug companies. Again, this does not provide adequate coverage and it doesn't contain costs.

Two months ago, I had a roundtable discussion in Iowa with insurers, business leaders, and consumers about drug costs. They were united in saying that not only are rising drug costs hurting seniors, they are a growing problem for employers trying to maintain affordable health insurance for workers. It is a problem for younger workers, feeling the pinch of higher health insurance premiums and cost sharing as a result. These Iowans were adamant, saying that any bill we pass has to have some new tools to hold down the rising drug prices.

Only the Graham-Miller bill makes progress toward cost containment. It
includes a bipartisan plan that will close the loopholes that have allowed drug companies to block lower cost generics from coming on the market. It addresses the issue of the 30-month rollover that they get all the time. The bill does not do that. It is crucial because generic drugs cost a fraction of what the name brand equivalent costs, and they are just as safe and effective. But only the Graham-Miller bill addresses that issue of bringing generics on the market and providing for that competition with brand names.

The Graham-Miller bill has the Stabenow amendment, which will allow States to provide the discounts they get through Medicaid to others in the State, including seniors.

There is also the important Dorgan amendment, which says drugs could be reimported from Canada by pharmacists. If you want to know how important this is, talk to my friend Marie, a 67-year-old retired nurse from Council Bluff. She dedicated 43 years of her life to helping others. She told me she is lucky compared to her friends because she is on three medications. She recently got an advertisement from a drug company in Canada that would sell her drugs to her for less. She did some research and got a prescription from her doctor. She is saving over $80 a month right now. She is a friend who takes tamoxifen, an anti-cancer drug for breast cancer. She bought her tamoxifen from the Canadian company. In the United States, it cost her $319 for a 3-month supply. It cost her $37 from Canada.

The problem with that is that individuals are doing that, and they are leaving out their local pharmacists. It is vitally important for the elderly to have a personal and a relationship with their local pharmacist to make sure they are taking the right drugs and the right dose.

While I think it is fine for seniors to go to Canada, reimported, we have to make sure local pharmacists can do the same thing. Let them reimport the drugs from Canada at a cheaper price for our consumers.

All of that is in the Graham-Miller-Kennedy amendment, not in the Grassley-Breaux-Jeffords, et al, amendment. If you want good coverage, if you want to close the loopholes, vote for the Graham-Miller bill and not the fake substitute on the other side.

The PRESIDING OFFICER (Mrs. Clinton). The Senator's time has expired.

Who yields time? The Senator from Iowa.

Mr. GRASSLEY. Madam President, I yield 1 minute to the Senator from Oklahoma, and then I would like to immediately yield 9 minutes to the Senator from Louisiana.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Madam President, I do not intend to object. If the Senator from Oklahoma should be provocative, which for some reason he might be, I hope I can yield a moment to the Senator from Iowa just to be quiet, calm and reserved, and then go to the 9 minutes for Senator Breaux.

The PRESIDING OFFICER. The proposition standard is recognized. The Senator from Oklahoma.

Mr. KENNEDY. Do we have that understanding?

Mr. GRASSLEY. I agree.

The PRESIDING OFFICER. The Senator from Oklahoma recognizes the Senator from Iowa.

Mr. NICKLES. Madam President, people are entitled to their own opinion, but they are not entitled to their own facts. The tripartisan bill—and I will let Senator GRASSLEY and Senator Breaux and others defend it—says it for people with incomes above 150 percent of poverty, the Federal Government, or this new plan, will pick up 95 percent of the drug—95 percent.

Under the Democrat proposal, if you do not have the Government-chosen plan or prescription, you get zero. Zero. Not 9 percent, not 50 percent.

The chart the Senator from Iowa has is incorrect. Under the basic plan, if you have an income above 150 percent of poverty—other words, above $20,000 for a couple—the Federal Government picks up half the prescription drug cost up to $3,450—half, 50 percent—and you choose your drug, not the Government choosing the drug. There is a big basic difference in this plan. You choose the drugs, not the Federal Government.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President, I ask for 1 minute to respond.

Mr. KENNEDY. I yield 1 minute.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President, I heard the Senator from Oklahoma talk about a Harry Houdini magic trick and a Hare¿s tooth and many other tri
vail issues. If you are below 150 percent of poverty, then it picks up 95 percent, but what he is not telling you is there is an assets test.

Take someone in Iowa who has an automobile worth $4,500. We need cars in Iowa. We do not have mass transportation. If you have a $4,500 car, you are not eligible for less than 150 percent of poverty. That is the assets test. If you have a burial plot worth $1,500, then you are out of the 150-percent poverty test. They are out. They are not telling you that. Have him stand up and tell you about the assets test and tell my elderly in Iowa, many who are below 150 percent of poverty, that they cannot have a $4,500 car, that they cannot have a $1,500 burial plot, that they cannot have $2,000 worth of furniture in their house. If they do, they do not qualify. Go ahead and tell them that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. WELLSSTONE. Madam President, with my colleague's indulgence, I ask unanimous consent that I follow the Senator from Louisiana for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. Mr. BREAUX. I thank the Chair. Madam President, I thank my colleagues for yielding me time.

On this amendment, on the argument in which the two colleagues were engaged, there is already an assets test for Medicare. The assets test is part of the concept of delivering health care in this country. If someone has low income but has assets—a house in Flori¿da, a large bank account, investments in stock—those assets are always considered to determine whether a person is eligible for Medicaid. We have all supported that. It is a good test.

The purpose of the taking the limited time that I have is not to criticize the other approach because our approach cannot be good just because the others are deficient. The tripartisan plan should not be set on what it is trying to prove, not because the Graham plan is deficient in any particular area. So I am not going to spend my time talking about any perceived deficiencies in their plan but rather explain what we have presented to the Senate.

Legislating is the art of the possible. It is not trying to get something done that cannot happen. There are a number of proposals trying out how we are going to do what everybody thinks we want to do, and that is to provide some reform to Medicare and at the same time do what we should have done in 1965, and that is to cover prescription drugs under Medicare.

Prescription drugs today are equally as important as a hospital bed was in 1965. Mostly that is on what Medicare tried to focus. It should cover prescription drugs, we all agree. There are various proposals as to how we should do that, ranging from $150 billion over 10 years the Hagel proposal from the Re¿
publican side; the House has a plan for about $350 billion which includes pro¿""
Mr. BREAUX. I have as a Senator, a personal experience that I have had. I have had about $30 billion a year, which includes about $30 billion a year for prescription drugs. I mentioned the price we have is about $370 billion. I think that is a good drug delivery system and what is an affordable price. I mentioned the price we have is about $370 billion, which includes about $30 billion a year for prescription drugs. I mentioned the price we have is about $370 billion, which includes about $30 billion a year for prescription drugs.

What we have tried to do in the tripartisan approach is to figure out what is a good drug delivery system and what is an affordable price. I mentioned the price we have is about $370 billion, which includes about $30 billion a year for prescription drugs. I mentioned the price we have is about $370 billion, which includes about $30 billion a year for prescription drugs.

The model we used is to ask: What has worked? One approach that has worked is the health care plan I have as a Senator—it is a pretty good plan; we wrote it—our plan for Medicare, which also provides prescription drugs. We have tried to do in the tripartisan approach is to figure out what is a good drug delivery system and what is an affordable price. I mentioned the price we have is about $370 billion, which includes about $30 billion a year for prescription drugs. We have tried to do in the tripartisan approach is to figure out what is a good drug delivery system and what is an affordable price. I mentioned the price we have is about $370 billion, which includes about $30 billion a year for prescription drugs.
Andersons of this world should be writing any kind of reform legislation when it comes to securities reform, when it comes to protecting investors and consumers. I do not believe that hardly anybody in the Senate would argue that when it comes to a clean air bill or a bill that will reduce environmental polluters should write that legislation.

So it is, I do not believe that the pharmaceutical companies ought to be given a tax cut proposed by the President that is affordable for senior citizens. I think it is a mistake.

The competing proposal basically has the Federal Government farming out a subsidy to private health insurance plans, Medicare managed-care plans, and basically saying we hope to give enough of a subsidy that they will provide the benefit. It is a suggested benefit. It is not a defined benefit. There is no security for senior citizens with this alternative.

For my part, I will go one step further. There is too high a deductible or there is a doughnut hole where a lot of seniors are worried about what they are going to do about these expenses as they run up $2,000, $3,000, $4,000 a month, that is the other big issue. We do not want to have a huge gap where people get no coverage, and that is exactly what is in the competing proposal.

Finally, I say to all of my colleagues, which is a different point, but I get a chance to say this, I want to see us do better on discounts and cost containment. I want to see us for sure support the Schuemer-McCain amendment on generic drugs. I want to make sure this reimportation from Canada actually is put into effect—it looks like the administration does not want to—because of the huge discount for senior citizens and other seniors as well. I would personally like to see the Federal Government become a bargaining agent for 40 million Medicare recipients, and in the over Graham-Kennedy-Miller bill there is allowance for the different managers around the country, benefit managers to do that work getting discounts. I want to see the States building on the Stabenow amendment and see States able to regain some of the savings they get from exacting a discount for people with no coverage now and adding that on to medical assistance.

Colleagues, what is going on is there are quite a few Senators in good faith, I don’t assume bad faith—where I do not believe there is a major government role here. They do not believe this ought to be part of Medicare. They are not quite sure they believe in Medicare, though it has been an enormously successful program. We should extend prescription drug benefits to Medicare and make it a clear, defined benefit that is affordable for senior citizens. That is the right thing to do.

I yield the floor.

Mr. FRIST. Madam President, how much time do I have?

The PRESIDING OFFICER. The Senator from Tennessee has 5 minutes and 40 seconds.

Mr. FRIST. And the other side?

The PRESIDING OFFICER. Three minutes 55 seconds.

Mr. FRIST. And yield myself 3 minutes.

Madam President, soon we will vote on one of the most important matters facing the Nation—whether to provide within Medicare a prescription drug benefit. In order to strengthen Medicare, we must include affordable prescription drug coverage as part of the package. Too many seniors today find prescription drugs unaffordable. The high cost of prescription drugs serves as a barrier. Without the health care security they deserve—which this body has promised them.

There is only one proposal that accomplishes the goal of modernizing Medicare and including a prescription drug benefit within Medicare. That is the tripartisan bill. Senator Snowe, a Republican, Breaux, a Democrat, Jeffords, an Independent, Hatch, a Republican, Grassley, a Republican, Collins, a Republican, and Landrieu, a Democrat, have sponsored this bill which reduces the cost of prescription drugs and provides a stable and sustainable prescription drug benefit. The word “sustainable” is critical.

The tripartisan bill provides low-income seniors and those with initially high drug costs special additional coverage in order to give them security. It expands and improves Medicare benefits over the traditional Medicare fee-for-service program that seniors and individuals with disabilities are comfortable with and understand today. It begins the critical element of instilling competition as we seek to add a new benefit—which means prudent decisionmaking will be made. The tripartisan bill is designed to be permanent, sustainable, affordable and responsible. Even though the cost—$370 billion—goes beyond what was intended in the initial budget, I believe it is a reasonable first step.

In closing, the tripartisan bill is not perfect, but it is clearly more reasonable than the alternative bill. Many think $370 billion, the cost of this bill, is high, and it is high since it is not coupled with as much reform as I think will be required to ultimately strengthen Medicare. Additionally, the bill lacks some of the necessary reforms that are needed to make Medicare truly sustainable—considering that the Medicare solvency will double in the next 30 years. Finally, the bill is not immediate, but neither is the alternative bill.

The time to help seniors is now. We must act now, act responsibly, and implement a plan that can be sustained. I will support the tripartisan bill because it provides the best and only real opportunity for progress this year on this important issue.

I yield the balance of my time.

The PRESIDENT pro tempore of the Senate. The Senator from North Carolina.

Mr. EDWARDS. Madam President, I yield myself 3 minutes.

This debate taking place in the Senate is about people’s lives. We have senior citizens who desperately need a prescription drug benefit. This is what they want. They want one that is affordable and reliable. It is no more complicated than that.

The Graham-Miller bill meets that criteria. Unfortunately, the bill from the other side does not for at least two major reasons. It turns the prescription drug benefit over to insurance companies. The insurance companies themselves have said this will not work. It will not work because they are in the business of making a profit. They will only go to the markets where it is profitable. That means there will be millions of senior citizens around this country with no access to a prescription drug benefit.

Second, it has an enormous gap in coverage. For those who have $400 a month in prescription drug costs, there was a 4-month period of the year where they will get no coverage at all, no help for their prescription drugs, although every month they are writing a premium check. That makes no sense. Those problems are taking care of in the Graham-Miller bill.

In addition, we have to bring the cost of prescriptions under control. That is why, no matter what, we have to pass the underlying bill that gets generics in the marketplace, stops the frivolous use of patents to keep generics out of the marketplace so we can have competition and bring down the cost of prescription drugs for everyone.

Second, to allow, in a safe fashion approved by the FDA, for drugs from Canada at lower cost to be brought into the United States so folks can buy at a lower cost.

Third, to allow States to make prescription drugs available to the uninsured, the same cost available to them that is available to everyone else so they are not taken advantage of.

These things will make this prescription drug benefit affordable.

Lastly, in addition to all of that, this has to be considered in the context of a responsible fiscal budget, in order to get this country back on the path to fiscal discipline. In January of 2001, there was a $6 trillion projected surplus; $5 trillion of it is gone. Why? The biggest single reason is because of a tax cut proposed by the President that
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has now been passed and signed into law.

To get this country back on the path to fiscal discipline, which it so desperately needs to be able to afford a prescription drug benefit, we ought to do at least three things: First, we ought to have pay-as-you-go apply in this Congress; Second, we ought to follow spending caps; Third, we ought to do something about the top layer of the tax cut for the 1 percent of Americans, the highest earning, richest people in America, scheduled to go into effect in the year 2004, to ask them to give up that tax cut in order to help their fellow Americans, in order to help us get back on the path to fiscal discipline and operate this Federal Government and this Federal budget in a responsible way.

The American people want us to do all these things. Give them a real prescription drug benefit, one that is affordable, one that is reliable, one they know they can depend on to bring down the cost of prescription drugs and find a way to pay for it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I yield myself such time as I may consume of the remaining 2 minutes and 40 seconds.

First, I am happy to hear the Senator from North Carolina mention the prescription drug program has to be within the context of a fiscally sound budget process. I agree with that. But I think that is very much an argument for a piece of legislation that is permanent as the tripartisan plan is, as opposed to a samsetted provision coming from the other side of the aisle that is $370 billion as opposed to $595 billion, the latter being the figure from the other side of the aisle. Just basically getting more for your money in the sense that CBO has scored the tripartisan program as the only program that brings down drug prices because of competition and the efficiency with which they are delivered as opposed to the program on the other side of the aisle that is very much a partisan plan as opposed to our bipartisan plan that drives up the price of drugs according to the CBO, which is our nonpartisan scoring arm.

Also, for the benefit of the Senator from Massachusetts, who is still here and my colleague from the State of Iowa who is not here, I go back to the assets test. I think they think they have something. But the point of the matter is, they do not. We have heard these repeated objections to the assets test for low-income beneficiaries in our bill as if it is something new. That is a red herring. There has been an assets test for low-income Medicare populations since 1987, and I happen to know that these programs passed by overwhelming margins—under the qualified Medicare beneficiary program as an example, as a specified Medicare beneficiary program as a second—and these programs have passed overwhelmingly with the support of my Democrat friends on the other side of the aisle.

I think that is injecting an argument into the program that is not legitimate. Current law excludes from the test the home and property it is on, a car that is necessary. I can also say it happened to be in the 1999 Clinton Medicare bill—that included an assets test as well.

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

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:31 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CLELAND).

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001—Continued

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, what is the parliamentary situation? What is pending?

The PRESIDING OFFICER. Under the previous order, there will now be 30 minutes for debate, to be equally divided between the Senator from Massachusetts, Mr. KENNEDY, and the Senator from New Hampshire, Mr. GREGG.

The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, on behalf of Senator KENNEDY, whom I do not see in the Chamber yet, I yield myself 4 minutes.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I am going to vote for the Graham-Miller amendment because it is, to my mind, the best proposal before us. It will provide affordable prescription drug coverage throughout the country. I think that is the best policy. But it now appears there may not be enough votes for that amendment. The same, I might add, is also true of the Grassley amendment, which embodies the so-called tripartisan approach.

If that turns out to be the case, we will be at a stalemate. At that point, we will have to decide whether there is some way to resolve our remaining differences so we can write a prescription drug bill that can pass.

With that in mind, I would like to briefly discuss the three key remaining differences.

The first, and probably most significant, is referred to as the delivery model. That may sound like some kind of technical jargon, but it is actually a very important matter and will determine whether we are passing some theoretical, pie-in-the-sky prescription drug benefit that works on paper but fails out in the real world or whether we are passing one that will really get prescription drugs to seniors at affordable prices.

There are two approaches. Under the Grassley approach, prescription drugs will simply be added to the existing Medicare Program, with some new incentives for efficient administration.

Under the Grassley approach, in contrast, prescription drugs will be provided through a new, market-based system that relies on private insurance companies.

People may ask: Why not try something new? What is wrong with a new market-based system?

Simply this: The new system is untested and may leave seniors without adequate coverage, especially in rural States such as my State of Montana.

Let me explain. Montana seniors, like those living in other rural areas, lack the rich retiree coverage options their urban counterparts enjoy. There just are not as many large companies offering benefits to retired workers in my State of Montana as there are in other parts of the country.

We also do not have any Medicare+Choice plans offering free or low-cost drugs to beneficiaries as in places such as Florida or some other parts of the country. In addition, our Medigap rates are higher than the national average and Medicaid coverage is lower.

On top of all that, we have been burned in the past by the promises of competition and efficiency. Rural areas often get the short end of the stick when we deregulate and leave people at the complete mercy of market forces that favor highly-populated areas. Consider airline deregulation, managed care, and energy deregulation, to name a few.

I don’t want to overstate the case. I’m not saying that a new approach is absolutely unworkable. But I am not willing to buy a pig in a poke. I want a reasonable assurance that a private insurance model will work.

I know that many other Senators share my concern. How can we address this concern? Is there another way, another idea? There may be.

In essence, we would shift to a new, market-oriented system but do so under safeguards to make sure that it really works, especially in rural areas and other underserved areas.

The resulting system might not be quite as efficient as some would like but in exchange, it is more stable than it otherwise would be under the private model.

The second key difference, between the two main proposals, is how much to spend on a prescription drug benefit. Clearly, we are talking about a big investment of government dollars, and even at the amounts we are considering here, we won’t buy a benefit that will meet seniors’ expectations.
The proposals that include a so-called doughnut, or coverage gap, give pause for concern, simply because during some parts of the year, seniors would not receive any assistance. I don't want to belabor the point, as I know many others have talked about this issue in the past few days.

To my mind, the Graham-Miller bill is right about on target, and I hope that those who support the Grassley approach can, in the spirit of compromise, agree to do some further research before the vote.

The final key difference involves what is referred to as "Medicare reform." That means making additional changes to the Medicare system, beyond those necessary to provide a prescription drug benefit.

With due respect to the proponents of reform, I believe that we should keep our eye on the ball. We have limited resources. Many of the reforms are untested and, in some cases, risky. We will lose other opportunities to consider broader changes to the Medicare program.

In light of this, I suggest that we defer the debate about additional reforms until a later date, and concentrate on prescription drug coverage.

Those are the key differences. Delivery model, spending, and other reforms are significant. They certainly are.

Can they be resolved? If we roll up our sleeves and put the interests of seniors ahead of politics or theory, we will get it done.

I yield the floor and encourage my colleagues in the next several days to work to find a compromise that gets the large vote and protects our seniors.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield 3 minutes to the Senator from Maine.

Mr. LEAHY. Mr. President, in recent days the Senate has begun to consider a number of proposals designed to help Americans afford their needed prescription drugs, not the least of which is to establish a Medicare prescription drug benefit. This is an important debate, and one that has been a long time in coming to the floor of the Senate. Now we have the opportunity to not just talk about creating a Medicare drug benefit but to prove to our Nation's seniors and disabled that we stand by our word. The amendment offered by Senators GRAHAM, MILLER, and others is the best proposal before us, and it is one that I urge my colleagues to support.

I am pleased to be an original cosponsor of this piece of legislation because it is the only one that would create a new, voluntary prescription drug benefit within the Medicare Program that all beneficiaries would be eligible for. Under the Graham-Miller proposal, Medicare beneficiaries will receive assistance starting from the moment they need their first prescription drug. There is no deductible and there is no gap in coverage, ensuring that no senior will be left stranded without the drugs they need. Beneficiaries would be responsible for copayments of $10 for generic drugs and $40 for medically necessary preferred brand name drugs until they have reached $4,000 of out-of-pocket spending, at which point Medicare pays all expenses. This bill provides low-income seniors and those with disabilities with assistance by covering the premiums and copays for those living below 135 percent of poverty, and giving premium assistance to those between 135 and 150 percent of poverty. In my State of Vermont, 28,000 of our 87,000 Medicare beneficiaries have incomes less than 150 percent of poverty and thus will qualify for this extra assistance available under the Graham-Miller proposal. This amendment will help our seniors get the drugs they need, where they live, what their income, or how sick they are. I urge my colleagues to support this important measure that will put affordable prescription drugs within the grasp of some of our most vulnerable Americans.

Mr. AKAKA. Mr. President, I rise today as a cosponsor of the Graham-Miller-Kennedy amendment that would establish a guaranteed Medicare prescription drug benefit for all Americans.

Approximately 19 million seniors in the United States have little or no prescription drug coverage. Prescription drugs are the largest out-of-pocket health care cost for seniors. Many who can afford drugs often do not take the drugs their doctors prescribe, and one in eight senior citizens is sometimes forced to choose between buying food and buying medicine. While numerous seniors live on modest fixed incomes, prescription costs have increased by more than 10 percent a year since 1995. Medicare needs a voluntary prescription drug benefit and...
seniors have the same protection against the high cost of prescription drugs as they have for hospital care.

The Graham-Miller-Kennedy amendment is the most comprehensive Medicare prescription drug benefit proposed in this Congress. It provides coverage to all seniors regardless of their health or income. In Hawaii, 159,000 senior citizens and disabled Medicare beneficiaries would be eligible for coverage under the Outpatient Prescription Drug Act of 1999. Low-income seniors in Hawaii would qualify for additional assistance under the plan.

Affordable premiums and copayments are key components of the Graham-Miller-Kennedy plan. For example, if a senior spends $4,000 on prescription drugs, she would reach the catastrophic limit and all additional drug expenses would be covered under this proposal. Seniors will not lose their current employer retirement coverage and will not have to rely on the public if they are covered by the plan. There also would not be a asset test required for participation in the Graham-Miller-Kennedy program.

The competing amendment proposed by the Senator from Iowa is well intentioned. The Grassley amendment would not provide adequate coverage for seniors. The Grassley amendment would result in 26,000 seniors in Hawaii losing their existing retirement coverage, 47,000 seniors and disabled Medicare beneficiaries in Hawaii would fall into the benefit hole and would have to continue paying premiums and paying higher drug costs while not receiving any benefits. The Grassley amendment would also include a means test to qualify for additional assistance that would prevent seniors with assets greater than $4,000 from qualifying for additional assistance.

Today, the Senate has a historic opportunity to provide seniors with the lifesaving prescription drug coverage that is urgently needed. We must ensure that all seniors are provided with an affordable and comprehensive prescription drug benefit for all seniors. I urge my colleagues to support the plan which does this, the Medicare Outpatient Prescription Drug Act.

Mr. Voinovich. Mr. President, I rise to speak in favor of the tripartisan prescription drug proposal before the Senate. I applaud the efforts of Senators Grassley, Breaux, Hatch, and Senate, and Jeffords, in developing this legislation.

Their work is the culmination of a year's effort to bridge the gap between the Medicare of 1965 and the Medicare for today and the future. As my colleagues know, when Medicare was enacted in 1965, Congress made a commitment to our Nation's seniors and disabled to provide for their health security. Unfortunately, that security is on shaky ground because Medicare has not kept up with the evolving nature of health care. The delivery of health care has vaulted ahead so dramatically 37 years after the inception of Medicare, that this system which was once sufficient is now anticipated and ineffective.

For example, conditions that used to require surgery or inpatient care can now be treated on an outpatient basis. It is time for Medicare to reflect the realities of today's health care delivery system. The vast majority of my colleagues will agree when I say providing prescription drug coverage through Medicare is the next logical step in personalizing the delivery of health care. The best way to deliver such a benefit, however, is a point on which a number of my colleagues on the other side of the aisle disagree. My colleagues from the Finance Committee have found a solution that is a good compromise and is result that can be agreed to by both Democrats and Republicans. In fact, I would venture to say that the tripartisan proposal has the support of a majority of Senators.

Unfortunately, a simple majority will not suffice. As my colleagues know, we are working under the fiscal year 2002 budget resolution, which set aside $300 billion for a prescription drug benefit. Because we never voted on a fiscal year 2003 budget resolution, the fiscal year 2002 funding levels are set to continue. So since 1974, we have no choice but to stay within the parameters of 2002 funding levels. The fact of the matter is we have stacked the deck against passing any sort of meaningful benefit that costs over $300 billion, regardless of whether the majority of Senators support the proposal.

Regardless, the bar has been raised to pass prescription drug coverage, which clearly indicates that any bill that passes through this body will have to be bipartisan in nature—or tripartisan in this case. The tripartisan bill is the only measure we have before the Senate that bridges both parties and is a benefit that can pass.

We cannot go any further. Each year we delay means another year our Nation's seniors will be forced to do without, already we have heard too often of seniors that have had to choose between food and prescription drugs. I, for one, am ready to go to my constituents in Ohio and say we were able to move past partisanship and provide real security for their health. The tripartisan proposal does that. We must act now, and we must act responsibly.

It is vital that we pass a prescription drug benefit this year, and it is vital that we pass one that is fiscally responsible. Ideally, the Federal Government would able to pay for every pill ever needed for every senior. Unfortunately, we live in the real world and are subject to limited resources. I would like to take a few moments to shed some light on our Government's current fiscal condition. Last year, the Congressional budget Office predicted a unified surplus of $275 billion or fiscal year 2002. As my colleagues know, this rosy budgetary picture is no longer the case. Recent budget projections show that the Federal Government is in much worse fiscal condition than we thought. These new projections show that the Federal Government will spend the entire Social Security surplus in both the current fiscal year and in fiscal year 2003 and we will spend $80 billion this year and $194 billion in 2003.

With this in mind, it is imperative that we act not only to provide Medicare benefits for today's beneficiaries, but also for the baby boomers who will enter into the system unprepared. Responsible in providing a benefit, we will end up writing IOUs not only for Social Security, but for this benefit as well. The tripartisan proposal strikes a balance between providing seniors and the disabled access to needed prescription drugs today and doing so in a fiscally sensible way that will allow benefits to extend to future generations.

I cannot say the same for the Graham-Miller bill. Top the best of my knowledge, I cannot definitively state what the Graham-Miller bill will cost. My colleagues on the other side claim that their bill will cost $450 billion over 6 years. Then, after 6 years, as their bill is currently written, the benefit will sunset. However, let us make the assumption that the Graham-Miller bill passed and their benefit did not sunset. What would that mean for the American people? I have a sneaking suspicion that $450 billion will somehow become $800 billion or as much as $1 trillion over 10 years. This is on top of the estimated $3.6 trillion it will cost the Federal Government to provide basic Medicare services for seniors and the disabled. As I see it, under the Graham-Miller bill, the American people get stuck between choosing cyanide and hemlock.

Senator Grassley and the others in the tripartisan group have put before the Senate a proposal that would cost $370 billion. It is difficult to state exactly what the Graham-Miller bill will cost. My colleagues on the other side claim that the so-called doughnut hole after $3,450 will be the financial ruin of every senior. The truth is that the vast majority of seniors, 80 percent, never even hit that hole. Moreover, the hole exists only until the beneficiary accrues another $250 in costs, at which time the government would pay 90 percent of all remaining drug costs. A benefit will greatly help seniors throughout the Nation, there are still some seniors for whom the $24 per month premium and additional
cost-sharing is still too high. For those individuals, the tripartisan bill provides protections that will allow access to prescription drugs. For those seniors under 135 percent of poverty, the tripartisan plan would provide a full subsidy for monthly premiums. In addition, the Government would cover 95 percent of their prescription drug costs at the initial benefit limit and 100 percent above the stop-loss limit. And for those seniors between 135 and 150 percent of poverty, the tripartisan proposal would provide assistance with their monthly premiums on a sliding scale. In addition, these individuals would pay no more than 50 percent of their drug costs once the $250 deductible has been reached.

When we talk about dollars being spent, we should also point out to seniors that they will receive more bang for their buck under the tripartisan proposal. Seniors will not just receive direct assistance from the government to cover prescription drug costs. Rather, under the tripartisan plan, competing pharmaceutical delivery plans will be forced to provide the best value on prescription drug prices in order to attract beneficiaries to their respective plans. To the advantage of both Medicare beneficiaries and the Federal Government, this competition will decrease the price of prescription drugs and permit all parties to stretch their dollars further. For example, the same seniors who would have paid one day's dose of Lipitor, might purchase 2 days' worth of the drug when competing plans vie for consumers as they would under the tripartisan plan.

This body has been playing this political posturing game for too long. I am tired of explaining partisanship as the excuse for why this body has not passed a prescription drug benefit and has forced the least of our brothers and sisters to choose between food and prescription drugs. I have been working on this issue for some time, providing funds at the Food and Drug Administration for consumer education and working with other non-profits to educate our seniors about the availability and efficacy of generics.

In the meantime, I urge my colleagues to waive the budget point of order on the tripartisan amendment to the Medicare Modernization Act, and I rise in support of this amendment to make affordable prescription drug coverage available to all of our Nation's seniors.

Prescription drugs are as important to a Medicare beneficiaries' health today as a hospital bed was in 1965, when the program was created, and I have long been a supporter of providing a prescription drug benefit as part of our efforts to strengthen Medicare. With recent advances in research, prescription drugs can literally be a life-line for patients whose drug regimen protects them from becoming sicker and reduces the need to treat serious illness through hospitalization and surgery. Soaring prescription drug costs, particularly for those of low-income, is a tremendous financial burden on the millions of Medicare beneficiaries who must pay for these drugs out of their pockets.

More and more, I am hearing disturbing accounts of older Americans who are running up huge, high-interest credit card bills to buy medicine they otherwise couldn't afford. Even more alarming are the accounts of patients who are either skipping doses to stretch out their pill supplies or being forced to choose between paying the bills or buying the prescription drugs that keep them healthy. It is therefore critical that we bring Medicare into line with most private sector insurance plans and expand the program to include prescription drug coverage.

The tripartisan plan that is before us today will provide an affordable and sustainable prescription drug benefit that will be available to all seniors. Moreover, unlike the alternative bill, our plan will make the drug benefit a permanent part of Medicare and is fully funded at $370 billion over 10 years.

Under the tripartisan bill, all seniors will have the choice of at least two prescription plans, and the Medicare program will be fully funded. All seniors will be eligible for the program, regardless of where they live. This will enable them to select the kind of prescription drug coverage that they need. Moreover, the coverage under these plans will be comprehensive. Seniors will have access to every drug, from the simplest generic to the most advanced, innovative therapy.

Our plan is also affordable and has the lowest monthly premium—$24—of any of the comprehensive prescription drug proposals that are on the table. Not only does our plan offer a lower premium, but it also offers lower copays for most drugs than the amendment proposed by the Senator from Florida. As the senior Senator from Maine pointed out on the floor the other day, seniors will pay more for most of the top 50 drugs under the Democrats' bill than they will under the tripartisan plan. For example, the copayment for Glucophage, which is used to treat type two diabetes, would be $40 under the Graham-Kennedy bill, and only $31 under the tripartisan plan.

In fact, our plan is such a good deal that the Congressional Budget Office tells us that just the Affordable Part of our plan will cost anywhere between $600 billion and $1 trillion over the next ten years. This is simply too heavy a financial burden for both current and future generations to shoulder, particularly given our mounting Federal deficit.

Moreover, despite its tremendous cost, the alternative plan promises only temporary help, not a permanent solution. Their plan sunsets after 6 years, and makes no provision for a drug benefit after 2010. In other words, their plan ends just as the tidal wave of baby boomers is preparing to retire.

The tripartisan plan also includes other improvements to the Medicare Program that are not included in the Graham-Kennedy proposal. The current...
Medicare benefit package, which was established in 1965, now differs dramatically from the benefits offered under most private health plans. Our bill would provide a new, enhanced fee-for-service option for Medicare beneficiaries that more closely mirrors private health plans. For example, it would cover more preventive services than traditional Medicare at little or no cost. It would also provide protection against catastrophic medical costs for those seniors with serious health problems. The Part B Program provides no such catastrophic protection.

No one would be forced to enter this new plan. It is simply another option. If seniors want to stay in the traditional Medicare Program, that is fine, and they will still be eligible for the new prescription drug coverage.

Access to affordable prescription drugs is perhaps the most important issue facing our Nation’s seniors today. It is clear that the current plan the Senate will stop playing politics so that we can pass a meaningful Medicare prescription drug bill this year. The 21st Century Medicare Act is the only legislation before the Senate that has not just our bipartisan, but bipartisan support. Moreover, it has the support of 12 of the 21 members of the Senate Finance Committee, which has jurisdiction over Medicare. That is not to say that I think the tripartisan plan is perfect. I do not, for example, think that payments imposed on home health care in the new fee-for-service option, and I would, of course, prefer a plan that had no gaps in coverage.

The tripartisan plan does, however, provide a major improvement in coverage, and I believe that it is the only proposal that gives our seniors any real hope of getting an affordable Medicare prescription drug benefit this year.

Since the cost of providing a meaningful benefit will only increase as time passes, it is all the more important that we act now. I therefore urge all of my colleagues to join me in supporting this tripartisan amendment.

Mr. REED. Mr. President, I would like to take a few minutes before we vote later today on the Graham amendment and the Grassley amendment to describe some of the grave concerns I have with the tripartisan amendment sponsored by Senators GRASSLEY, JEFFORDS, and Breaux.

The tripartisan Senate bill offers the following “benefits” to seniors: an expected monthly premium of $21; a beneficiary must cover the first $250 in drug costs; then $251 and $3,450; at that point the beneficiary is then responsible for all drug expenses between $3,451-$5,300; Moreover, the plan claims to offer assistance for low-income beneficiaries. What is not mentioned is that a strict asset test would prevent 40 percent of low-income seniors from even qualifying for this subsidy. A car, a wedding ring, or a burial plot over a certain value would render a beneficiary completely ineligible.

The purpose of insurance is to provide protection against certain costs. The kind of insurance some of my colleagues in the Senate have proposed would cause severely ill or disabled persons to pay with disabilities holding the bag when their drug expenditures are highest. Under the tripartisan plan, beneficiaries could still be required to pay thousands of dollars in drug expenditures.

This proposal would create a serious lapse in what is supposed to be a safety net for our most vulnerable citizens, only paying a quarter of an average Rhode Islander’s prescription drug costs. When a person breaks an arm, Medicare pays for the whole price, not half. A prescription drug benefit should pay for all of your benefits.

There are other nonprescription-drug-related problems inherent in the tripartisan bill that are also of great concern, particularly Title II, the “Option for Enhanced Medicare Benefits” section. To me, the provisions outlined in this section of the bill are a direct affront on the Medicare Program. Their purpose seems to create a new Medicare option that combines both Part A and Part B with a combined premium.

Under this option, a beneficiary would pay more upfront, out-of-pocket costs, such as a $10 co-payment for the first five home health visits and $50 per day for the first 100 days in a skilled nursing facility. In return, the beneficiary would pay nothing for preventive health services such as mammography and cancer screening and would receive protection against catastrophic health care costs.

This new Medicare benefit option would reverse the universal nature of our current program by creating a new line of services for those who can pay more. During the Balanced Budget Act debate of 1997, I fought against the addition of copayments for home health and other essential services because they threaten the access of low-income beneficiaries to those services. This new enhanced benefit option would create a two-tiered system of the haves and the have-nots. Since there is no premium assistance for low-income beneficiaries who may wish to enroll in the enhanced option, only the more wealthy beneficiaries would be able to afford it. And since it requires beneficiaries to pay a greater share of their upfront costs, it would divert healthier, younger beneficiaries from the traditional program. This adverse selection would ultimately result in higher costs for those who remain in the traditional Part A and Part B program.

The sponsors and supporters of the tripartisan plan have argued that, even though our Nation’s most vulnerable citizens deserve a Medicare prescription drug benefit they can depend on, the proposal offered by Senators GRAHAM, MILLER, and KENNEDY is simply too expensive. I would like to take a moment to highlight for my colleagues a recent report by the Center on Budget and Policy Priorities that I believe adds an important perspective to their point of view.

The report compared the cost of last year’s tax cuts with the costs of two prescription drug proposals for the Medicare population. The estimated 10-year cost of the first plan being roughly $350 billion and the second $700 billion for the same period. The report found that when the tax cut is fully in effect, the cost of the tax cut for just the top 1 percent of the population would exceed the entire difference in cost between the two prescription drug proposals.

I voted against the President’s tax cut because I felt that it failed to leave room for critical immediate needs such as a prescription drug benefit, nor did it allow us to adequately address the long-term solvency of Social Security and Medicare.

Once Congress enacts a Medicare prescription benefit, it will be difficult to make any significant reductions. If we are going to enact a benefit, we must pass a solid, reliable benefit that will continue to meet the needs of Medicare beneficiaries in years to come. And if resources are the issue, many Members have already stated clearly that there is a way to address that issue, either through the reserve fund set aside in last year’s budget or by other means.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I yield myself 4 minutes, after I ask unanimous consent that Senator DAYTON be added as a cosponsor of this amendment.

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

Mr. GRAHAM. Mr. President, I rise to respond to criticisms raised about the availability and cost of drugs under the Democratic proposals. The Democratic majority leader has distributed a memo in which he cites selected provisions of our bill to come to a false conclusion about the access seniors would have to prescription drugs. I want to set the record straight.

Under the Democratic proposal, all medically necessary drugs would be available to our seniors at a rate of no more than $40 per prescription for the year 2005. Only medically necessary drugs, not just the drugs that are on the preferred list.

The sections of the amendment Senator LOTT chose to omit make clear that every senior would have access to drug that is medically necessary for that senior. Seniors are further protected because the Medicare Program would assure that the definition of a class of drugs is clinically appropriate. To the contrary, the Republican bill allows the drug HMOs to define the class of drugs. And section 32 of their amendment, clarifies that not all drugs within a class would have to be covered.
Senator LOTT may want to take a closer look at the Republican language given his concerns in this area.

Under the Democratic proposal, seniors will know in advance exactly how much they will pay for any drug. In 2005, they will never pay more than $10 for a generic and $40 for a medically necessary brand name drug.

Under the Republican plan, there is no way of knowing how much a senior would actually pay for a specific drug because there is no defined benefit in the Republican plan. Who makes the decisions? The drug HMOs make the decision. They choose how much the beneficiaries will pay, what the deductibles will be, and how insurers will pay for each prescription in coinsurance. It could be 50 percent, which is what their charts say. It could be 80 percent. It will be determined not by the seniors, not by Medicare, but by the drug HMO.

I will carefully look at the differences between the Democratic and Republican bills. Our bill uses the Medicare Program, a tried and true delivery system, to provide prescription drugs to our seniors. The Republican plan privatizes Medicare and requires seniors to get their drugs from a drug HMO—if they can find one in their State.

Our bill assures that seniors in rural America are guaranteed the same benefits provided to senior Americans elsewhere in this country. The Republican bill abandons rural Americans. Our bill gives seniors an affordable drug benefit and guaranteed prices. The Republican bill leaves seniors dependent on what drugs are covered and how much seniors will pay for each prescription.

Our bill uses every dollar paid by the beneficiary in monthly premiums to lower the cost of prescription drugs, whereas the Republican bill uses taxpayer dollars and premium dollars to lure uneager private insurers into a market for which they are not equipped. Our bill is a bill for seniors. The Republican Party says they did not bring back prescription drugs because it is the Democratic Party's fault, and I don't think we will get very far saying we didn't have a drug plan because the Republicans would not support ours. I think the seniors are wising up and know that this blame game is no longer going to help them one bit. You cannot take an excuse to the drugstore and say, ‘we want prescription drugs. What the seniors need is both sides to come together and create a program that would work.

Our tripartisan bill is somewhere between the two versions that I have described—the Hagel bill at $150 billion, and the Graham bill at about $394 billion. All of that comes out of the Social Security trust fund money. We have tried to be responsible in how much we can spend to make sure we have a sufficient number of votes to actually pass bills that create a delivery system that can work.

What we have suggested is that for people in the Medicare Program, just like those of us in the Federal Employees Health Benefits Plan—the program that we have drug coverage under and all of our insurance—that private companies compete for the right to sell us that coverage. They compete for the right to sell us prescription drugs. The company that can do it the cheapest is the one that wins, from which we purchase the plan. That is what we are suggesting.

We are also suggesting that these companies are big people, big players. There are PBMs like Merck-Medco or Aetna or Blue Cross. These companies are used to assuming risk. That is their business. Why should we say are we going to get companies to deliver the product, but if they underestimate how much it is going to cost, the taxpayers are going to have to cover their loss. Our bill will come back and say, ‘you pay $100 to provide prescription drugs for seniors, and it costs them $102, then that is their responsibility. That is the risk they have to assume. Why should the taxpayers say: Look, we don't care how much it actually costs, the taxpayer will pick up the difference no matter what.

Regarding rural areas, our legislation says there will be at least two competing plans in every area of the United States. The Government will ensure that there are at least two competing plans. It is not like an HMO. Here you had to have a hospital and doctors and emergency rooms. The only thing you need to deliver drugs in a rural area is a drugstore to have the prescription filled and a doctor to write the prescription. We guarantee that every part of the country will have at least two competing plans.

What do we do if neither side has 60 votes? Do we give up? I suggest we try to find common ground. I think we can do that and we will continue to work in that regard.

Mr. GRASSLEY. Mr. President, I yield 3 minutes to the Senator from Utah.

Mr. HATCH. Mr. President, just a few years ago, when President Clinton was President, he was asking for a drug benefit program of $168 billion. Last year, the Democrats wanted a $311 billion program. This year it is $600 billion. Frankly, I think more than that because they have written in a sunset provision that actually helps to reduce the cost of that program, but also makes the program temporary.

I have to say that some of the things I find objectionable about the Graham approach is that the bill sets up a Government formulary that allows only two drugs for each illness. Because of that, it means that literally dozens of drugs that may be prescribed by doctors will have to be purchased by the patients themselves.

I might also add that it means a situation of price controls without question. Countries that set price controls on prescription drugs have been unable to duplicate the success of the United States in developing new pharmaceuticals.

Our tripartisan plan provides a permanent benefit, not a temporary one like Graham-Miller does. It gives beneficiaries choice in Medicare coverage, drug coverage, and options to select any prescription they want. It is affordable. Our plan costs $370 billion over 10 years. The Graham plan costs $600 billion over 10 years. In addition, includes Medicare reforms. The Graham-Miller plan does not. Our plan is not run by the Government, but by the private sector, and it depends on private competition. It trusts seniors to make their own decisions and it does.

The Graham-Miller bill does not. Ours is affordable, it creates competition, and there are no price controls on drugs. We take care of the
poorest of the poor and we do it within reasonable budgetary limits.

Mr. President, I yield back the remainder of my time.

Mr. KENNEDY. Mr. President, I yield 4 minutes to a Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. MILLER. Mr. President, first I want to quickly make a point about a matter that has been raised on the provision of the Graham-Miller-Kennedy bill that says we take a second look at this legislation after a few years. That is not a weakness. It is one of its strengths, and it is nothing new. That is what we did with welfare reform, and that is what we did with the farm bill. I submit to the Chair, if we had that provision in the original Medicare bill, we probably would have had a prescription drug benefit years ago.

Back in April, right after the Easter recess, I came to the Senate floor and talked about the urgency of passing a prescription drug bill. I spoke then of my 88-year-old Uncle Hoyle who lives next door to me in the mountains of North Georgia. He has been like a father to me in many ways. Once a very strong mountain man, Uncle Hoyle now suffers from diabetes, prostate cancer, recently had angioplasty, and also suffers from a kidney infection. Although he still makes a great garden—and I had tomatoes and corn out of it this last week—that once strong body is growing frail. I cannot get Uncle Hoyle, or millions like him, off my mind.

Many—too many—refuse to see these elderly waiting, waiting for someone, anyone, to knock on that screen door and say, as John Prine sings: “Hello in there.”

The elderly are waiting for something else, too. They are waiting for us to do something about their health needs. So far, they have waited in vain, each day growing older, growing weaker. Now it comes down to us on this July afternoon 2002.

If we do not do something, you know who we are going to be like? If we do not do something, we are going to be like those who pass by that man in the ditch on the side of the road in that Biblical story of the Good Samaritan: Passed him by, tried not to look at him, refused to help him. We will be no better than they were and should be remembered in the same negative way.

We the bicameral Congress by adding a meaningful prescription drug benefit to Medicare. The Graham-Miller-Kennedy bill would do just that. I believe and, more importantly, the AARP believes that our bill offers the best value for seniors. We deliver our prescription drug benefit through the tried and tested Medicare system. We provide extra help for our neediest seniors. We guarantee coverage 24 hours a day in every corner of this country, including that tiny rural town where the Officer knows, where I and my Uncle Hoyle live.

Remember what FDR once said: Try something; if it doesn’t work, try something else. But for God’s sake, try something. That is what I am trying to say. I want Uncle Hoyle and all those millions like him in this land of plenty who played by the rules, raised their families, and worked hard to have some hope and dignity in their twilight years.

Is that really too much to ask? Mr. President, I do not think so.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that the Senator from Iowa be granted 3 additional minutes and the Senator from Massachusetts, the manager of the bill, be given 3 additional minutes prior to the vote.

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

Mr. GRASSLEY. Mr. President, I yield myself such time as I might consume.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, soon we will cast what could be our final votes on a new Medicare prescription drug benefit. I am deeply disappointed with the process that brought us to this point.Congressional Record — Senate

While we have gained important consensus and good bipartisan will on the Finance Committee in favor of politics and partisanism that has seemed to dominate the debate on the floor of the Senate. However, I continue to believe that our bill, the Tripartisan 21st Century Medicare Act, represents the broadest and best approach to providing prescription drug coverage.

Our work on this bill over the course of a full year involved fine Senators from every party. I have never been prouder to work in a bipartisan manner than with my colleagues Senator HATCH, Senator BREAX, Senator SNOWE, and Senator JEFFORDS on probably the most important change in Medicare since the 57-year history of that legislation.

Together the five of us, bipartisan or tripartisan, whatever one wishes to call it, consulted stakeholders of all political persuasions and the Congressional Budget Office as we developed our policies over the last year. At every step of the way, we faced trade-offs and made compromises, all in the spirit of cooperation, with the common goal of getting something done that not only would act to work without breaking the Medicare bank.

Our bill reflects the best of what good bipartisan cooperation can do. It offers seniors affordable coverage on a permanent basis. It does not sunset, and it does not take brand name drugs away from our seniors. It improves and enhances other unfair aspects of the Medicare Program, and it does it all on a voluntary basis. It does so at a total cost that reasonable people from both parties should be able to support—$370 billion over 10 years.

I urge my colleagues to remember that anything that comes to the floor on a purely partisan basis, such as the Graham-Kennedy bill before us right now, is destined to fail, and I remind everyone again that nothing ever passes this body on a partisan basis alone. Around here, it takes bipartisan cooperation to make things happen, and apparently the Democrat leadership is not interested in making things happen for our senior citizens.

Our bill is built on a bipartisan foundation. Had it been given a chance to be debated in the Senate Finance Committee, it could no doubt have been improved further and we were denied that chance all because the other side did not want real debate. They wanted a real issue instead.

I urge my colleagues, especially those on the other side of the aisle, to listen closely when Senators claim to care about bipartisanship. Our bill is the only bipartisan prescription bill in all of Washington, DC, this year. It deserves consideration of the full Finance Committee, but since we have been denied that right by the Democratic leadership, it deserves your vote today.

The bill, other than the tripartisan bill before us, is without a doubt a program for big Government. Rather than allow prescription drug plans to design cost savings and innovative benefits that best suit seniors’ needs, the Graham-Kennedy bill requires Federal bureaucrats to set up 10 regional drug formularies, basically deciding which prescription drugs seniors can and cannot access.

Under Graham-Kennedy, plans would not compete with one another. It would not be allowed to deviate from a regional drug formula, thus restricting seniors’ choices. Plans would be further restricted from offering more than two brand name drugs in a therapeutic class.

This approach puts control squarely in the hands of bureaucrats in Government, and we know from experience that exclusive Government control over medicine has not worked well. The Government has lagged many years behind the private sector in covering immunizations, physicals, mammograms, and other preventive care in Medicare. By contrast, the Tripartisan 21st Century Medicare Act approach puts control in the hands of our senior citizens. The bill guarantees multiple plans will compete in each region of the country, giving seniors a choice to pick the plan that best suits their needs and the right to get out of plans that do not meet their needs.

The tripartisan bill also does not restrict plans from offering more drug choices and better overall drug coverage. Under the tripartisan bill, private plans compete for seniors, not Government bureaucrats. What if the specific drug a senior relies on is not on the regional Government formulary? The Graham-Kennedy bill forces seniors to go through multiple layers of Government bureaucrats to convince the Government to give them the drugs that their doctors think they need.
The tripartisan bill lets seniors and their doctors decide what drugs they should receive.

Take your choice. We have it within the next 5 minutes. I hope you will vote for the tripartisan plan.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Will the Chair let me know when there are 15 seconds remaining?

The PRESIDING OFFICER. The Chair will so advise the Senator.

Mr. KENNEDY. Mr. President, this vote is one of the most important any of us will ever cast. It is a vote about our national character and national priorities.

It is a vote about the quality of our society. But most of all it is a vote about senior citizens and disabled Americans and their right to live in dignity.

Medicare is a solemn promise between Government and the individual. It says, “Play by the rules, contribute to the system during your working years, and you will be guaranteed health security in your retirement years.” Because of Medicare, the elderly have long had insurance for their hospital and doctors bills. But the promise of health security at the core of Medicare is broken every day because Medicare does not cover the soaring price of prescription drugs.

Today, we have an opportunity and the chance to repair the broken promise of Medicare. It is time to pass a Medicare prescription drug benefit. It is time for Congress to listen to the American people instead of the powerful special interests.

When I first came to the Senate, I was privileged to participate in the debates that led to Medicare’s passage. Then, as now, there were two plans before us. One plan was the solid, dependable, comprehensive Medicare program that became law. The other was little more than a political fig leaf for the elections. One plan was supported by all the organizations representing senior citizens and working families. The other plan was supported only by the powerful special interests. That is the same situation we face today.

Senators GRAHAM, MILLER, and I have offered a solid, affordable Medicare prescription drug benefit that offers senior citizens and disabled Medicare beneficiaries the protection they need at a price they can afford. There is no deductible, there are no gaps, there are no loopholes. The benefit and the premium are both guaranteed in the law itself. Low income senior citizens get special assistance.

But the other side has taken a different approach. Their plan is not affordable, not adequate, and not Medicare.

Under their plan, benefits are so inadequate that senior citizens will still be forced to choose between food on the table and the medicines they need to survive. There is a high deductible and a large coverage gap. Whether the senior citizen has large drug needs or more modest ones, the program only pays a small fraction of the cost of needed medicine—leaving the elderly to shoulder the rest or go without.

Special help for the low income elderly is conditioned on a cruel and intrusive assets test.

Instead of guaranteeing benefits for senior citizens, their program provides subsidies for insurance companies—and allows them to set the premium and determine the benefits that the elderly can receive.

And to reduce the cost of their plan, they have set it up in such a way that it actually encourages employers to drop the good retirement coverage that more than ten million senior citizens now enjoy.

According to the Congressional Budget Office, under the Republican plan one-third of these retirees—three and one-half million—would actually lose the good coverage they have today and be forced into the inferior Republican plan.

From the AARP to the Leadership Council of Aging Organizations to the National Committee to Preserve Social Security and Medicare, virtually every organization representing senior citizens and the disabled supports our amendment. Not a single legitimate organization of senior citizens or the disabled supports their proposal.

We are proud that our Democratic leader brought this matter to the floor of the Senate. This is the time for us to act.

The PRESIDING OFFICER. The Senator from Massachusetts has 15 seconds remaining.

Mr. KENNEDY. Senior citizens and their children and their grandchildren understand that affordable, comprehensive prescription drug coverage under Medicare should be a priority. Let’s listen to their voices instead of those of the special interests. Let’s pass a Medicare prescription drug benefit worthy of the name.

Every single member of this body has a good prescription drug benefit. Let’s do the same for the American citizens. That is what our program does.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I think the time has expired.

The PRESIDING OFFICER. The Senator from Iowa has 45 seconds.

Mr. GRASSLEY. Mr. President, I yield back the remainder of my time.

Mr. President, I make a point of order that the pending amendment violates section 302(f) of the Congressional Budget Act.

The PRESIDING OFFICER. Mr. President, pursuant to section 904 of the Budget Act, I move to waive the point of order for the pending amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

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

The result was announced—yeas 52, nays 47, as follows:

[Rollcall Vote No. 186 Leg.]

YEAS—52

Akaka
Baucus
Bayh
Biden
Bingaman
Boxer
Browax
Byrd
Canwell
Cornahan
Jaffer
Cleland
Cheney
Conrad
Corzine
Dole
Durbin
Dayton
Dodd
Dennis
Donnelly
Dorgan
Dodd
Dayton
Dodd
Dodd
Dominguez
Ensign

NAYS—47

Allard
Allen
Bennett
Bond
Brownback
Running
Burns
Campbell
Chafee
Coats
Collins
Craig
Crafo
DeMint
Domenici
Ensign

NOT VOTING—1

Hutchinson

The PRESIDING OFFICER. On this vote, the yeas are 52, the nays are 47.

Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. Under the previous order, the amendment is withdrawn.

VOTE ON AMENDMENT NO. 410

The PRESIDING OFFICER. The question now occurs on the Grassley amendment No. 4310.

The majority leader, Mr. DASCHLE, Mr. President, I make a point of order that the pending amendment violates section 302(f) of the Congressional Budget Act of 1974.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, pursuant to section 904 of the Budget Act, I move to waive the point of order for the pending amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.
The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 48, nays 51, as follows:

[Rollcall Vote No. 187 Leg.]

YEAS—48


NOT VOTING—1

Helms

The PRESIDING OFFICER. On this vote, the yeas are 48, the nays are 51. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. Under the previous order, the amendment is withdrawn.

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

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER (Mr. CReZNOE). Is there objection?

Mr. REID. Mr. President, I object.

The PRESIDING OFFICER. The objection is heard.

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.

The Senate from Nebraska.

AMENDMENT NO. 413 TO AMENDMENT NO. 429
(Purpose: To provide Medicare beneficiaries with a drug discount card that ensures access to affordable outpatient prescription drugs)

Mr. HAGEL. Mr. President, I call up amendment No. 4315, which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nebraska [Mr. HAGEL], for himself, Mr. ENSIGN, Mr. LUGAR, Mr. GRAMM, Mr. INHOFE, and Mr. GRIGG, proposes an amendment numbered 4315 to amendment No. 4299.

Mr. HAGEL. I ask unanimous consent reading of the amendment be dispensed with.

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

(The amendment is printed in today’s RECORD under “Text of Amendments.”)

Mr. HAGEL. Mr. President, we have spent 4 days debating and voting on two Medicare prescription drug proposals, the Graham-Miller-Kennedy bill and the so-called tripartisan bill. I have worked with Senators ENSIGN, LUGAR, PHIL GRAMM, INHOFE, SANTORUM, and GRIGG to introduce relevant, straightforward, realistic legislation to add a prescription drug benefit to our Medicare Program.

Our legislation would create a permanent Medicare prescription drug program that would be available to all Medicare beneficiaries beginning January 1, 2004. We keep it affordable to both beneficiaries and taxpayers. We do it without creating a new Federal Government bureaucracy. The program is not perfect. None of the Medicare prescription drug bills we have considered have been perfect.

This bill accomplishes a very important goal. This bill gives seniors the peace of mind that comes with knowing they have security from extremely high drug costs, catastrophic costs that ruin families.

Why are we engaged in this debate?

Medicare was created, as we all know, in 1965—and it is a 1965 model. Preventive health care, like diet, lifestyle, and exercise, was not emphasized in 1965. Prescription drugs were not as widely prescribed or used. Research had not developed the kind of lifestyles and life expectancies and quality of life we now enjoy—prescription drugs, pharmaceutical research, being the core of that development.

Seniors needed protection, in 1965, from high hospital costs for inpatient services, and we gave them that protection. It came through Medicare Part A hospital insurance.

In 2000, the average American spent $435 a year on prescription drugs. Today, Medicare beneficiaries need protection from unlimited out-of-pocket prescription drug costs.

John C. Rother, policy director of AARP, was quoted today in the New York Times as saying:

Another possibility is for Medicare to provide catastrophic coverage for prescription drug expenses over a certain threshold, perhaps $1,000 to $6,000 a year, with no premium. This could be combined with additional help for low-income beneficiaries and a government-authorized drug discount card.

So reported the New York Times today as a quote from Mr. Rother, the policy director of AARP. What Mr. Rother states is exactly what this bill does.

How would this program work? There are two major components to our bill. First, all participating beneficiaries...
would be protected from unlimited out-of-pocket drug expenses through a cap on their private expenditures. The annual out-of-pocket limit would depend on their income. That would go as follows: For annual income levels below 200 percent of poverty, the annual expense would be no more than $1,500. That is a little more than a $100-a-month cap on out-of-pocket expenses. For those with annual income levels between 200 percent and 400 percent of poverty, it would be capped at $3,500—no more. And for those who wanted to subscribe—this is a voluntary program, open to all Medicare beneficiaries—with incomes above 600 percent of poverty, their out-of-pocket expenses would be capped at 20 percent of their income.

Again, to give some immediacy to help underscore the numbers, the 2002 Federal poverty level is $8,860 for an individual and $11,940 per couple. Beneficiaries with the lowest incomes would have their out-of-pocket expenses on prescription drugs limited, as I said, to $1,500—no more. And almost half of all Medicare beneficiaries live on incomes lower than 200 percent of poverty.

The second part of our program would be that every beneficiary would be able to choose to enroll or not to enroll in a discount drug card program, giving them access to privately negotiated discounts on prescription drugs. Who would administer this program? The Secretary of Health and Human Services would administer the program through the Centers for Medicare and Medicaid Services, CMS. The Secretary would negotiate with private companies to deliver the benefits. That means that new Federal bureaucracy, no new Government program to administer these benefits.

I would like to point out that two-thirds of all seniors already have some type of prescription drug coverage that they like and want to keep. Seniors would not be forced to drop supplemental coverage, and employers would be encouraged to retain and even improve existing coverage under our plan.

Our bill would allow Employer-sponsored plans—all employer-sponsored plans: Medicare supplement plans, Medicare-Choice plans—pharmaceutical benefit managers—PBMs and even States working with private companies to deliver the benefits.

By structuring our program this way, we do not create an expensive and new, expanded bureaucratic headache, the subsequent redtape that follows. We would use the market system in place.

These private market tools, such as consumer choice and competition to control costs without limiting innovation, are critical to the future development and innovation of prescription drugs.

How would seniors participate? Seniors would enroll with an approved provider and pay an annual fee of $25, which would be waived for beneficiaries with incomes less than 200 percent of poverty, individuals with incomes of less than $17,730, and the subsequent redtape that follows. Once beneficiaries had met the annual limit on prescription drug expenses, they would pay a small copayment of no more than 10 percent of the cost of each prescription drug. Seniors would not have to pay monthly premiums for deductibles.

When would the program start? Our program would take effect January 1, 2004. Other bills that were considered would not have taken effect until 2005 or even later. And our benefit is permanent; we do not sunset the program.

Why do we structure the program this way? Any realistic Medicare prescription drug proposal must not only be affordable for seniors, but it must also be affordable to the taxpayers, future generations of Americans who are going to have to pay for this program.

Why is that important? It is very important because if we begin a program and obligate and commit the next generation of Americans to a program, then we owe them. We have a responsibility and obligation to tell all the facts and structuring a program that is accountable and responsible.

Let’s examine something carefully. Projected Federal deficits now are seen for at least the next 2 years and probably longer. The last couple of years ago when we looked out onto the horizon and saw surpluses as far as the eye could see, we are now in a different dynamic, a different environment. No one really knows how long we will be in deficit, so any new Federal program and entitlement that is added, someone must pay for that.

We are not operating under a new budget resolution, so, as of October 1, we will no longer be subject to budget caps. The prescription drug bills we debated did not attain the 60 votes needed today in order to overcome a point of order raised because both violated the budget resolution cap of spending no more than $300 billion over the next 10 years. That was an important point. Both of the bills we debated that did not attain those 60 votes needed were in excess of the $300 billion cap that the Budget Committee of the Senate, this Senate, that body, voted for last year. But after October 1, there are no caps. We are not operating under a budget.

Finally, the underlying Medicare Program is still in danger of becoming insolvent. Let me pass on an interesting number. When Medicare was passed in 1965, Part A hospital costs for 1990 were projected to be $8 billion. In 1990, Medicare Part A actually spent $67 billion.

So from the projection, in 1965, out 25 years, as to how much Medicare Part A would cost, the actuaries said that would cost $8 billion. In 1990, Medicare Part A actually spent $67 billion.

The most important short-term priority should be the needs of the fairly narrow, and politically influential, band of Americans...
who have very low incomes and very high drug prices. They have said it accurately. They have stated it correctly. They have focused on those who need it most. This amendment does that.

Mr. President, I am grateful for an opportunity to propose this amendment and debate it. We will have a vote on it tomorrow. I know a number of my colleagues wish to speak on this amendment.

So I will leave the floor to my cosponsor on this amendment, who has worked long, hard, diligently, and understands the issue as well as anyone in the Senate. I am very proud we have teamed up, along with a number of our other colleagues, to present something we think is important for our country that is workable, doable, and responsible.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENZSIND. Mr. President, I thank the co-author of this amendment, the Senator from Nebraska, for the great work he has done; and, by the way, that both of our staffs have done in coming up with an amendment that we think is fiscally responsible and that meets the needs of those seniors who need it the most.

We have heard a lot of examples during the House debate, and during the Senate debate, about those seniors who are having to choose between paying rent and paying for prescription drugs or paying their food bills and being able to pay their drug bills. We have heard about a lot of heartbreaking stories. Those are real stories that are out there. We have those stories in my home State of Nevada. We get letters from those people all the time.

I got an e-mail a few weeks ago from a lady who sent this e-mail at 11:20 p.m. West Coast Time. She was up thinking—and probably looking for a discount card. She was thinking about our responsibility to our children and the next generation of young people coming up who are going to be working for a living and paying taxes. Will the Social Security system be there for them? Will this country be there for them? Somebody has to pay for all of these programs that we are talking about.

People have not wanted to means test Medicare and Social Security because they believed that they have earned this benefit, that they have paid in for this benefit.

Realistically speaking, this new prescription drug benefit would not have been earned by anybody that is going to get it. At least early on, Frankly, it is a straight giveaway to seniors. It is taking it out of the pocket of younger people who are paying into the system now and putting it into the pocket of older people who, while they were working and paying taxes, paid for a Medicare program that did not have a prescription drug benefit.

All of us feel a great responsibility to our parents, our grandparents, to take care of them in their golden years. But we must do this in a way that does not put such a burden on young people in our society that they cannot prosper.

Why should their tax rates have to be so high just because we in the Senate wanted to get reelected, so we voted for things that just kept spending these young people's money? Ultimately, they will have no choice but to pay high taxes because politicians pay attention to the senior citizens because senior citizens vote. We need to pay strict attention to what we are doing here and whose money we are doing it with.

Once we add a benefit to Medicare, we will not be cutting that benefit in the future. So whatever we do, we better do in a fiscally responsible fashion.

Senator HAGEL and the rest of the team that has put this amendment together believes that we have done exactly what is right to help to those seniors who need it, but we have done it in a fiscally responsible manner.

I want to talk a little bit about the amendment and how it works. Senator HAGEL has already spoken, but I want to reemphasize a couple points and to use a chart for those who need to see it. I am kind of a visual learner and need a chart to understand things sometimes, to actually be able to see the numbers on a piece of paper so I can put them in my head.

The way our bill works, first of all, is that we cap—this is catastrophic coverage—we cap the amount of out-of-pocket expenses a senior citizen is going to have to pay. We do that based on income. The people who have the lowest income get the most help. It goes up from there based on your income level. That seems to make sense if you think about it. Should a person like Ross Perot, who would qualify for the lowest level of help, get the same help as some- like Ross Perot, who would qualify for the same level of help? I think most people would say they should not get the same level of help.

Our bill says that if you are lower income, you are going to get more help. It also says that the sicker you are, the more help you get because those seniors who are very sick or who have a chronic condition such as heart disease, diabetes— and we will talk about a few examples later—pay much more per year in prescription drug costs and our plan limits their out-of-pocket spending. Those are the people our bill actually helps more than the leading Democratic proposal or the so-called tripartisan proposal.

For people who make $17,720 or less a year, up to 200 percent of poverty and below, we cap their out-of-pocket expenses at $1,500. This is a little over half of the seniors in this country. If you make between $17,721 and $35,440 per year, your out-of-pocket expenses are capped at $3,500, and it scales up from there.

Once again, our program is completely voluntary. I have heard that in 1987 the Senate passed, and actually enacted into law in 1988, a catastrophic drug benefit plan. We hear people—and I am not sure if they were reelected to our plan or not—saying seniors opposed the 1988 plan so much, that they repealed it the next year. They were not opposed to it because of the catastrophic coverage, they were opposed to it because one, they were forced to join; and, two, their Medicare premiums went up. Ours is a voluntary program, and it only has an annual enrollment fee of $25 per year. That is strictly to take care of administrative costs. We figure about $25 per year is what is necessary to handle these costs per enrollee.

When you pay that fee and sign up for the program, you will get a drug discount card. You will be able to sign up for various plans in the area, and pharmaceutical benefit managers will have a list of pharmacies that are participating. They will have a formulary or a list of drugs that are offered. You will go through those, and you will say: I have this disease, or, I like that particular formulary; maybe I will get together with some of my fellow seniors or I will get together with my doctor and say, Which one of these plans do you recommend? Then you will sign up for that plan that best meets your needs. It is the competition between the plans and the volume buying that will allow the average senior to save somewhere between 25 and 40 percent on the drugs they buy with this drug discount card.

Right upfront, they save 25 to 40 percent. Then, we cap their out-of-pocket expenses. So it is a two-pronged approach. We believe that because the senior pays initially out of pocket—about $100, $120 a month for the low-income—pharmaceutical benefit managers will have a list of pharmacies that are participating as a result of competition between the participating entities.

I want to give a couple of real-life examples of those cases we always hear about—those cases that tug at our heartstrings.

James is a 68-year-old man who has an income of about $16,000 per year. He is being treated for diabetes. These are the various medications he is taking: Glucophage, Glyburide, Lisonirtil, Protonix, Lescol, and Zoloft. He has monthly prescription drug costs of $478.04, and a yearly cost of $5,736.48—so James is paying out of his own pocket over $5,700 right now. Medicare does pay for any of this.

To compare the various plans, first of all, under the Graham-Miller plan, James' out-of-pocket expenses would...
be $2,940.00. Under the tripartisan plan, he would pay $2,341.65. Under the Hagel-Ensign plan, he would pay $1,923.65. So for the low- to moderate-income person who has a serious disease, the Hagel-Ensign plan gives that person more help than any of the other bills. And, under the Ensign plan, she would save $2,341.65 and, under our plan, she would pay $1,714.84 a year. Once again, this person does better under the Hagel-Ensign plan more so than either of the other two plans which were voted on and failed the vote of order.

To reemphasize, the plan we have all worked on together, including Senator Gramm of Texas, provides a Medicare prescription drug benefit in a much more fiscally responsible way and takes better care of the generations.

There is a third example I want to talk about. Betty, who is a 66-year-old, has an income of $15,500 per year. She suffers from diabetes, hypertension, and high cholesterol, which is not unusual for a senior. Her medications are Lipitor, Glucophage, Insulin, Coumadin, and Monopril, for a total cost of $394.03 a month, and $4,484.37 a year.

Once again, here is how Doris would fare under the various plans. Under the Graham-Miller plan, the leading Democrat plan, she would pay $2,220.00 a year out of pocket; under the tripartisan plan, she would pay $2,066.36 a year; and, under our plan, she would pay $1,714.84 a year. Once again, this person does better under the Hagel-Ensign plan more so than either of the other two plans which were voted on and failed the vote of order.

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to be shocked. I think they even probably think that the most generous of the plans—the Graham-Miller-Kennedy plan—doesn’t go far enough in terms of help that they need. To hear this one—and I will get into some of the details—I think they would say: Gee whiz, what the hell is this? We passed a prescription drug benefit and said we passed a prescription drug benefit and passed the Hagel-Ensign bill, most of our constituents would say—correctly, no, you didn’t, and don’t you claim that you did because you are helping the vast majority of people who desperately need the help.

I will go on with the AARP letter. They are worried about the cataclysmic nature of the Hagel-Ensign bill. Quoting them:

While AARP has not opposed income-relating premiums, income-relating the Medicare benefit changes the nature of the problem. This would set up an extremely dangerous precedent in Medicare.

That is exactly right. Anybody who thinks this bill is helping middle-class people hasn’t read it. The vast majority of our constituents who struggle with the cost of drugs, who may be making $20,000 or $25,000 and paying a couple thousand dollars—not $5,000, but $2,000—are left out in the cold by this bill. These drugs are more typical than the examples my good colleague from Nevada has brought up in his chart.

So to think that this is comprehensible, to think that it covers most, is wrong. We do have a choice. It is a value choice. How much are we willing to spend to help people? You cannot have it both ways. You cannot say we are passing a comprehensive prescription drug benefit and not spend the money for it. These drugs are wonderful, but they are expensive, and you cannot avoid that conundrum. You have to decide which side of the fence you are on.

With some regret, and I say it in admiration for their bold essay, the Hagel-Ensign amendment says we are on the side not of providing broad, comprehensive coverage but, rather, doing a little bit. And, again, as I said, put into the context of all the other things we spend money on, put in the context of the desire on the other side to continue with tax cuts, which takes their budget and puts it in a warped and pretzel-like way, it is not what the American people want.

So I am going to conclude with this quote:

Given these concerns, AARP opposes your amendment. We remain fully committed to developing a comprehensive drug benefit for all Medicare beneficiaries, and we are forward to working with you on legislation that our members can support.

What AARP said to my colleagues I say as well. Let me just go over some of these things. This is the Hagel bill. Senior citizens with an income of $9,000 are covered, that is, for $2,000 first and $1,500 in prescriptions drugs. You will never get there. That will be 17 percent of somebody’s income. That is wrong.

Now, my friend from Nevada took one side of the line. I am going to take the other side of the line. He used a $17,000 example. Let’s say you go to $18,000 in income. Nobody is rich on $18,000, whether you live in Nebraska, Nevada, or in Manhattan. It is harder in Manhattan than anywhere else. Your standard of living is different with the same income level there.

Listen to this: A senior making $18,000 would have to pay $3,500 before they receive any help. That is not the kind of benefit the American people asked for: being asked to pay $18,000, you pay $3,500 first? What they would say in New York is: Forget about it. What are they doing to the rest of the country? Is: Please go back and try to do a little better.

Even a senior citizen with an income of $35,000—one you are at $35,000 and you are a senior citizen, hopefully your kids are out of the house and you are not doing that badly, although, again, in parts of New York, $35,000 does not stretch too far when you have an average rental payment of $1,000 a month or $800 a month. That eats a lot of it, and you choose, and other expenses. That person would have to pay $5,500, 16 percent of their income, before they got any help. My guess is that 98 percent of all senior citizens at that level of income would not qualify for this program at all. The number who pay that huge amount for prescription drugs—and that is the amount they would need before the program begins—is small.

I would not call this insurance. I would call it a proposal. If it would become law, poor senior citizens would still be choosing between food on the table and the medicines they need to survive. This senior citizen who is making $9,000 and paying $1,500 for their prescription drugs is still choosing between food on the table and medicine.

Middle-class senior citizens who are willing to pay a little more in copays and monthly payments would not get a benefit, they would find worthwhile at all. It would not affect most of them.

To all of my colleagues, this bill is more fiscally tight, stingier, if you will, than the House Republican bill. It is more, you guys that either of the two bills voted for in the Senate. I do not know a single organization of the elderly or the disabled that supports it, and I do not believe it deserves the support of the Senate.

The fight for a real Medicare prescription drug benefit does not end today. In fact, I argue that we made some progress today. Fifty-two votes for the Graham-Miller-Kennedy bill is ahead of progress, and, in fact, should we adjust the Budget Act next year, that 52 votes might be adequate to actually pass the bill. Once we forget these notions of spending money on things that virtually nobody wants, especially the rarefied few, we will be able to do it.

We made progress today. I am not despairing. I compliment the Senator from Georgia, as well as the Senator from Florida and the Senator from Massachusetts, who will be here shortly, for putting together a proposal that I think does much more of both: It is still fiscally within our means but really is broad and comprehensive and deals with people’s needs.

The Hagel-Ensign amendment I think would be a cop-out. In fact, the argument was made by my friends—again, I salute the sincerity of their effort; I really do. This is an honest proposal and I thank them for that, but they abandoned themselves: We will not do much after this.

I would rather go back to the drawing board and try to pass something that far better meets the American people’s needs, such as the bill proposed by the Senator from Florida, Georgia, and Massachusetts. I urge my colleagues to defeat this amendment, and let’s keep working on this issue until we get it right.

I yield the floor.

The PRESIDING OFFICER (Mr. MILLER). The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, I am not going to get into an argument with our dear friend from New York. I will say, in fact, that in New York if you make $9,000 a year, you qualify for Medicaid. So you are completely covered.

I also have to say, if we are going to take the approach the Senator from New York takes, and that is “how much are they willing to spend to help you,” then we get into a debate not about what works, not about what is feasible, not about what we can afford, but who is willing to spend more money.

In truth, we have already been in that debate. I want to show my colleagues this, because this is frightening to me.

In 1999, just before he left office, President Clinton proposed a comprehensive drug benefit—and I start earlier. We had through a legislative act of Congress, a bipartisan commission appointed with Senator Breaux as chairman. I was on that commission. Part of what we did is we put together a proposal to modernize Medicare through the use of competitive marketplace forces.

For example, if you have a cane with four little legs on it and you buy it
through Medicare, the average Medicare care cost is $40. The VA, which has never been thought of as the world’s most efficient buyer, buys it for $15. The Breaux commission put together a proposal to modernize Medicare and to use some of the savings to help people get coverage for pharmaceuticals, and the way they got it was opting into a more cost-effective system.

That proposal actually saved money because reforms in Medicare save more money than providing the pharmaceuticals in this more competitive environment.

President Clinton, who had us all down to the White House, looked us in the eye and said: Don’t let this process fail because of you. I was one of the members of this commission. President Clinton looked us right in the eye and said: Don’t let it fail because of you. And then all four of his appointees voted no at the last minute. We needed 11 out of the 17 to make a recommendation to Congress, and we only got 10.

At that point, incredibly, providing pharmaceuticals not only did not cost money, it was part of a reform program where the savings we would have gotten with Medicare reform would have paid for the pharmaceutical benefits.

That is where the debate started, and we failed to act because of one vote on the bipartisan commission, when all four of the President’s appointees voted no. In fact, they had a press conference at the White House denouncing the plan before we had the vote.

At that point, at the end of his administration, President Clinton said: We can have a comprehensive benefit for $168 billion. That was in 1999 just as President Clinton was ending his term.

Then Congress in 2000 had a proposal. Former Senator Robb from Virginia was the author of that proposal, and it cost $242 billion. If you went back and looked at that debate, everybody who was a Democrat said: We can solve this problem. If you will just give us $242 billion, we can solve the problem.

Then you will remember the budget debate we had last year, the Baucus amendment. I could quote 20 Democrat Senators who said: We can provide all the benefits we need for $311 billion.

I could quote Senator BAUCUS. I could quote the distinguished majority leader, but it is never fair using people’s words against them. I do not do it. The second Senator I will quote is one of his appointees.

In the budget debate last year, $311 billion would have done everything we wanted to do. This year in the budget we said: No, that is not enough. That is being tightfisted with the elderly. We do not want $311 billion. In the budget we said $242 billion. The budget did not pass, but that is what the budget had.

Now we come to the floor with a proposal that says: We cannot spend $500 billion; that is being tightfisted with our seniors. Well, we do have thought of $311 billion? When was that wrong with Senator Robb’s tightness at $242 billion? Was Bill Clinton a person who did not love the elderly at $168 billion?

What a heartless man he was. Today, we said: No, it is going to take $600 billion—not $311 billion but $600 billion.

Mr. SCHUMER. Will my colleague yield?

Mr. GRAMM. Let me finish this point, and I will be happy to yield.

Mr. SCHUMER. I thank the Senator. Mr. GRAMM. The $600 billion would not pay for a real program. It starts in 2005. It ends in 2010. So if one does not live until 2005, they get no benefits; if they live past 2010, they get no benefits—and it still cost $600 billion.

Now, where do we think we are going? Where does all of this end? We are asking people to look and see who cares the most. And you can measure that by how much money they are willing to spend.

Where does this end? Will it not go on forever? I am going to yield to the Senator, but let me make this point to sort of bring this in.

Forget this red in the chart. That was about this bill that I was talking about when I made the chart. Just look at the yellow on this chart. I want to try to impress this one figure on people’s minds. Today, Medicare, which has been adopted that we sustained a benefit.

Some people estimate that if the bill had been adopted that we sustained a point of order against today, this would not from 2 percent of the economy to 4 percent but from 2 percent to 6 percent. We would literally be discount it above the present value of the revenues we are going to collect, today it is taking 2 percent of the economy. If we do not pass any tax benefit and in present value terms of $17 trillion—when you discount it above the present value of the revenues we are going to collect, today it is taking 2 percent of the economy. Today the payroll tax for Medicare and Social Security is 15.3 percent. If left unchanged, meaning we do not cut it and we do not increase it, the payroll tax will have to more than double by 2030 to over 30 cents out of every dollar earned by every worker to pay for Social Security and Medicare.

That is without a prescription drug benefit.

Some people estimate that if the bill had been adopted that we sustained a point of order against today, this would go not from 2 percent of the economy to 4 percent but from 2 percent to 6 percent. We would literally be looking at over 40 cents out of every dollar earned by every worker to pay for Social Security and Medicare.

I understand all of these people who want these benefits are writing these letters saying we do not love them. I am happy to yield. Mr. SCHUMER. Will my colleague yield?

Mr. GRAMM. I am happy to yield. Perhaps I could quote the distinguished majority leader, but it is never fair using people’s tightness at $170 billion is not $311 billion but $600 billion.

Mr. SCHUMER. I thank my colleague. Mr. GRAMM. The $600 billion would not pay for a real program. It starts in 2005. It ends in 2010. So if one does not live until 2005, they get no benefits; if they live past 2010, they get no benefits—and it still cost $600 billion.

I thank the Senator from Texas if he knew that the Medicare level in New York is $599, which is $7,200 a year. I ask him if he knew that.

Mr. GRAMM. If I were from New York I would be trying to change that.

Mr. SCHUMER. Well, we will, maybe with the help of the Senator from Texas. In any case, that person in the example does not qualify.

The second question I ask my colleague, side by side with this, I like his chart. It sorts of my argument because that last number is $600 billion. As I understand it, if we did not make the estate tax repeal permanent, something my colleague from Texas has fought very long and hard over, that would be $670 billion, as I understand it. That is how much it would cost over the same 10-year period. So we are not talking about the ability of the Government to pay this; we are talking about size of government. That is one of the great debates we have. But it is not that my colleague says we cannot afford it; rather, he is using it for different purposes.

At least to me, when I go from one end of my State to the other, the number of people who ask for estate tax repeal is much smaller than the number who ask for a comprehensive prescription drug plan for Medicare.

So I ask my colleague, aside from the ideological and philosophical argument about size of government and all of that—which on which we have had nice debates on both the floor and in our various committees that we share—but certainly within the contemplation of myself and friends, that would be $670 billion, as I do not take that money for estate tax reduction, we could put it into this program; am I right about that? This is a simple value choice.

Mr. GRAMM. I am going to answer that point. Was there a third point?

Mr. SCHUMER. Yes. The third point is this: When we compared the programs, the $168 billion, the $242 billion, and the $311 billion, that was apples and oranges, as I understand it. The benefit I remember from the Robb program that my friend from Texas pointed out did not have the same level of benefit, the same generosity of benefit, as the plan proffered by the Senators.
from Florida, Georgia, and Massachusetts. So we are really comparing apples and oranges.

It is not that anybody thought the original plans did everything, it was just the amount of money they were willing to invest, and in fact, I recall it, the Robb plan was sort of objective because people thought for the amount of money it cost compared to the amount of benefit, it was not quite worth it, at least in political terms, using politics in the finer sense in terms of value choices.

Those are my three questions to my colleague, and I welcome the answers he will give with the same twinkle in his eye.

Mr. GRAMM. Let me begin with No. 3 first. We are comparing apples and apples. In 2001, in the political bidding war we were in then, $311 billion represented a sufficient number of apples to engage successfully in the bidding contest. Today, it is $600 billion and heady discussion is that, beginning with the chairman of the Finance Committee and the majority leader, we had Members saying last year that $311 billion would provide a wonderful program. The problem is, this year it is $600 billion and that is a wonderful program. And it is not apples and oranges, it is a lot more apples.

Secondly, I think where my colleague is leading on the death tax thing is kind of a circular argument. If you are willing to take someone's money, the only limit you get as to how much you can spend on Medicare or anything else is the amount of money that can be extracted without destroying the productivity of society.

The point I had made earlier was that you are already committed under the existing program to take 30 cents out of every dollar everybody earns to pay for Social Security and Medicare. If you adopt your program, by some estimates you would be paying 40 cents out of every dollar that people earn, and the question is: Is that something that the economy can bear, and is that fair to young people?

In terms of the death tax, we have a very different view of the death tax. Nobody in my family ever paid any death tax, and nobody ever bequeathed anybody anything because they did not have anything. But when somebody works a lifetime to build up a farm or a family business, the view of the Senator that this belongs to the Government and my view is it belongs to the people who build it up. They build it up for their family, and it is not right for us to force their family to sell off their business or sell off their farm or sell off their life’s work to give the Government 55 cents out of every dollar they earn.

It is a perfectly legitimate position to say they ought to have to do that, but it is not something of which I am supportive. I think it is fundamentally wrong.

There are other people who want to speak.

Mr. SCHUMER. I am not yielding but thanking him for the answers.

Mr. GRAMM. Let me also say one thing that has happened about which I am worried. Many of my Democratic colleagues, knowing that this tax cut that we adopted is temporary because of this quirk in the budget, unless something changes it goes away in 10 years—almost seem determined to spend and spend and spend until we have to take the tax cut away.

I remind my colleagues throughout American history the highest sustainable tax rate that we have been able to sustain over long periods of time was taking 19 cents, on average, of every dollar created in the economy. When we adopted the tax cut last year, the Government was taking 22 cents out of every dollar produced in the economy. That was a record high that only had one year higher. That was 1944 at the peak of the war effort. I hope people do not believe we should go back to a 22-cent tax rate.

The final point I make, the Senator acts as if death taxes would pay for Medicare. We all know Medicare is funded by payroll taxes. If you are working in some factory somewhere—I don’t know how this helps you in this debate, but if you are and say you are taking a coffee break and this is the only thing they have on in the factory—don’t think that some rich guy is going to be forced to sell off his farm to pay for Medicare. You are going to have to pay for it with higher payroll taxes. Don’t be confused.

Now, I have talked longer than I had intended. Let me make a couple of points. First, I read a quote, from John C. Rother, policy director of AARP. In recognizing that the two big plans would be defeated, he said: Another possibility is for Medicare to provide catastrophic coverage for prescription drug expenses over a certain threshold. And he notes that: we could have a Government-authored discount card.

Now, let me make my points about this bill and stop. First, I had virtually nothing to do with writing this bill. Two Senators have been principal authors of it. I recognized, in simply looking at it, that it was the best plan around. They came up with it.

Why is it the best plan around? First, it is within budget. Now, it is hardly some sign of a lack of money. Somewhere between $140 and $170 billion is what this costs. That is a lot of money.

What it does is provides the most help to people who fall into two categories: A, you don’t have very much income; and B, you have high drug bills. I submit those are the people who need the help the most.

The problem with the other two proposals—let me make my criticism bipartisan—the problem with the other two proposals is that they spend 80 percent of their money helping people who don’t need help. When you take the view that the Government ought to have a program that pays at least 25 percent of the drug bill for Bill Gates and Ross Perot—that it is not a universal program unless they are covered—you are going to end up spending huge amounts of money paying for people that don’t need the help, end up paying for the roughly two-thirds of people who already have health insurance for pharmaceuticals, because you substitute the taxpayer for the private insurance policy they already have as part of their retirement program.

The point I am trying to make is you are spending 80 cents on people who either almost have the benefit or don’t need it to get 20 cents on the target to people who do need it.

The advantage of the Hagel-Ensign bill is that it puts every dollar on the target. This is what it says. Again, you can spend more money; God knows you can spend more money. But just listen to what it does. Let me take a retired couple of their incomes—$320,000 a year; they would have to pay roughly $100 a month in drug bills themselves, but at slightly above $100 a month this program kicks in and they get full payment except, possibly, a very small, little copayment for pharmaceuticals.

Now, our colleague from New York said a huge number of seniors, 80 percent I think he said, would reject this program. I don’t believe it. My mama’s drug bill is $400 a month. She does not want help in 2005. She does not know if she will be alive in 2005. She wants help now.

The advantage of this program is that it provides help right now. What it would mean in her case is she would have to pay a little over $100 a month and now she is paying $400 a month.

Now, if your income goes up, then the deductible goes up. For example, if you are making $46,000 a year, your deductible is $3,500. If you are retired, most retirees who make $46,000 a year own their own home. What this bill says is, if your expenses on pharmaceuticals get up really high, the Government is going to help you. If you make $69,000, you have to spend $5,500 to get the payment by the Government. So it is tied to your income.

And for Bill Gates and people who are very wealthy, they have to spend 20 percent of their income on pharmaceuticals. Bill Gates will never get a benefit and he shouldn’t. He doesn’t need it, and he doesn’t want it. He may not even take it.

That is not the only help you get, by the way, because immediately this program would let private companies contract through Medicare to represent Medicare beneficiaries in negotiating drug prices. So much of these companies would compete in buying the drugs you buy. You would buy from whoever could sell them to you the cheapest, and it is estimated that they would save you somewhere between 25 percent and 40 percent of the cost of your drug bill.

In my mama’s case, this would mean spending much less than $400 a month—
it is estimated that these companies, because they have more buying power, would get the best price. She goes to the same pharmacy because it is the one convenient to her house. These companies could go all over the country to find their drugs and buy them the cheapest. They could save her $100 on average just simply by being competitive.

Remember I told you about the cane with it—Dr. Finkler. For years you have seen them—lots of people have them in hospitals. Medicare pays $40 for that cane on average. The VA buys that cane for $15 because they go out and engage in competitive bidding. This would do the same thing. Then, anything above $100 per month, the Federal Government would pay.

If you said to my mother and anybody else’s mother: Would you rather have this Government pay the whole thing? The answer would be yes. She would rather the Government pay the whole thing. But the point is, this is a reasonable, responsible program that would help real people.

Finally, Senator Ensign has presented three or four times—you can never do it enough—cases of people who have real high drug bills, and remarkably he has shown that his program is cheaper for them than these very expensive programs. Before somebody runs down here to the floor to answer me and says: How is it possible? We spend $600 billion and Senator Ensign spends $170 billion and you are saying it is cheaper? You are saying it is cheaper under Senator Ensign’s program. How can that be when he doesn’t spend as much money?

The answer is very simple. He doesn’t cover everybody. If you do not have high enough incomes or if you do not have moderate income, he helps you get competitive purchase of your drugs, which saves you between 25 percent and 60 percent. But the Government does not pay if you do not fall in this category of people. You don’t get help under those circumstances.

Now you say everybody should get help. The point is, this bill helps the people who need the help the most. This is a good proposal.

I remind my colleagues, we are at an impasse here. There are some people already talking about spending more money. There is logic in that thing to do now, if we want to act this year, is to take this proposal and adopt it. That will help people who need the help most and help them now. Then we can come back next year. We can look at the budget situation, we can see where we are, and in the process we can supplement this if we want to.

Let me give you one example because Senator Ensign has done it better than I could possibly do it. This is somebody who lives in Nevada. He calls her Betty Smith. She is 66 years old. She has an income of $15,000 per year. She is being treated for a whole bunch of things.

Her drug bill is $8,000 a year. My mother’s drug bill is $4,600 a year and, thank God, she doesn’t have these kinds of problems. So it is easy to believe an $8,000 bill.

Here is the point. Look at the Hagel-Ensign proposal and exactly this situation. Your income is $15,500 and you are being treated for breast cancer and you are taking all these drugs and you have a $8,000 bill, so you are spending over half your income. This is literally somebody. We all talk about this cliché of people being forced to choose between medicine and food. I hope her children are helping her. If they aren’t, they ought to be. But she wouldn’t have it. She just doesn’t have anybody helping her—she would literally be choosing between eating and drugs.

Now, here are the three bills. Two of them we voted on, and one we are not going to vote on. I ask my colleagues, do we care? Does it pay if you do not fall in this category?

And I commend this program to them. I congratulate my colleagues. This is the largest appropriations bill in all probability, you need to come through the Finance Committee. This has not been taken through the Finance Committee. It clearly should have been. This is the largest—this will be the largest new entitlement program that I will have voted on since I have been in the Congress, either the House or the Senate, by far. I think at the end of the day, when the dollars are tallied up, you are looking at a multi-trillion-dollar program because once we start a benefit, we do not stop it. This is something that we will start, and will do, and it is going to continue for a number of years. It is something we need to do.

But if you are going to start, at the end of the day, a trillion-dollar program in all probability, you need to take the right process. It needs to come through the committee that looks at the numbers and figures out how to pay for it.
To just pass a benefit and say we are going to do it, and we will figure out how to pay for it after the bills come due, is the height of irresponsibility on our part.

I have two charts. I do not want to overload you with lines on a chart, but I want to point out, this is where we are today with these various proposals. This black line represents the total income for Medicare. I call this chart “The Great Medicare Accounting Scandal” because I do not think we are accounting for the real cost of these programs.

We are being critical of people—and rightfully so—in corporate America for not accounting for real costs and for sliding things around saying: Well, OK, we will capitalize this, but it should have been a direct expenditure and expense. We are criticizing them—and rightfully so—for doing that.

What are we doing here? What are we doing here on our accounting? The black line is the amount of money we have coming into Medicare. The red line is the Graham-Kennedy benefit proposal. You can see, in year 1 of the benefit, in the year 2005, the expenditures are more than the income we have coming from Medicare. The first year out of the box, you are spending more money than you have coming in in Medicare. That does not count the accumulation that you are going to have up until 2010, when the program, theoretically, ends. But, of course, it does not.

We do not terminate benefit programs. It is going to continue past 2010, into 2011, which is the first year the baby boomers start retiring. So you have this group of soon-to-be seniors—72 million baby boomers—in America. Count myself amongst them. That is kind of the big lump in the python coming through, the pig in the python, in the demographic charts in the United States, starting in 2011, where the program is supposed to end in 2010. Of course, it isn’t going to happen.

On this chart, where would this red line be in the year 2011, when you start getting this large group of retirees coming into the system? It is going to be much higher and be an accounting scandal for us.

So how are you going to pay for this? You are either going to cut benefits, which I do not think we are going to do, or you are going to raise payroll taxes, which I would think would be the wrong thing to do—we already load so much on people working in the system—or are you going to try to take this from somewhere else in the system, or raise the deficit? Probably you are going to do all of those things, other than cutting benefits. But we are not talking about that in this system right now.

Look here, on this chart, at the various other proposals that we have. The purple line shows the total expenditures today, without a benefit. The Hagel-Ensign proposal is shown by the green line.

Of the proposals that are coming forward—and I think we need to have a prescription drug benefit—this is the most responsible one that we can handle and that we can do. And we, clearly, should do something.

The Hagel-Ensign proposal, for us, right now, to do something now and not just to have something for campaigns. Here is the Democrat proposal. Here is the Republican proposal. But you cannot take those as prescription drugs. That is not going to help you. You cannot cut promises. That is what we have sitting out there now. And that is where it seems the debate is heading, unless we can take it back to the Finance Committee and have a legitimate process, which I do not think we are going to do, and we could cobble together different proposals of any of these bills and figure out how to make it work, and get a bipartisan proposal that we would all support and would include a prescription drug benefit.

That sits out there to be had. That can take place. Instead, we are just saying, no, we are going to take it through this different process. We are going to bypass the Finance Committee on the most expensive entitlement program that I will have voted on as a Member of this body. We are going to bypass the normal process. We will just have a political debate on it that I do not think is going to be for the body and is not the right way to go.

On the particular proposal, the Hagel-Ensign proposal, of which I am pleased to support, I also note that it is supported by AARP. Unlike my colleague from New York, who said the AARP does not support it, in today’s New York Times, John Rother, policy director of AARP, said this:

Another possibility is for Medicare to provide catastrophic drug coverage. For prescription drug expenses over a certain threshold, perhaps $4,000 to $6,000 a year, with no premium. This could be combined with additional help for low-income beneficiaries and a government-authorized drug discount card.

That is not my speech supporting Hagel-Ensign. That is from the policy director of AARP in the New York Times today. He is saying: Look, you have support for this proposal. They are at a standoff on this proposal. What could we get done so we can move this forward for the benefit of seniors in America? And he describes the Hagel-Ensign proposal. That is what we should do.

That is the type of proposal we need to move forward. It would be an appropriate proposal for us to move forward, so we can provide a benefit, we can get it done now, and provide it to people who need it. They do not need promises. They need action by us. And they could have the action. This is something we need to do, and we need to do it this way today.

This chart shows the various lines depicting where the assets in the proposals go. You can see the current projected Medicare trust fund assets, and also the projected Medicare trust fund assets under Graham-Kennedy. You can see, where we are going in this proposal. This line is going south, fast, if you get a benefit that you cannot afford.

I ask a rhetorical question of all my colleagues: Would we rather encounter the first wave of baby boomer retirees with $660 billion in the Medicare trust fund or would we rather encounter retirees having spent all but $250 billion? That is what these lines point out.

We know we have the baby boomer generation hitting in 2011. They start jumping into the retirement pool in 2011. We want to face them with some money built up at that point in time and still have a prescription drug benefit like what is in Hagel-Ensign, or the program that trumps will come there with more assets in the bank and still provide today a prescription drug benefit for those who need it today. And they need it today.

I really think we should set our Republican and Democrat caps aside and say we can provide this to people who need it today. For the 27 percent of the public who do not have a prescription drug benefit of some type, who are in a low-income category, who need this, we provide a discount drug card or discount card, such as in the Hagel-Ensign proposal. We do that today and still save some money for when the baby boomers start retiring in 2011.

I hope we will all look at that and say that is the right thing to do, to provide that benefit. It is the responsible thing to do. And as we look to our future, it is the right thing for workers coming up in this system so that they are not stuck with this huge lug on their shoulders when the baby boomers retire.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, I rise to speak in opposition to the amendment. I want the Senator from Nebraska to know of my personal affection and respect for him. There are certain people whom you just naturally gravitate and you naturally like, and he is certainly one of them.

I rise in opposition, not because he does not have an excellent, substantive proposal, but I would offer my objection as has been articulated by the AARP today in a letter to Senator Hagel in which they state:

In addition to our substantive objections, we are concerned that by offering this scaled-back proposal today, you would effectively derail bipartisan discussion and compromise on more meaningful comprehensive approaches.
That is what I want to discuss today. What this Nation is begging for is a comprehensive approach, not a piece-meal approach. What the senior citizens of this Nation are yearning for is that we modernize Medicare to provide a prescription drug benefit.

If any of us were designing a Medicare system, which is a health insurance system for senior citizens, funded by the Federal Government, if we were devising it today in the year 2002 instead of the year 1965, when it was enacted, would we include prescription drug benefits? The answer to that is, obviously, yes.

Medicare was set up in 1965 when the condition of health care was centered around acute care in hospitals. But with the miracles of modern medicine, with the advent of prescription drugs that can increase the quality of our lives, that can take care of chronic ailments and that, indeed, add to what we would call preventive maintenance, then, clearly, if we were designing a health insurance system funded by the Federal Government for senior citizens today it would clearly include prescription drug benefits.

That is the question that is before this body. But because of the rules of the Senate, we have to get 60 votes in order to pass anything here which, with competing plans, makes it very difficult.

Although I think the Senator from Nebraska has some excellent ideas, it is injected in this debate at the wrong time because in the words of the AARP, as articulated in their letter today:

We are concerned that by offering this scaled-back proposal today, you would effectively derailed bipartisan discussion and compromise on more meaningful, comprehensive approaches.

We have to keep trying. We have just been unable to get the 60 votes on two different substantive approaches to prescription drugs in the votes that occurred earlier today. We have to keep trying to forge a compromise. The compromise is not this scaled-down version.

I wish to speak about the substantive alternatives that are here. One of the alternatives, as suggested by what has been voted out of the other body, the House of Representatives, utilizes the private sector and private sector insurance companies in which they offer the prescription drug benefit.

I have little personal experience as the elected insurance commissioner of Florida for 6 years before coming here. I point out that you can get some glimpse of the enthusiasm of insurance companies to offer this prescription drug benefit on a prescription drug benefit. It was to be offered by private insurance companies. Within 2 years after the passage of that law, not one insurance company had come forth to offer that prescription drug benefit.

On the basis of that experience, that is certainly not what we want to be offering to senior citizens of our country on something that is so important to them, a benefit that would be illusory, that would not be there. That is why we ought, in whatever compromise we strike, to come closer to the Graham-Miller approach, which is a substantial improvement. The prescription drug benefit becomes a part of Medicare. Then it is my hope, once we can find that illusive consensus, we can go on and add additional improvements.

The health care providers of this country are hurting because they are not getting reimbursed for their Medicare procedures at a rate that is commensurate with what they should be reimbursed. One of the items we are going to discuss—and hopefully we would be able to take this base bill and amend it—is an increase of those Medicare reimbursements so that we are taking care of the Medicare beneficiaries, the senior citizens, and we are also helping those who are providing the services, the health care providers, by increasing their Medicare reimbursement.

When we do that, I hope we will also look at some of the practices that because doctors are getting squeezed, in large part squeezed by insurance companies, sometimes regular insurance companies, some called HMOs, which are insurance companies, and because doctors are getting squeezed, they are trying to find ways to keep their income up.

And behold, down in my State of Florida, there is a group of doctors now saying to all of their patients: We are not going to see you anymore unless you pay us an entrance fee of $1,500 per patient per year. But by the way, we still want to take your Medicare reimbursement.

That is simply the beginning of the end for Medicare, because the logical extension of that is that only those people who are wealthy enough to afford that entrance fee—in the case of Florida, $3,000 per year per couple—are going to get the access to the doctor they want, that doctor who is being reimbursed by the Federal Government for the services performed for those senior citizens.

That is wrong. It should be changed. It ought to be illegal and yet the Department of HHS has said it is not illegal. So what we are doing is we are changing the law so that a doctor cannot receive reimbursement from Medicare if they are saying to those patients: I will not see you unless you pay me $1,500 a year as an entrance fee into concierge care.

I hope we strike the major compromise, that it is closer to the Graham-Miller bill, that we address Medicare reimbursements because the doctors and other health care providers need it, and that we add the amendment I just talked about which would prevent doctors from limiting patients to seeing them unless they pay an entrance fee while at the same time getting their Medicare reimbursement.

I thank the Chair and yield the floor.

Mr. HAGEL. Mr. President, could the Chair tell me how much time this side has remaining?

The PRESIDING OFFICER. Twelve minutes fifty seconds.

Mr. HAGEL. And how much time does the other side have remaining?

The PRESIDING OFFICER. Five minutes fifty-seven seconds.

Mr. HAGEL. I thank the Chair.

Mr. President, I allocate 5 minutes of our remaining time to the Senator from Oklahoma.

Mr. INHOFE. Mr. President, I know time is now precious and we are down to a few minutes. I will skip a lot of things I was going to say since there has been a lot of redundancy.

My good friend from New York was on the floor and was talking about the relative significance of the inheritance tax and how it wasn’t really all that meaningful. I am sure the occupant of the chair would agree because he was one of the rare Democrats who stood up and said we should repeal that unfair tax on money that has already been spent. Also, the crisis we have had out West in my State, I have yet to find one person out there who wasn’t more concerned about losing his farm because of the very unfair death tax than even the farm bill. But that is not what we are here to talk about.

I think something the Senator from Texas, Mr. GRAMM, said has to be repeated over and over; that is, this Hagel-Ensign bill is a lot less expensive and does a better job, but there is one major reason. We have a saying out in Oklahoma that “if it ain’t broke, don’t fix it.” That is exactly what the situation is.

We have a lot of people who don’t need additional coverage now. If they don’t need it, why provide it? Why get into some very large program?

Now, we have had two programs that have been rejected today. The first would not do for seniors what it said it would do, and it would have cost a lot more than we can afford, and it would not have included a lot of the drugs the seniors need. That program, as well as costing too much and not covering enough medications, would sunset in 2010. That means in 2010, people who have been relying on the Medicare prescription drug benefit would have had their coverage taken away. I know better than that.

I remember one of the best speeches that should be required reading for all young people, called “A Rendezvous With Destiny,” by Ronald Reagan. He said:

The closest thing to immortality on the face of this earth is a Government benefit or program once started.

We all know that is the way it would work out and we would end up with some very large, spiraling cost program that we could not get rid of. It is not responsible, reasonable, and it is
not the best we can do for seniors. I am glad it did not pass.

Then we were given a chance to consider a second option, the tripartisan plan. I thought it was too expensive, but I supported it. It is very much like what the House passed. It is something we can go to conference on and have something effective come out of it. Once a person’s drug costs reach a higher fixed limit, the Government would have paid 90 percent of the additional cost. Most enrollees supported it, as I did; but it was defeated.

Now we have a chance to give seniors a real prescription drug benefit. This legislation is a responsible, long-term, comprehensive plan which truly takes into account the needs and the situation of individual seniors. Several fellow cosponsors have already spoken to the specifics of the plan, such as low premiums, low overall costs on catastrophic coverage. I will tell you what it means to the people who sent us here.

Senator Gramm talked about some individuals without identifying them. I will identify the people. The Hendersons are from Okmulgee County, a short distance from where I live in Oklahoma. I told them I was going to use their case. They wrote me to tell me about their struggle with prescription drugs. They had a unique problem—one was a heart problem and one was a cancer problem. The Hendersons have a yearly household income of $24,000 and they spend $9,000 of that on prescription drugs in a single year. The Hendersons’ income falls between the 200 percent and 400 percent above the national poverty level. That national poverty level for couples is $11,940 a year.

Under our bill, an out-of-pocket limit on the cost of prescription drugs for people with a similar income to the Hendersons is set at $3,500. If they were between 100 and 200 percent of poverty, their remaining cost of the Hendersons’ drugs is $5,500, their copays would be no more than $550, and under this bill the Hendersons would pay a total of $4,050 a year for prescription drugs, when they are now paying $9,000 a year. This bill cuts their drug costs by more than half.

The Hendersons, under the Democrat plan, would have faced uncertainty on three fronts: First of all, uncertainty about which drugs were covered, since only two drugs in each therapeutic class would be covered; secondly, uncertainty about how much the prescription would cost since the $10, $40, and $60 copayments in the plan were virtually done away with through amendments; and, thirdly, uncertainty about whether their benefit would last even if it didn’t. They would not know this. Uncertainty is there.

I believe the Hagel plan is real assistance, and I strongly support it. I believe this is the alternative that is left and the most responsible one. I thank the Chair.

The PRESIDING OFFICER (Ms. Cantwell). Senator from Michigan is recognized.

Ms. Stabenow. Madam President, I yield myself 4 minutes.

Madam President, first of all, I want to speak to my colleague from Oklahoma. My mother grew up in Oklahoma, and I have a great affinity for that State. I have a lot of relatives there.

But I was quite surprised to hear the comment that “if it ain’t broke, don’t fix it,” when we are referring to Medicare. When we look at the Medicare system and the inability to cover prescription drugs for our seniors, when we look at the explosion in the price of the prescription drugs, I would say it is extremely dangerous precedent that is more broken than our inability today to provide low-cost prescription drugs, whether it be through Medicare or whether it be a small business or a farmer trying to get coverage for their family. This system is broken. That is why we are here to be fixed.

I rise in opposition to the Hagel amendment. I appreciate the desire of my colleagues to find an alternative, but I certainly am concerned that this does not begin to address what it is that seniors in this country are needing or asking them to do. There seems to have been a lot of confusion about where AARP is regarding this issue. So I will read a letter sent to the author of the amendment on July 23—today—which says:

Dear Senator Hagel: Enacting a comprehensive prescription drug benefit in Medicare this year remains the top priority for AARP. Our members are counting on the Senate to pass a drug benefit that is available and affordable to all beneficiaries. Our members were promised in the last election that a comprehensive drug benefit would be available in 2002 and counting on you to make good on that promise this year.

We appreciate the intent of your bill, S. 2736, the “Medicare Rx Drug Discount and Security Act of 2002,” to provide a prescription drug discount card and stop-loss protection to beneficiaries. However, in addition to our substantive objections, we are concerned that by offering this scaled-back proposal today, you would effectively be in a position of compromising on more meaningful comprehensive approaches. We believe Congress should focus its efforts on enactment of a more comprehensive drug benefit this year.

In addition to the timing of your proposal, AARP has concerns about the approach taken in your bill, including:

Catastrophic coverage: While AARP has not opposed income-relating premiums, income-relating the Medicare benefit changes the nature of the program. This set would an extremely dangerous precedent in Medicare. Further, the stop-loss levels set in the bill do not provide enough protection for lower income beneficiaries. A low-income couple could spend 25 percent of their income just for drugs before this plan offered assistance. Thirdly, there are a number of issues involved in using tax returns to determine program eligibility levels, and we believe other options should be explored.

Discount card: While AARP supports the use of a discount card program as a building block for a Medicare prescription drug benefit, your proposal lacks the necessary specifications to guarantee the level of discount, what level of discount would be passed to beneficiaries, and the degree to consumer protections required of plans.

I hope these concerns do not oppose your amendment. We remain fully committed to developing a comprehensive drug benefit for all Medicare beneficiaries and we look forward to working with you on legislation that our members can support.

This is signed by the executive director and CEO of AARP. I simply wanted to enter that into the RECORD to make it clear that AARP joins us in opposition to the amendment.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. Hagel. Madam President, I ask unanimous consent that Senator Ensign and Nickles and other cosponsors of amendment No. 4315. I yield the remainder of our time to the distinguished Senator from Tennessee.

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. Frist. Madam President, how much time remains on our side?

The PRESIDING OFFICER. Six minutes twenty-four seconds.

Mr. Frist. And the time on the other side?

The PRESIDING OFFICER. One minute.

Mr. Frist. Madam President, will you notify me when I have 1 minute remaining?

I rise in support of the Hagel-Ensign Medicare Prescription Drug Discount and Security Act of 2002. I do so after a long day of debate, discussion, and votes on bills which attempt to reach out with affordable prescription drug coverage for our seniors.

Over the course of the day’s debate, we have touched upon what matters most to seniors. This is what I want to address in the next 3 or 4 minutes.

What do seniors who are listening today—38 million Medicare potential recipients who are seniors today and another 5 or 6 million individuals with disabilities—what do they want regarding prescription drug coverage? I think it is three things. The first issue is that seniors want security. They want peace of mind. When you are 65, 70, 75, 80 years of age, the most frightening thing in the world is what will happen to your life you develop something—whether it is heart disease, chronic lung disease, emphysema, or lymphoma—and all of a sudden you face high prescription drug costs which are skyrocketing. We know this is an issue that we have been dealing with that all week long. In essence, paying for prescription drugs bankrupts you in terms of what you can afford and, even worse than that, what your children may be able to afford. The beauty of the particular bill is that it addresses that peace of mind, that security.

The second issue I hear as I talk to seniors as I travel around Tennessee,
and it has been discussed a lot on the floor today, that is, with regard to prescription drugs, seniors want help now. They listen to the debate, and both of the bills discussed earlier today have some very good, substantive issues to them, are comprehensive, and each have their good points. But I want to point out that both bills have that the Hagel-Ensign bill does not have is this bill takes effect, in essence, right now. That is what seniors want.

Seniors who are listening may think: Why is a bill taking place in 2006 or 2005? I do not even know if I am going to be around 3 or 2 years from now. What they really want is help now. Those who need it want it now. The message they tell me is to do it now. Again, the Hagel-Ensign bill takes effect next year, not 2 years and not 3 years from now.

The third factor this bill does is it addresses prescription drugs in a responsible way. We are not in a world today where you can just throw unlimited money and say it will be taken care of by the next generation or by my family 5 years from now. This is especially true when we have a doubling of the number of seniors, the demographic change, the move of the baby boomers coming online in 2008 and 2010. Seniors tell me, whatever you do, do it responsibly. Do it in a way that is just not over a 3-year period, 4-year period and it disappears, you take the benefit away or raise it instantly. Do it in a way that can be sustained over time. Do it responsibly.

That is what the Hagel-Ensign bill does. One of the most beautiful aspects of this bill is that we can do it now, and we can do it responsibly. We talk big figures. The dollar figure was $160 billion. It is a lot of money, but it is not the $300 billion or the $1 trillion or even the $370 billion of the tripartisan plan. It takes effect now, giving peace of mind. How much more money a senior is going to have to pay out of pocket if there is a catastrophe or if a senior develops a disease which requires the miracle medications that are out there today, and it does it in a responsible way.

How does the bill work? We have been through the details. The first issue I mentioned was peace of mind, security, and savings. Instead of what seniors are doing now—going to a pharmacy or placing a prescription on the table, and paying a retail price that no one in this body, most employer-sponsored plans do not have to—they will be able to go in to a pharmacy with a card that they put on the table and take advantage of marketplace tools.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Madam President, I yield the floor.

Among other things, I want to make clear that is responsible. It is affordable for seniors, affordable for taxpayers, and is permanent.

Madam President, I yield the floor.

Mr. HAGEL. Madam President, can you give us an indication of the time remaining to each side?

The PRESIDING OFFICER. The Senator from Michigan controls 1 minute. The Senator from Nebraska controls 5 seconds.

Ms. STABENOW. Does the Senator from Nebraska wish to take his 5 seconds?

Mr. HAGEL. I want the Senator from Michigan to have his 5 seconds.

Ms. STABENOW. I will simply say in closing that AARP, representing seniors, and other senior organizations across this country do not believe this, in fact, is a good deal. There is no question they want action now, but it has to be real and meaningful.

Discount cards are available now. In many cases, they do not work at all or they are very limited. It is important we be responsible.

I would argue there is a broader responsibility in the Senate. When we debate whether or not the tax cut geared to the wealthiest individuals in the country will be extended another 10 years, we are debating an amount of money that is more than four times any comprehensive Medicare plan that we have before us.

This is a question of priorities. It is a question of what we believe, as Americans, should be our values and how we act on those in terms of our priorities, and I argue that doing the right thing with the real Medicare benefit is what our seniors are asking for and it is what we deserve. I urge my colleagues to vote no on the Hagel amendment.

The PRESIDING OFFICER. All time has expired.

The Senator from West Virginia.

A TRUE COMMITMENT TO HOMELAND SECURITY

Mr. BYRD. Madam President, the Senate will soon have before it the fiscal year 2002 supplemental appropriations conference report. This legislation provides for the defense of this Nation, both at home and abroad.

Specifically, the bill provides $14.4 billion for the Department of Defense. It allocates $5.5 billion to New York to complete the promise made to provide $20 billion to help recover from the terrorist attacks on September 11. Another $1 billion is for Pell grants, $417 million for hurricane disaster relief, $400 million for election reform grants, and $2.1 billion for foreign affairs.

The bill also provides $205 million for Amtrak. Amtrak is an integral piece of the Nation’s transportation network. For many rural communities, Amtrak represents the only public transportation connection to the rest of the Nation. Without the funding contained in this bill, that connection is in danger of being severed. Because of growing financial pressures, Amtrak needs an infusion of funding soon or else it faces bankruptcy. The $205 million included in this supplemental appropriations bill will stave off bankruptcy and give the passenger railroad, which is under new management, time to craft sound plans for the future.

Most importantly, this bill provides $6.7 billion for homeland security, including $3.85 billion for the Transportation Security Administration. That is why this funding bill is so important. This funding will take steps now—without delay—to plug the holes in our Nation’s defenses here at home. Congress has not hesitated when it comes to funding security efforts. In two supplemental bills—the one approved shortly after the attacks and the one before the Senate today—Congress has invested $15 billion to protect Americans from another terrorist attack and to better respond should God forbid, another attack occur.

The funding initiatives shaped by Congress have helped to hire more border patrol agents, increase the scrutiny of cargo shipments at our seaports, and accelerate the purchase of vaccines against smallpox. We have funded critical training and purchases for local police, fire, and medical personnel. We have helped to train doctors and local health departments to detect and treat a biological or chemical weapons attack.

The money allocated in December has helped to hire more than 2,200 INS border patrol agents and 5,000 INS investigators is being doubled. 324 additional protective personnel are being hired to protect our
nuclear weapons complex, and additional resources are being spent on efforts to destroy or secure nuclear materials overseas.

The legislation that will soon before the Senate today will accomplish even more. It will accelerate the safety of food and drinking water supplies. The legislation provides $701 million for first responder programs, $343 million above the President's request. This conference report, which will be voted on tomorrow morning, includes $150 million for firefighters, with the funds going directly to the local fire departments. In the spring, when the firefighter grants that Congress allocated in the $40 billion supplemental where made available, more than 18,000 fire departments across the country applied for assistance totaling more than $3 billion. Yet only $360 million was available to meet the demand. The administration did not request any additional funding for this program. However, the need for first responders is urgent and will require funding to be prepared to respond to attack; Congress and the President need to provide the necessary resources so those first responders will be ready.

In this supplemental bill, State and local grants will receive $100 million to improve interoperability of communications equipment for fire, police, and emergency medical technicians. The inability of local police and fire departments to communicate with each other when responding to the World Trade Center attack has been identified as a major Achilles’ heel in a defense of our homeland. The funding in this legislation will help to eliminate that inability and to develop uniform, interoperable communications equipment. The administration requested no funding for this important need.

Another $54 million, $22 million above the President’s request, will strengthen the Federal Emergency Management Agency’s search and rescue teams. Currently, there are 28 FEMA search and rescue teams around the country; some can be deployed to major disasters to assist local first responders in search and rescue operations. This funding will be used to upgrade equipment and training for responding to events involving a biological, chemical, radiation or nuclear attack.

One of the major weaknesses in our homeland security is the virtually non-existent protections at the Nation’s ports. Cargo containers are piled up by the thousands at ports, depots, and huge outdoor warehouses. American ports are home to oil refiners, chemical plants, and nuclear facilities. A hijacked vessel that crashes into a port could be used to ignite volatile fuels or gases and produce an explosion that equals one caused by hundreds, maybe thousands of tons of dynamite. American ports receive 16,000 cargo containers per day and 6 million containers each year, but less than five percent of those containers are inspected. That means a terrorist has at least a 95 percent chance of sneaking weapons of mass destruction into the United States. That is not acceptable. The supplemental, in addition to national security legislation, provides $739 million for port security programs, $465 million above the President’s request. This conference report includes $125 million for port security programs through the Transportation Security Administration. Last fall, Congress approved $93 million of unrequested funds for port security grants. DOT received $952 million of applications for the $93 million Congress provided. The administration did not request additional funding for this purpose.

Another $328 million in this bill is for the Coast Guard for port and maritime security. That is $225 million above the President’s request. Increased funds would be used to expedite vulnerability assessments at our Nation’s ports, rather than follow the administration’s slower plan to do the assessments over the next 5 years. The money would fund two new maritime safety and security teams; purchase a total of 6 homeland security response boats; and expand aviation assets as well as the shore facilities to support them. Another $39 million would provide the Transportation Service to target and inspect suspect shipping containers at overseas ports before they reach American ports. The administration requested no funds for these activities.

Another major concern is the security of the Nation’s nuclear facilities. The U.S. Department of Energy needs funds for this effort, but the Office of Management and Budget chose not to forward the request to Congress. This legislation recognizes the need, heeds the warnings, and provides $235 million to improve security of the nuclear weapons stockpile, national nuclear labs, and nuclear weapons plants. Funds are included to establish a “911” system for local first responders to call when confronted with nuclear hazards, enhanced funding for the National Center for Combating Terrorism, expansion of radiological search teams, and establishment of a National Capital Area Response Team at Andrews Air Force Base.

Just a few weeks ago, the White House warned of a possible terrorist attack on the Nation’s banking system. It was a warning that we could lose $4 trillion in a matter of minutes. The potential for a terrorist organization to use computers and technology to short-circuit our financial system is clear. That is why this conference report includes $147 million—$128 million above the administration’s request—for cyber security to help deal with threats to Federal and private information systems.

Our long and porous land borders represent a daunting challenge in terms of homeland security. The Immigration and Naturalization Service and the Customs Service are already hiring more than 2,200 agents and inspectors with the funding Congress provided in December. This legislation on which we will vote tomorrow, takes the next step, providing $120 million for border security, including $32 million for Immigration and Naturalization Service construction to improve facilities on our Nation’s borders and $25 million for better equipment.

When it comes to security at the Nation’s airports, no one should doubt Congress’ commitment. I note that, earlier today, the U.S. Secretary of Transportation testified at a hearing and charged that Congress is hamstringing his new Transportation Security Administration. Secretary Mineta has complained about a lack of flexibility in Congressional funding. Before the Transportation Secretary takes shots at Congress, I wish he would consider the facts. I hope that he will. This legislation provides $3.85 billion for the Transportation’s Security Administration. The conference report provides $471 million for unrequested airport security efforts, including $150 million to ensure that all small and medium airports have funds to implement the FAA’s new airport security guidelines and that large airports have some additional funding to meet those requirements. $225 million is provided above the President’s request for explosives detection equipment and $42 million is provided to improve the security of the FAA air traffic control system. In light of the recent tragedies at the Los Angeles International Airport, when a man walked to an airline ticket counter and started shooting, Congress provides $17 million to improve airport terminal security. In addition, $15 million is provided for additional funds to ground communications for the air marshals. If there is a problem on a plane, the security personnel on the ground need to know about it.

The Transportation Secretary has charged that less flexibility translates into less security at our airports. Well, last fall, when Congress approved the $10 billion emergency supplemental, we gave the administration flexibility. The President had the authority to allocate the $10 billion, with the approval of the Transportation Secretary. But did that flexibility lead to efficient government? Not necessarily. The Transportation Secretary, while pointing a finger at Congress, ignores the fact that his hand-picked Under Secretary of Transportation Security promptly spent $418,000 to refurbish his personal office in what I am told is a beautiful mahogany. That must be one of the most stunning offices in the entire Department of Transportation. I would suggest that the Secretary’s finger pointing be flexible, and that he turn his finger to his own department. Try that,
Mr. Secretary. He cannot in good conscience charge Congress with the inefficient operations of the Transportation Security Administration when is own personnel have wasted money and opportunity, missed their own internal deadlines for improving airport security, and provided the budget information to Congress. Instead of looking for someone to blame for failures, the Transportation Secretary should be working internally to fashion a much more efficient and responsive Transportation Security Administration.

Another area of focus for this Congress is nuclear non-proliferation. We have heard a great deal of discussion about the potential for a "dirty bomb"—a small nuclear device no larger than a briefcase that, if exploded, can contaminate a broad area with radiation for many years. The best way to stop a dirty bomb is to minimize the opportunity for terrorists to get their hands on nuclear material. This supplemental bill includes $100 million to protect fissile material abroad, purchase radiation detectors, and establish international standards for securing fissile material.

The Department of Defense will receive, through this legislation, $14.4 billion for its activities around the world. There can be no doubt as to the commitment of Congress to the men and women in the Armed Forces. We will always ensure that they have the resources and equipment necessary to fulfill their mission to protect American interests throughout the world.

However, the Secretary of Defense, in the Administration's supplemental request, asked for authorities that are currently invested in other Cabinet secretaries and in the Congress. The Defense Secretary asked for the authority to spend $100 million in foreign countries as he sees fit. Congress said no. The Secretary asked for the authority to pay bounties for the death of those he deems to be terrorists. Congress said no. The Defense Secretary asked for the authority to spend $30 million to indigenous groups around the world who arguably are assisting in the war on terrorism. Congress said no.

The Framers of the Constitution crafted a delicate balance between the legislative, executive, and judicial branches of the Federal Government. These new authorities for the Secretary of Defense would jeopardize that balance. Congress should not give this Secretary—or any other Secretary—extraordinary authority for the sole purpose of making the Secretary's job easier.

If the President signs this bill, he will have 30 days to decide whether to designate over $5.1 billion as an emergency. If he does not make the emergency designation, the funds cannot be spent. Within the $5.1 billion, there is nearly $2.5 billion for homeland security. If the President does not make the emergency designation, he will block nearly $2.5 billion in homeland security investments, many of which I have just outlined. Firefighters, Police officers, Port security, Border security, Airport security, Search and rescue teams. Food safety. Drinking water safety. All these and more are included in the bill. The President will join with Congress in this bipartisan approach to homeland security. I hope that he will declare these items to be an emergency, and make these important investments immediately to protect the American people from terrorist attacks.

In addition, if the President decides not to make the emergency designation, he also will block funding for the National Guard and Reserves. He will block funding for election reform. He will block funding for combating AIDS, tuberculosis, and malaria overseas. He will block flood prevention and mitigation; embassy security; aid to Israel and disaster assistance to Palestinians; and wildfire suppression; emergency highway repairs; and veterans health care.

These critical appropriations for the American people have been delayed for months, sometimes as a result of administration intervention. The time has come for speedy passage and the President's signature.

The Senate Appropriations Committee held 5 days of hearings on this bill and benefited greatly by hearing testimony from our Nation's first-responders, mayors, Governors and Cabinet officials—from seven departments and from the Director of FEMA. We have produced a fair and balanced bill that fills many of the gaps in our homeland defense that were identified in our hearings.

I want to thank, once again, my friend and the Ranking Member of the Appropriations Committee, the Senior Senator from Alaska, Senator Ted Stevens, for his cooperation, for his leadership, and for the conduct of the hearings, the markup of the bill, in the debate on the floor. I also want to thank our House counterparts, Appropriations Committee Chairman C.W. "Bill" Young and Ranking Member David Obey for their cooperation and commitment to completing action on the legislation. I would be recreant if I did not thank the staffs who have worked so hard to finish this bill. On the Republican side, I thank Steve Cortese and Andy Givens and all of the professional and subcommittee staffs. On the Democratic side, I thank the Committee Staff Director, Terry Sauvain, my Deputy Staff Director Charles Kieffer, Edie Stanley, and Nancy Olkewicz, and all of the professional and subcommittee staffs for their long, long, long hours and days and weekends. Their tireless efforts have resulted in legislation, this legislation that we will vote on tomorrow, legislation that will help to protect America.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. Reid. Madam President, before the President pro tempore of the Senate leaves the floor, I would like to say on behalf of the people of Nevada and the country how much we appreciate the work he did on homeland security. When I got to know the Senate from West Virginia held hearings and called in Cabinet members to find out what was needed by each entity—and then the disappointment was, as far as I am concerned, when we got the supplemental request from the President, these matters were not found.

I say to the Senator from West Virginia, based on information obtained about how this should be obtained, by having congressional oversight hearings to determine what was needed, and then move forward together so people in West Virginia, Washington, and around the rest of the country are going to receive a return on the actions that we will be taking by the Senate tomorrow, I hope there are no games played.

When the bill goes to the President, I hope he doesn't play around and try to send us a message about vetoing the bill.

This is so important for the country. We would not have this legislation but for the Senator from West Virginia. Of course, I have to include Senator Stevens, who was very deliberate and sat through those hearings, as did the Senator from West Virginia. This is a bipartisan bill. A large chunk of it is based on the needs of this country for homeland security.

Mr. Byrd. Madam President, I thank the very distinguished Democratic whip for his observations.

Senator Reid is a member of the Appropriations Committee in the Senate. So he partook of the action on this bill all along the way. He was present in the hearings that this Appropriations Committee held early in the year on this bill. I believe it was April. He was part of the work he did on homeland security. Senator Byrd has been the lead in coming to this, and the Secretary of Defense did not request from the President, these matters were not found.

When the bill goes to the President, I hope he doesn't play around and try to send us a message about vetoing the bill.
This year that bill came to the floor with the solid support of the Republicans and Democrats on that committee. It was unanimously supported. It increased the homeland security part above the President’s request by $3 billion.

As we have gone through the process—it was a long, dragged-out effort when it came to working with the other body on the conference. We finally had to yield and come down from the $3 billion to $1.4 billion in additional money over the President’s request for homeland security.

Again, all the way, I am proud to say, we have a bipartisan group in that committee that walks step by step and shoulder to shoulder to my colleague, Senator Stevens, and I. We don’t have any quarrels. We don’t have any differences. We don’t have any partisan discussions. We don’t have any partisan bickering, nor do the members on the committee.

The distinguished Senator from Utah, Mr. BENNETT, is a member of that committee. I served with his father, I believe his father sat right here. I believe his father sat right there in that chair when the son, in whom his father was well pleased, was around these premises and knew a great deal about the Congress and worked in the Congress. He worked in his precincts.

We don’t have any middle aisle in our committee. It was a joint effort on the part of Republicans and Democrats in close ranks and voting to support monies for the security of the American people. These are monies that are in this conference report.

When it comes to homeland defense, this Appropriations Committee has been right out front. I am very proud of the way we have been able to do our work and work together. It has been a long time since this committee started on this bill. I guess the budget was sent up here last February. It has been all that long time.

Here we are in July with the conference report that we will be voting on tomorrow morning.

I thank the distinguished Senator. I yield the floor.

CHANGES TO THE 2002 APPROPRIATIONS COMMITTEE ALLOCATIONS AND THE BUDGETARY AGGREGATES

Mr. CONRAD. Mr. President, section 314 of the Congressional Budget Act, as amended, requires that chairman of the Senate Budget Committee to adjust the budgetary aggregates and the allocations for that committee included in the concurrent budget resolution by the amount of appropriations designated as emergency spending pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

The conference report to H.R. 4775, the 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States, provides $29.886 billion in designated emergency funding 2002 for a variety of activities, including homeland security and the war on terrorism, which is estimated to result in $7.783 billion in outlays in 2002.

Pursuant to section 302 of the Congressional Budget Act, I hereby revise the 2002 budget aggregates included in the concurrent budget resolution in the following amounts.

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<th>TABLE 1.—REVISED ALLOCATION FOR APPROPRIATIONS COMMITTEE, 2002</th>
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<td>Current Allocation: Emergency Spending</td>
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<td>Budget authority</td>
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Pursuant to section 311 of the Congressional Budget Act, I hereby revise the 2002 budget aggregates included in the concurrent budget resolution in the following amounts.

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<th>TABLE 2.—REVISED BUDGET AGGREGATES, 2002</th>
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<td>Current allocation: Budget Resolution</td>
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<td>Adjustments: Emergency Spending</td>
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<td>Revised allocation: Budget Resolution</td>
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Prepared by SBC Majority staff on 7–21–02.

The PRESIDING OFFICER. The Senator from Nevada.

UNANIMOUS CONSENT REQUEST—H.R. 3230

Mr. REID. Madam President, when I today read Congress Daily, as I often do, I was stunned. I was stunned as a result of what the President said in his radio address.

I have to acknowledge that I didn’t wait around and listen to it Saturday. But I read about it here.

Let me read what the President said on Saturday. I say this with total sincerity. I am so disappointed in the President. I am sure others think that what he has done is hypocrisy. I will not use that word.

I am just terribly disappointed in the President.

This is what he said. The headline is:

Bush Urges Congress To Send Him Terrorist Reinsurance Bill.

President Bush made another push for enactment of a terrorism reinsurance bill, noting in his radio address over the weekend: “Until Congress sends a bill to my desk, some buildings will not be able to get coverage against terrorist attacks, and many new buildings will not be built at all. Commercial development is stalling, and workers are refusing to leave on these jobs. This year alone, the lack of terrorism insurance has killed or delayed more than $8 billion in commercial property financing. Congress should pass a terrorism insurance bill without unnecessary measures.”

Can you imagine giving an address to the American people about Congress needing to do something on terrorism insurance?

Rather than wasting time on the radio address, why doesn’t he call the Republican leadership in the Senate and ask: Why don’t you let us go to conference?

Almost everything we have done with this terrorism insurance, we have had to fight the minority every step of the way. We fought to get it on the floor. We tried to do it even last year, right after the events of September 11, and we were stopped from doing so.

I was on the floor with maybe 10 or 12 times offering a unanimous consent request that we be allowed to go forward with the conference.

Just to remind everybody, we were told by the leadership that all we needed to do is change the ratio. Senator DASCHLE—and he has that right—decided the ratio should be 3 to 2. We were told: Make it 4 to 3, and we will go right to conference. That was weeks ago. We changed: OK, if that is what you want, then we will be happy to do that. We changed it to 4 to 3.

Then we are told: Well, there are two people in the minority who want that third spot, and they can’t work that out.

So, as a result of that, as the President has indicated, there is no question about it, there is work being held up in Nevada and all over the country because they cannot get terrorism insurance. We cannot go to conference because you will not let us.

Last week, we were told: Give us 24 hours to resolve this. I have said here, for this unanimous consent agreement that I have been seeking for several days: I will put it in my desk and do it again. No more. No more. This is the last. As far as I am concerned, terrorism insurance is dead.

The industry, obviously, does not care enough to put enough pressure on the minority so that we can go to conference. If the roles were reversed and we, the Democrats, were holding up the appointing of conferees on a terrorism insurance bill, our phones would be ringing. We would have petitions. We would have demonstrations. But because it is the insurance industry, which is a little closer to the minority than we are, nothing happens. Day after day after day goes on, and I guess they expect me and Senator DASCHLE to come and offer this unanimous consent request.

They can do it. In the meantime, terrorism insurance is dead. Nothing is going to happen. The House is going out Thursday.
So, as far as I am concerned, this bill is dead. I am not putting the unanimous consent request in my desk anymore; I am putting it in the garbage can. And we will wait and see what happens. I think it is too bad. But maybe there has been something that has happened in the last few hours that will change their minds. Maybe my statement now will change their minds.

So I ask unanimous consent—I better take it out of the garbage so I can read it; and then I will put it right back, as soon as I finish—that the Senate proceed to the immediate consideration of Calendar No. 232. H.R. 3210, the House-passed terrorism insurance bill; that all after the enacting clause be stricken, and the text of S. 2600, as passed in the Senate, be inserted in lieu thereof, the bill, as thus amended, be read a third time, passed, and the motion to reconsider be laid upon the table; that the Senate insist on its amendment, request conference with the House on the dis-agreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate, with the ratio of 4 to 3, all without intervening action or debate.

The PRESIDING OFFICER (Mr. Dayton). Is there objection?

The Senator from Utah.

Mr. BENNETT. Mr. President, reserving the right to object, let me say to my friend from Nevada that his words are well-taken. His passion is understood. At least as far as I am concerned, his determination to get this bill through is fully shared.

However, on behalf of the ranking member of the Banking Committee, Senator Graham, and reserving his rights, as I am sure the Senator from Nevada has from time to time reserved the rights of some of his colleagues, I must object.

The PRESIDING OFFICER. Objection is heard.

UNANIMOUS CONSENT REQUEST—H.R. 3694

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 381, H.R. 3694, and that the Jeffords-Smith-Inhofe amendment, which is at the desk, be considered and agreed to, the bill, as amended, be read three times, passed, and the motion to reconsider be laid upon the table, without any intervening action or debate.

The PRESIDING OFFICER. Is there objection?

The Senator from Utah.

Mr. BENNETT. Mr. President, I am told that the amendment is still under review on this side of the aisle; therefore, I must again object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, I thank the Senator from Utah. He is absolutely correct. I, on an occasion or two, have represented Senators here, doing things that sometimes I did not personally agree with. But I do hope that we can move forward on both matters.

I was serious about everything that I said on the terrorism insurance bill. On the matter dealing with highway funding, it is very important we get this done for a lot of different reasons. One reason is to prepare for the bill that is coming up next year, of which everyone has an interest. It is the bill we do every 5 or 6 years to fund highway projects around the country. It is money that is collected during the 5-year period from the gas taxes. We need to make sure we have the ability to meet as many of the demands of the country as we can.

So I appreciate the Senator working on his side to get that cleared. I have another unanimous consent on his side to get that cleared.

UNANIMOUS CONSENT AGREEMENT—H.R. 4775

Mr. REID. Mr. President, I ask unanimous consent that the previous order with respect to the conference report accompanying H.R. 4775, the supplemental appropriations bill, be modified to provide that the debate time commence at the conclusion of the debate with respect to the Hagel amendment to S. 812; with the debate time on the conference report remaining as provided for under the previous order; that upon the use of that time, without further intervening action or debate, the Senate proceed to vote on adoption of the conference report; that upon disposition of the conference report, there be 5 minutes for debate prior to a vote in relation to the Hagel amendment, with the time equally divided and controlled between Senators Hagel and Kennedy, or their designees, provided further that the previous provisions relating to the Hagel amendment remain in effect.

The PRESIDING OFFICER. Is there objection?

Mr. BENNETT. Mr. President, I am happy to say on this occasion there is none.

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

Mr. REID. Mr. President, debate will begin on the Hagel amendment at 11 a.m. Under the previous order, there will be 2 hours of debate. At 1 p.m., the Senate will begin the supplemental conference report with 30 minutes of debate. The first vote tomorrow will be at 1:30, approximately, to be followed by a vote with respect to the Hagel amendment. There will be two votes there at 1:30 tomorrow.

I appreciate everyone working with us. We will be able to get a lot of work done in committees. The Appropriations Committee—Senator Byrd’s committee—is reporting out, I think, four appropriations bills tomorrow morning.

We have a lot to do. This will allow us to do that without being broken up for votes.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent the Senate now proceed to a period of morning business with Senators allowed to speak therein for a period not to exceed 5 minutes each.

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

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 last 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 in November 2000 in Bloomington, MN. Cecil John Reiners, 57, attacked a Hispanic man for speaking Spanish at work. Witnesses told police that Reiners, the business owner, was upset when a 23-year-old employee spoke Spanish with two others at a break table. Reiners went to the warehouse with a wood post and severely beat the victim, who was treated for severe skull fractures and clots at the hospital. “All I wanted was for that Mexican to leave my property,” Reiners said. Mr. Reiners was later convicted of felony first-degree assault in connection with the incident.

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 and changing current law, we can change hearts and minds as well.

CIVILIZATION NEED NOT DIE

Mr. MURKOWSKI. Mr. President, in the more than 10 months since the attacks of September 11, 2001, all of us have been trying to bring context and understanding to the new world challenges we are confronting. It is at times such as this that the Senate needs wisdom and clarity to bring such context to our times.

Often in the past, the Senate turned to one of its most distinguished colleagues for vision and wisdom. That person, Daniel Patrick Moynihan, understood history and the actors and actions that make history.

Recently, I came across the Harvard University commencement speech that our former colleague, Senator Moynihan, gave this year, on the 58th anniversary of D-Day. I think all of my colleagues will benefit from reading Pat’s remarkable speech, for it gives historical context to the times in which we are living.

I, for one, miss hearing Pat’s insights into life. All of us who served with Pat...
At the very least we can come to terms with the limits of our capacity to foresee events. It happens I had been a Senate observer to the START negotiations in Geneva, and was on the Foreign Relations Committee when the treaty, having been signed, was sent to us for ratification. I remarked to our superb negotiators that we had sent them to Geneva to negotiate a treaty with the Soviet Union, but the document before us was the treaty—a document only two of which I could confidently locate on a map. I was told they had exchanged letters in Lisbon [the Lisbon Protocol, May 23, 1992], I said that sounded like a Humphrey Bogart movie.

The hard fact is that American intelligence had not the least anticipated the implications of the Helsinki Accords. Admiral Turner, former director of the CIA in Foreign Affairs, 1991. “We should not gloss over the enormity of this failure to forecast the magnitude of the Soviet crisis . . . The corporate view missed by a mile.”

Russia now faces a near-permanent crisis. By mid-century its population could well decline to as few as 80 million persons. Immigrants will press in; one dares not think what will have happened to the nuclear materials scattered in zones. Admiral Turner’s 1991 article was entitled “Intelligence for a New World Order.” Two years later, I outlined what that new world order or disorder would be in an article in the same journal entitled “The Clash of Civilizations.” His subsequent book of that title is a defining text of our time.

Huntington perceives a world of seven or eight major conflicting cultures, the West, Russia, China, India, Africa, South America, Africa. Most incorporate a major nation-state which typically leads its fellows.

The Cold War on balance suppressed conflict. But the end of the Cold War has brought not universal peace but widespread violence. Some of this has been merely residual proxy conflicts dating back to the earlier era. Some plain ethnic conflict. But the new horrors occur on the fault lines, as Huntington has it, between the different cultures.

For argument’s sake one could propose that Marxism was the last nearly successful effort to Westernize the rest of the world. In 1975, I stood in T’annamene Square, the center of the Middle Kingdom. In an otherwise empty plaza, a single figure outside a massive mast. At the top of one were giant portraits of two hirsute 19th century German gentlemen, Messrs. Marx and Engels. The other displayed a somewhat Mongol-looking Stalin and Mao. That wasn’t going to last, and of course, it didn’t.

Hence Huntington: “The central problem in the relations between the West and the rest is . . . the discordance between the West’s—particularly America’s—efforts to promote universal Western culture and its declining ability to provide for emblems of 36 religions. All the major civilizations. Not since 1910 have we had so high a proportion of immigrants. As of 2000, one in five school-age children have at least one foreign-born parent. And there is every reason to believe that we have seen nothing so far but the beginning of a trend. And when we come to look at the numbers, that is the stultifying effect, the costs, that whatever we do is consistent with our fundamental ideals. We need to explore how best to organize the agencies of government to detect and prevent calamitous action.

But at the same time, we need take care that whatever we do not be consistent with our basic constitutional design. What we do must be commensurate with the threat in ways that do not needlessly undermine the very liberties we seek to protect.

The concern is suspicion and fear within. Does the Park Service really need to photograph every visitor to the Lincoln Memorial? They don’t, but they will. It is already done at the Statue of Liberty. In Washington, agencies compete in techniques of intrusion and exclusion. Identity cards and surveillance machines and all the clutter, plus a new life for secrecy. Some necessary; some discouraging. Mary Graham warns of the stultifying effect of perpetual state of war. Some reasonable, as George Will writes, “renders societies susceptible to epidemics of suspicion.”

We are witnessing such an outbreak in Washington, just now, as to what the different agencies knew in advance of the 9/11 attack; when the President was
briefed; what he told. These are legitimate questions, but there is a prior issue, which is the disposition of closed systems not to share information. By the late 1940s the Americans had decoded KGB traffic to have a firm grip on the Soviet espionage in the United States and their American agents. No one needed to know about the President of the United States. But Truman was not told. By order, mind, of Omar Bradley, Chairman of the Joint Chiefs of Staff. Now as then there is police work to be done. But so many forms of secrecy are self-defeating. In 1988, the CIA formally estimated the Gross Domestic Product of East Germany to be higher than West Germany. We should calculate such risks.

The “What-if’s” are intriguing. What if the United States had recognized Soviet weakness earlier and, accordingly, kept its own budget in order, so that upon the breakup of the Soviet Union a momentous economic aid program could have been commenced? What is we had better calculated the forces of the future so that we could have avoided going directly from the “end” of the cold War to a new Balkan war? A classic clash of civilizations? A little attention and resources for the shattered empire?

Because we have that second chance Riesman wrote about. A chance to define our principles and stay true to them. The more then, to keep our system open as much as possible, without purposes plain and long as we continue to understand what the 20th century has surely taught, which is that open societies have enemies, too. Indeed, they are the greatest threat to closed societies, and accordingly, the first object of their enmity.

We are committed, as the Constitution states, to “the Law of Nations,” but that law as practiced. Many have come to think that international law prohibits the use of force. To the contrary, like domestic law, it legitimates the use of force to uphold law in a manner that is itself proportional and lawful.

Democracy may not prove to be a universal menu. But decency would do. Our present conflict, as the President says over and again, is not with Islam, but with a malignant growth within Islam defying the teaching that the struggle for the path of God forbids the deliberate killing of noncombatants. Just how and when Islam will decide that law is too soon to tell, I believe the establishment and launching of the Komen Foundation will be Nancy Brinker’s most remarkable legacy to humankind.

When her older sister Suzy died of breast cancer at the age of 36, Nancy set out to keep the promise she had made to Suzy: to do everything in her power to eradicate breast cancer as a life-threating disease. Today, 20 years after the Komen Foundation’s inception, we recognize the “Power of Promise” Nancy made that day.

I am proud to have worked for the Komen Foundation in the Senate, and mark today’s celebration by noting the truly great things people can do when they answer a call, see a need, and set out to make things different.

Twenty years ago, breast cancer was a term rarely spoken in public, and a subject that almost never appeared in newspapers or magazines. There were no self-help books and those who survived the disease did not readily share their stories. What is worse, breast cancer was viewed as a certain death sentence. Few treatment options existed and those that did were drastic and disfiguring.

At its inception, the Komen Foundation began to educate people and help them recognize the seriousness of breast cancer in our society. People began giving of themselves as volunteers and as financial donors so that research into new breast cancer treatments, screening, and educational outreach efforts could be funded.

The Komen Foundation boasts over 100 affiliate groups in cities across the U.S., three European affiliates and a cadre of 75,000 dedicated volunteers, many of whom are survivors. In the past two decades, the Foundation has raised more than $475 million for research, education, screening and treatment programs—many of which reach into traditionally medically underserved areas. The Komen Race for the Cure has had over 120 races this year with 1.2 million runners and walkers participating. Each race event is an occasion of hope and survivor pride for participants and their supporters.

On the 20th Anniversary of the Komen Foundation, let us all renew our resolve in the fight against breast cancer so that one day we will have something miraculous to celebrate: the end of breast cancer as a life-threatening disease.

CONGRATULATING MONTANA WRESTLERS

Mr. BAUCUS. Mr. President, today I rise to congratulate the outstanding wrestlers from my home State of Montana who won the Amateur Athletic Union Grand Nationals Wrestling Championships in Shreveport, LA, this past June. This was the first year in which Montana has sent an organized team to the competition, and on behalf of all Montanans, I want to say how proud we are of these athletes and their historic success.

In order to win the title, Team Montana, competed in Greco-Roman, Freestyle and Sombo disciplines, which are the three international styles of wrestling. Led by Stan Moran of Wolf Point, MT, the team was composed of athletes 5-35 years old, including World Champion Josh Charette; World Silver medalist Rob Charette; and World Bronze medalist Stan Moran, Jr. This is Josh Charette’s third consecutive World Open Championship. Josh is currently representing Montana at the Olympic Training Center in the Judo discipline, where he is preparing for the 2004 Olympic Games in Athens.

Although these outstanding athletes are in the spotlight, I also want to take a moment to comment on the strength of the wrestling community in Montana. Whether it is the recent success at the AUU Grand Nationals Wrestling Championships or the success of Montana State University—Northern’s wrestling program, Montana’s entire wrestling community has a record that it can be very proud of. I know that such success comes only with focus and dedication, and I want to commend the families, coaches, and wrestlers who have fostered an environment of excellence.
Again, I applaud these Montana wrestlers for their hard work and dedication to their respective disciplines. I wish them continued success in all their endeavors.

**GREAT LAKES SCIENCE CENTER**

Mr. LEVIN. Mr. President, I am proud of the Great Lakes Science Center on its 75 years of service to Michigan and the Great Lakes region. This center provides the scientific information needed for restoring, enhancing, managing, and protecting the unique habitat in the Great Lakes. Despite the importance of the Great Lakes, too few resources are devoted to researching and monitoring the ecosystem health. However, the Great Lakes Science Center has been at work for nearly eight decades—through the rise and fall of numerous species like lake trout, alewife, white fish, and sturgeon.

After the collapse of the cisco fishery in Lake Erie in 1925, the Great Lakes Science Center, which was then called the Great Lakes Biological Laboratory, was created to study the causes of this collapse. Though the fisheries in the Great Lakes continue to suffer, it was not until 1950 that biological research was truly supported. At that time the Great Lakes were experiencing one of the worst disasters possible—the invasion of sea lamprey. The sea lamprey, which moved into the Great Lakes through the Welland Canal and spread throughout the Great Lakes, destroyed the lake trout and lake whitefish commercial fisheries. After testing over 4,000 chemicals, the Great Lakes Science Center found the compound that is still being used today to destroy the lamprey.

In 1965, the center moved to its newly constructed headquarters on the North Campus of the University of Michigan at Ann Arbor. The center has been active in all areas of Great Lakes research including algal blooms, invasive species, near-shore habitat, fishery genetics, and fish disease. The work of the dedicated staff has helped bring back the sturgeon and lake trout.

Today, the Great Lakes Science Center has 107 staff members, 5 field stations, 1 vessel base, and 3 vessel basefield station combinations throughout the Great Lakes. I am proud of the long and distinguished history of the Great Lakes Science Center, and I wish all of the researchers at the Science Center great success for the next 75 years.

**MESSAGE FROM THE HOUSE**

At 2:15 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. 3048. An act to resolve the claims of Cook Inlet Region, Inc., to lands adjacent to the Russian River in the State of Alaska, and to the Russian River in the State of Alaska.

H.R. 3258. An act to amend the Federal Lands Policy and Management Act of 1976 and the Miners Leasing Act to clarify the method by which the Secretary of the Interior and the Secretary of Agriculture determine the fair market value of rights-of-way granted, issued, or renewed under these Acts.

H.R. 3487. To amend the Public Health Service Act with respect to health professions programs.

The message further announced that the House has passed the following joint resolution with amendments, in which it requests the concurrence of the Senate:

S.J. Res. 13. A joint resolution conferring honorary citizenship of the United States on Paul Yves Roch Gilbert du Motier, also known as the Marquis de Lafayette.

**MEASURES REFERRED**

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 3892. An act to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize additional projects under that Act, and for other purposes.

H.R. 3917. An act to authorize a national memorial to commemorate the passengers and crew of Flight 93 who, on September 11, 2001, courageously gave their lives thereby thwarting a potential attack on our Nation’s Capital, and for other purposes.

H.R. 3048. An act to amend the Public Health Service Act with respect to health professions programs.

The message also announced that the House has passed the following joint resolution, with amendments, in which it requests the concurrence of the Senate:

H. Con. Res. 352. Concurrent resolution expressing the sense of Congress that Federal land management agencies should fully support the “2008 Interagency Strategy for Reducing Wildland Fire Risks to Communities and the Environment” as prepared by the Western Governors’ Association, the Department of Agriculture, the Department of the Interior, and other stakeholders, to reduce the overabundance of forest fuels that place national resources at high risk of catastrophic wildfire, and for other purposes.

H. Res. 389. An act to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize additional projects under that Act, and for other purposes.
other purposes; to the Committee on Foreign Relations.

H.R. 4558. An act to extend the Irish Peace Process Cultural and Training Program; to the Committee on Foreign Relations.

H.R. 4570. An act to make certain adjustments to the boundaries of the Mount Naomi Wilderness Area, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 4903. An act to ensure the continuity for the design of the 5-cent coin, establishing the Coin Design Advisory Committee, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 4912. An act to amend title 38, United States Code, to enact into law eligibility requirements for burial in Arlington National Cemetery, and for other purposes; to the Committee on Veterans' Affairs.

H.R. 5055. An act to authorize the placement in Arlington National Cemetery of a memorial honoring the World War II veterans who perished in the Battle of the Bulge; to the Committee on Veterans' Affairs.

H.R. 5138. An act to posthumously award congressional gold medals to government workers and others who responded to the attacks on the World Trade Center and the Pentagon and perished and to people aboard United Airlines Flight 93 who helped resist the hijackers and caused the plane to crash, to require the Secretary of the Treasury to mint coins in commemoration of the Spirit of America, recognizing the tragic events of September 11, 2001; and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 5145. An act to designate the facility of the United States Postal Service located at 3135 First Avenue North in St. Petersburg, Florida, as the "William C. Cramer Post Office Building"; to the Committee on Governmental Affairs.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 352. Concurrent resolution expressing the sense of Congress that Federal land managers should fully support the "Collaborative 10-year Strategy for Reducing Wildland Fire Risks to Communities and the Environment" as prepared by the Western States Fire Management Board, the Department of Agriculture, the Department of the Interior, and other stakeholders, to reduce the overabundance of forest fuels that place communities at high risk of catastrophic wildfire, and prepare a national assessment of prescribed burning practices to minimize risks of escape, to the Committee on Agriculture, Nutrition, and Forestry.

H. Con. Res. 385. Concurrent resolution expressing the sense of the Congress that the Secretary of Health and Human Services should conduct or support research on certain tests to screen for ovarian cancer, and Federal health care programs and group and individual health plans should cover the tests demonstrated to be effective, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

THE FOLLOWING REPORTS OF COMMITTEES WERE SUBMITTED:

By Mr. BYRD, from the Committee on Appropriations:

Special Report entitled "Further Revised Allocation to Subcommittees of Budget Totals for Fiscal Year 2002" (Rept. No. 107-217).

By Mr. KENNEDY, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 2489: A bill to amend the Public Health Service Act to establish a program to assist family caregivers in accessing affordable and high-quality respite care, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HOLLINGS for the Committee on Commerce, Science, and Transportation:

- *Steven Robert Blust, of Florida, to be a Federal Maritime Commissioner for a term expiring June 30, 2006.*
- *Kathie R. Heffern, of South Dakota, to be an Associate Director of the Office of Science and Technology Policy.*
- *Richard M. Russell, of Virginia, to be an Associate Director of the Office of Science and Technology Policy.*
- *Frederick D. Gregory, of Maryland, to be Deputy Administrator of the National Aeronautics and Space Administration.*
- *Jonathan Steven Adlestein, of South Dakota, to be a Member of the Federal Communications Commission for the remainder of the term expiring June 30, 2003.*

Mr. HOLLINGS. Mr. President, for the Committee on Commerce, Science, and Transportation I report favorably the following nomination list which was printed in the Record on the date indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that this nomination lie at the Secretary's desk for the information of Senators.

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

- Coast Guard nominations beginning George H. Teuton and ending Blake L. Novak, which nominations were received by the Senate and appeared in the Congressional Record on July 18, 2002.
- *Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.*

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. ALLEN:

S. 2772. A bill to ensure continuity for the design of the 5-cent coin, establishing the Coin Design Advisory Committee, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BINGAMAN (for himself, Mr. DOMENICI, and Mr. BROWNBACK):

S. 2773. A bill to authorize the Secretary of the Interior to cooperate with the High Plains Aquifer States in conducting a hydrogeologic characterization, mapping, modeling and monitoring program for the High Plains Aquifer and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

S. 2774. A bill to transfer to the Secretary of Homeland Security the functions of the Secretary of Agriculture relative to agricultural inspection and entry inspection activities; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. CLINTON:

S. 2775. A bill to amend title XVI of the Social Security Act to provide that annuities paid by States to blind veterans shall be disregarded in determining supplemental security income benefits; to the Committee on Finance.

By Mr. BINGAMAN:

S. 2776. A bill to provide for the protection of archaeological sites in the Galisteo Basin in New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. MILLER:

S. Con. Res. 130. A concurrent resolution expressing the sense of Congress that the Major League Baseball Players Association and the owners of the teams of Major League Baseball to enter into a contract to continue to play professional baseball games without receipt of a lockout, or any coercive conduct that interferes with the playing of scheduled professional baseball games; to the Committee on Health, Education, Labor, and Pensions.

ADDITIONAL COSPONSORS

S. 2. At the request of Mr. ALLARD, his name was added as a cosponsor of S. 2, a bill to amend title XVIII of the Social Security Act to provide for a Medicare voluntary prescription drug delivery program under the Medicare program, to modernize the Medicare program, and for other purposes.

S. 346. At the request of Mr. MURKOWSKI, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 346, a bill to amend chapter 3 of title XVIII, United States Code, to divide the Ninth Judicial Circuit of the United States into two circuits, and for other purposes.

S. 446. At the request of Mr. CRAPO, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 446, a bill to preserve the authority of States over water within their boundaries, to delegate to States the authority of Congress to regulate water, and for other purposes.

S. 1020. At the request of Mr. SCHUMER, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 812, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide for greater access to affordable pharmaceuticals.

S. 1029. At the request of Mr. HARKIN, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1029, a bill to amend title XVIII of the Social Security Act to improve the provision of items and services provided to Medicare beneficiaries residing in rural areas.
At the request of Mr. Campbelle, the name of the Senator from Ohio (Mr. Voinovich) was added as a cosponsor of S. 1339, a bill to amend the Bring Them Home Alive Act of 2000 to provide an asylum program with regard to American Persian Gulf POW/MIA's, and for other purposes.

At the request of Mr. Lieberman, the name of the Senator from Arkansas (Mrs. Lincoln) was added as a cosponsor of S. 1327, a bill to amend the National Commission on Terrorist Attacks Upon the United States, and for other purposes.

At the request of Mr. Breaux, the name of the Senator from Nebraska (Mr. Hagel) was added as a cosponsor of S. 2047, a bill to amend the Internal Revenue Code of 1986 to allow distilled spirits wholesalers a credit against income tax for their cost of carrying Federal excise taxes prior to the sale of the product bearing the tax.

At the request of Mr. Corzine, the name of the Senator from Vermont (Mr. Leahy) was added as a cosponsor of S. 2250, a bill to amend the Federal Food, Drug, and Cosmetic Act to require labeling containing information applicable to pediatric patients.

At the request of Mr. Kyl, his name was added as a cosponsor of S. 2480, a bill to amend title 18, United States Code, to reduce the age for receipt of military retired pay for nonregular service from 60 to 55.

At the request of Mrs. Clinton, the name of the Senator from Maine (Ms. Collins) was added as a cosponsor of S. 2294, a bill to amend the Federal Food, Drug, and Cosmetic Act to require labeling containing information applicable to pediatric patients.

At the request of Mr. Leahy, the name of the Senator from Iowa (Mr. Harkin) was added as a cosponsor of S. 2480, supra.

At the request of Mr. Harkin, the names of the Senator from New York (Mrs. Clinton) and the Senator from Missouri (Mrs. Carnahan) were added as cosponsors of S. 2512, a bill to provide grants for training court reporters and closed captioners to meet requirements for realtime writers under the Telecommunications Act of 1996, and for other purposes.

At the request of Mr. Smith of New Hampshire, the name of the Senator from Nevada (Mr. Ensign) was added as a cosponsor of S. 2504, a bill to amend title 49, United States Code, to establish a new Federal flight deck officer, and for other purposes.

At the request of Mr. Reid, the name of the Senator from New York (Mr. Schumer) was added as a cosponsor of S. 2562, a bill to expand research regarding inflammatory bowel disease, and for other purposes.

At the request of Mr. Brownback, the name of the Senator from Oklahoma (Mr. Coburn) was added as a cosponsor of S. 2574, a bill to amend the Clear Creek County, Colorado, Public Lands Transfer Act of 1993 to provide additional time for Clear Creek County to dispose of certain lands transferred to the county under the Act.

At the request of Mr. Hollings, the name of the Senator from Michigan (Mr. Levin) was added as a cosponsor of S. 2608, a bill to amend the Coastal Zone Management Act of 1972 to authorize the acquisition of coastal areas in order better to ensure their protection from conversion or development.

At the request of Mr. Mrukowski, the name of the Senator from Mississippi (Mr. Cochran) was added as a cosponsor of S. 2615, a bill to amend title XVII of the Social Security Act to provide for improvements in access to services in rural hospitals and critical access hospitals.

At the request of Mr. Breaux, the name of the Senator from Michigan (Mr. Cochran) was added as a cosponsor of S. 2663, a bill to permit the designation of Israeli-Turkish qualifying industrial zones.

At the request of Mr. Grassley, the name of the Senator from Kansas (Mr. Roberts) was added as a cosponsor of S. 2729, a bill to amend title XVIII of the Social Security Act to provide for a Medicare voluntary prescription drug delivery program under the medicare program, to modernize the medicare program, and for other purposes.

At the request of Mr. Kerry, the name of the Senator from Iowa (Mr. Harkin), the Senator from Nevada (Mr. Reid), the Senator from Nebraska (Mr. Ensign), the Senator from Missouri (Mr. Bond) and the Senator from North Carolina (Mr. Helms) were added as cosponsors of S. 2734, a bill to provide emergency assistance to non-farm small business concerns that have suffered economic harm from the devastating effects of drought.

At the request of Mr. Allard, his name was added as a cosponsor of S. 2736, a bill to amend title XVIII of the Social Security Act to authorize Medicare beneficiaries with a drug discount card that ensures access to affordable outpatient prescription drugs.

At the request of Mr. Feingold, the name of the Senator from Wisconsin (Mr. Kohl) was added as a cosponsor of S. 2761, a bill to amend the Internal Revenue Code of 1986 to provide that reimbursements for the cost of using passenger automobiles for charitable and other organizations are excluded from gross income, and for other purposes.

At the request of Mr. Allen, the name of the Senator from Georgia (Mr. Murray) was added as a cosponsor of S. Res. 239, a resolution recognizing the lack of historical recognition of the gallant exploits of the officers and crew of the S.S. Henry Bacon, a Liberty ship that was sunk February 23, 1945, in the waning days of World War II.

At the request of Mr. Thurmond, the names of the Senator from Michigan (Mr. Levin) and the Senator from Wyoming (Mr. Enzi) were added as cosponsors of S. Res. 242, a resolution designating August 16, 2002, as ‘National Airborne Day’.

At the request of Mrs. Hutchison, her name was added as a cosponsor of S. Res. 293, a resolution designating the week of November 10 through November 16, 2002, as ‘National Veterans Awareness Week’ to emphasize the need to develop educational programs regarding the contributions of veterans to the country.

At the request of Mr. Burns, the name of the Senator from South Carolina (Mr. Thurmond) was added as a cosponsor of S. Con. Res. 119, a concurrent resolution honoring the United States Marines killed in action during World War II while participating in the 1942 raid on Makin Atoll in the Gilbert Islands and expressing the sense of Congress that a site in Arlington National Cemetery, near the Space Shuttle Challenger Memorial at the corner of Memorial and Farragut Drives, should be provided for a suitable monument to the Marine Raiders.

At the request of Mr. Hutchinson, the name of the Senator from Massachusetts (Mr. Kerry) was added as a cosponsor of S. Con. Res. 121, a concurrent resolution expressing the sense of Congress that there should be established a National Health Center Week for the week beginning on August 18, 2002, to raise awareness of health services provided by community, migrant, public housing, and homeless health centers.

Amendment No. 404

At the request of Mr. Allard, the name of the Senator from Colorado (Mr. Campbell) was added as a cosponsor of amendment No. 404 Intended to be proposed to S. 122, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.
At the request of Mr. DAYTON, his name was added as a cosponsor of amendment No. 4309 proposed to S. 812, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

At the request of Mr. ALLARD, his name was added as a cosponsor of amendment No. 4310 proposed to S. 812, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BINGAMAN (for himself, Mr. DOMENICI, and Mr. BROWNBACK):

S. 2773. A bill to authorize the Secretary of the Interior to cooperate with the High Plains Aquifer States in conducting a hydrogeologic characterization, mapping, modeling and monitoring program for the High Plains Aquifer and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, I rise today to introduce a bill that has significance for the entire Great Plains region of our Nation. The High Plains Aquifer, which is comprised in large part by the Ogallala Aquifer, extends under eight states: Colorado, Kansas, Nebraska, Oklahoma, Texas and Wyoming. It is experiencing alarming declines in its water levels. This aquifer is the source of water for farmers and communities throughout the Great Plains region. The legislation I am introducing today is intended to ensure that sound and objective science is available with respect to the hydrology and geology of the High Plains Aquifer.

This bill, the “High Plains Aquifer Hydrogeologic Characterization, Mapping, Modeling and Monitoring Act,” would direct the Secretary of the Interior to develop and carry out a comprehensive hydrogeologic characterization, mapping, modeling and monitoring program for the High Plains Aquifer. The Secretary is directed to work in conjunction with the eight High Plains Aquifer States in carrying out this program. The U.S. Geological Survey and the States will work in cooperation for the goals of this program, with half of the available funds directed to the State component of the program.

I have appreciated the input and assistance of many in the High Plains Aquifer States in putting this legislation together. Last session, I introduced two bills relating to the High Plains Aquifer. One of these bills, S. 1537 would have established a mapping and monitoring program for the High Plains Aquifer. The bill I am introducing today builds on that program based on input from several of the State geologists and water management agency officials who would be involved in implementing the program. Their assistance has been invaluable. As we conduct hearings on this legislation, I hope to receive further comment from them on the legislation, and I look forward to continuing to work with them as we proceed with this important legislation.

The second bill that I introduced last session, S. 1538, proposed that the Secretary of Agriculture provide incentive payments through the Farm Program to producers willing to conserve water by converting to less water-intensive crops or to dryland farming. In addition, the bill would have provided assistance to producers to make their irrigation systems more water-efficient. I am pleased that the recently-enacted Farm Security and Rural Investment Act of 2002 establishes a ground and surface water conservation program which incorporates such incentive payments contained in S. 1538. It is to be funded in the amount of $25 million for fiscal year 2002, $45 million for fiscal year 2003, and $60 million for each of fiscal years 2004 through 2007.

The Conference Report for the 2002 Farm Bill makes clear that “highest priority” is to be accorded the High Plains region in the funding and implementation of this program. I expect that the new program will yield substantial benefits to the High Plains region in addressing ground water depletion by providing cost-share payments, incentive payments, and loans to producers to improve irrigation systems, enhance water efficiencies, convert to the production of less water-intensive crops or dryland farming, improve water storage through measures such as water banking and groundwater recharge, mitigate the effects of drought, and institute other measures as determined by the Secretary.

A reliable source of groundwater is essential to the well-being and livelihoods of people in the Great Plains region. Local towns and rural areas are dependent on the groundwater for drinking water, ranching, farming, and other commercial uses. Yet many areas overlaying the Ogallala Aquifer have experienced a dramatic depletion of this groundwater resource. The problem we are confronting is that the aquifer is not sustainable, and it is being depleted rapidly. This threatens the way of life of all who live on the High Plains. The bill I am introducing today would help ensure that the relevant science needed to address this problem is available so that we will have a better understanding of the resources of the High Plains Aquifer. I ask that my colleagues join me in supporting this legislation.

I ask unanimous consent that the text of the bill and the section-by-section be printed in the RECORD.

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

S. 2773

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “High Plains Aquifer Hydrogeologic Characterization, Mapping, Modeling and Monitoring Act.”

SEC. 2. DEFINITIONS.

For the purposes of this Act:

(1) ASSOCIATION.—The term “Association” means the Association of American State Geologists.

(2) DIRECTOR.—The term “Director” means the Director of the United States Geological Survey.

(3) FEDERAL COMPONENT.—The term “Federal component” means the Federal component of the High Plains Aquifer Comprehensive Hydrogeologic Characterization, Mapping, Modeling and Monitoring Program described in section 3(c).

(4) HIGH PLAINS AQUIFER.—The term “High Plains Aquifer” is the groundwater reserve depicted as Figure 1 in the United States Geological Survey Professional Paper 1400-B, title “Geohydrology of the High Plains Aquifer in Parts of Colorado, Nebraska, Texas and Wyoming.”

(5) HIGH PLAINS AQUIFER STATES.—The term “High Plains Aquifer States” means the States of Colorado, Kansas, Nebraska, Texas and Wyoming.

(6) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(7) STATE COMPONENT.—The term “State component” means the State component of the High Plains Aquifer Comprehensive Hydrogeologic Characterization, Mapping, Modeling and Monitoring Program described in section 3(d).

SEC. 3. ESTABLISHMENT

(a) PROGRAM.—The Secretary, working through the United States Geological Survey, and in cooperation with the State geological surveys and the water management agencies of the High Plains Aquifer States, shall establish and carry out the High Plains Aquifer Comprehensive Hydrogeologic Characterization, Mapping, Modeling and Monitoring Program for the High Plains Aquifer. The program shall undertake on a county-by-county level or at the largest scales and most detailed levels determined to be appropriate on a state-by-state and regional basis:

(1) mapping of the hydrogeological configuration of the High Plains Aquifer; and

(2) with respect to the High Plains Aquifer, analyses of the current and past rate of vertical migration of water within the High Plains Aquifer, and the current and past rate of loss of saturated thickness within the High Plains Aquifer. The program shall also develop, as needed, regional data bases and groundwater flow models.

(b) FUNDING.—The Secretary shall make available fifty percent of the funds available pursuant to this Act for use in carrying out the State component of the program, as provided for by subsection (e).

(c) FEDERAL PROGRAM COMPONENT.—

(1) PRIORITIES.—The program shall include a Federal component, developed in consultation with the Federal Review Panel provided for by subsection (e), which shall have as its priorities—
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(A) coordinating Federal, State, and local, data, maps, and models into an integrated physical characterization of the High Plains Aquifer;
(B) supporting State and local activities with scientific and technical specialists; and
(C) undertaking activities and providing technical capabilities not available at the State and local level.

(2) INTERDISCIPLINARY STUDIES.—The Federal component shall include interdisciplinary activities to build hydrogeologic characterization, mapping, modeling, and monitoring for the High Plains Aquifer.

(d) STATE PROGRAM COMPONENT.—
(1) Establishment.—The program shall include a State component which shall have as its priorities hydrogeologic characterization, mapping, modeling, and monitoring activities in the High Plains Aquifer. The State component shall be in addressing issues relating to groundwater depletion and resource assessment of the Aquifer. Priorities under the State component shall be based upon the recommendations of the State panels representing a broad range of users of hydrogeologic data and information, which shall be appointed by the Governor of the State or the Governor’s designee.

(2) Awards.—Twenty percent of the Federal funds made available under this Act shall be equally divided among the State geological surveys of the High Plains Aquifer States to carry out the purposes of the program by this Act. The remaining funds under the State component shall be competitively awarded to State or local agencies or entities in the High Plains Aquifer States, including State geological surveys, State water management agencies, institutions of higher education, or consortia of such agencies or entities. Such funds shall be awarded by the Secretary only for proposals that have been recommended by the State panels referred to in subsection (d)(1), subjected to independent peer review, and given final recommendation by the Federal Review Panel established under subsection (e). Proposals for multi-state activities must be recommended by the State panel of at least one of the affected States.

(e) FEDERAL REVIEW PANEL.—
(1) Establishment.—There shall be established a Federal Review Panel to evaluate the proposals for funding under the State component under subsection (d)(2) and to recommend approvals and levels of funding. In addition, the Federal Review Panel shall coordinate the Federal component priorities under subsection (d)(1), Federal interdisciplinary studies under subsection (c)(2), and the State component priorities under subsection (d)(1).

(2) COMPOSITION AND SUPPORT.—Not later than three months after the date of enactment of this Act, the Secretary shall appoint to the Federal Review Panel: (1) two representatives of the United States Geological Survey, at least one of which shall be a hydrogeologist; (2) representatives of the geological surveys and water management agencies of the High Plains Aquifer States from lists of nominees provided by the Association and the Western States Water Council, so that there is representation of both the State geological surveys and the State water management agencies. Appointment to the Panel shall be for a term of three years. The Director shall provide technical and administrative support to the Federal Review Panel. Expenses for the Federal Review Panel shall be paid from funds available under the Federal component of the program.

(f) LIMITATION.—The United States Geological Survey shall not use any of the Federal funds to be made available under the State component for any fiscal year to pay indirect, servicing, or program management charges. Receipts of awards granted under subsection (d)(2) shall not use more than eighteen percent of the Federal award amount for indirect, servicing, or program management charges.

SEC. 4. PLAN.

The Secretary, acting through the Director, of the Geological Survey, after consultation with the Association of Western States Water Council, the Federal Review Panel, and the State panels, prepare a plan for the High Plains Aquifer Hydrogeologic Characterization, Mapping, Modeling and Monitoring Program. The plan shall address overall priorities for the program and a management structure and organizations including the role and responsibilities of the United States Geological Survey and the States in the program, and mechanisms for identifying priorities for the Federal component and the State component.

SEC. 5. REPORTING REQUIREMENTS.

(a) REPORT ON PROGRAM IMPLEMENTATION.—One year after the date of enactment of this Act, and every two years thereafter through fiscal year 2011, the Secretary shall submit a report on the status of implementation of the program established by this Act to the Committee on Energy and Natural Resources of the Senate, the Committee on Resources of the House of Representatives, and the Governors of the High Plains Aquifer States.

(b) REPORT ON HIGH PLAINS AQUIFER.—One year after the date of enactment of this Act and every two years thereafter through fiscal year 2011, the Secretary shall submit a report to the Committee on Energy and Natural Resources of the Senate, the Committee on Resources of the House of Representatives, and the Governors of the High Plains Aquifer States on the status of the High Plains Aquifer, including aquifer recharge rates, extraction rates, saturated thickness, and water table levels.

(c) ROLE OF FEDERAL REVIEW PANEL.—The Federal Review Panel shall be given an opportunity to review and comment on the reports required by this section.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2011 to carry out this Act.

SECTION-BY-SECTION HIGH PLAINS AQUIFER HYDROGEOLOGIC CHARACTERIZATION, MAPPING, MODELING AND MONITORING ACT

SEC. 1. SHORT TITLE

Defines the High Plains Aquifer States as the States of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas and Wyoming.

SEC. 2. DEFINITIONS

(a) Program. Directs the Secretary of the Interior, through the U.S. Geological Survey, in cooperation with the State geological surveys and the water management agencies of the High Plains Aquifer States, to establish and carry out the High Plains Aquifer Comprehensive Hydrogeologic Characterization, Mapping, Modeling and Monitoring Program. The program is to undertake activities not available at State and local levels.

(b) Funds. Requires the Secretary to make available fifty percent of the funds available pursuant to this Act for use in carrying out the State component of the program.

(c) Federal Program Component.

(1) Priorities. The program is to include a Federal component, developed in consultation with the Federal Review Panel, which shall have as priorities coordinating the data, maps, and models into an integrated physical characterization of the High Plains Aquifer, supporting State and local activities with scientific and technical specialists, and undertaking activities not available at State and local levels.

(2) Interdisciplinary Studies. The Federal component is to include interdisciplinary studies.

(d) State Program Component.

(1) Priorities. The program is to include a State component which shall have as priorities characterization, mapping, modeling, and monitoring activities that will assist in addressing issues relating to groundwater depletion and resource assessment of the Aquifer. Priorities are to be based on recommendations of State panels representing a broad range of users of data and information, which shall be appointed by the Governor of the State or the Governor’s designee.

(2) Awards. Twenty percent of the funds available in the State component shall be equally divided among the State geological surveys of the High Plains Aquifer States. The remaining amounts shall be competitively awarded to State or local agencies or entities in the High Plains Aquifer States, including State geological surveys, State water management agencies, institutions of higher education, or consortia of such agencies or entities. Such funds shall be awarded by the Governor or the Governor’s designee.

(e) Federal Review Panel.

(1) Establishment. Establishes a Federal Review Panel to evaluate proposals submitted for funding under the State component, to review and coordinate Federal component priorities, to undertake activities not available at State and local levels.

(2) Composition and Support. The Secretary of the Interior is to appoint to the Federal Review Panel two representatives of the U.S. Geological Survey (at least one of which shall be a hydrogeologist) and three representatives of the geological surveys and water management agencies of the High Plains Aquifer States from lists of nominees provided by the Association, the Western States Water Council, and the Western States Water Council, so that there is representation of both the State geological surveys and the State water management agencies.

(f) Limitation. The U.S. Geological Survey is not to use any of the Federal funds made available for the State components to pay indirect, servicing, or program management charges. Receipts of awards granted under subsection (d)(2) shall not use more than eighteen percent of the Federal award amount for indirect, servicing, or program management charges.

SEC. 4. PLAN.

The Secretary, with the participation and review of the Association of American State Geological Survey Directors, the Western States Water Council, the Federal Review Panel and the State panels, is directed to prepare a plan for the program.

SEC. 5. REPORTING REQUIREMENTS.

(a) Report on Program Implementation. The Secretary is to submit a report one year after the date of enactment of this Act and every two years thereafter, on the status of implementation of the program to the Committee on Energy and Natural Resources of the Senate, the Committee on Resources of the House, and the Governors of the High Plains Aquifer States.

(b) Report on High Plains Aquifer. One year after the date of enactment of the Act and...
every year thereafter, the Secretary is to submit a report to the Committee on Energy and Natural Resources of the Senate, the Committee on Resources of the House, and the Governors of the High Plains aquifer States, on the status of the High Plains Aquifer.

(c) Role of Federal Review Panel. The Federal Review Panel will be given an opportunity to review and comment on the reports.

6. AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated such sums as may be necessary to carry out the Act for fiscal years 2003 through 2011.

KANSAS GEOLOGICAL SURVEY.

Hon. JEFF BINGAMAN,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR BINGAMAN: I am writing on behalf of the geological surveys of the eight High Plains states to endorse your proposed legislation, "High Plains Aquifer Hydrogeologic Characterization, Mapping, Modeling, and Monitoring Act."

This act would authorize the scientific and technical analyses critical to extending and conserving the life of the nation’s single largest groundwater resource. It is particularly noteworthy that the act is written to facilitate and ensure cooperation and collaboration among all of the affected geological surveys, state and local water agencies, and the local water user communities.

The High Plains aquifer is a complex system of interdependent materials that vary vertically and across the region in their thickness, water storage and transport capacity, and ability to be recharged. Eight state geological surveys and the U.S. Geological Survey formed the High Plains Aquifer Coalition two years ago to advance the understanding of the subsurface distribution, character, and nature of the High Plains aquifer that comprises the geologic deposits in the eight-state Mid-continent region. The distribution, withdrawal, and recharge of groundwater, and the interaction with surface waters are profoundly affected by the science and the natural environment of the High Plains Aquifer in all eight states—New Mexico, Texas, Oklahoma, Colorado, Kansas, Nebraska, South Dakota, and Wyoming. The geological surveys, in consultation with the state and local water agencies and groups, have expressed the need for comprehensive understanding of the subsurface configuration and hydrogeology of the High Plains Aquifer. This information is needed to provide state, regional, and national policymakers with the earth-science information required to make informed decisions regarding urban and agricultural land use, the protection of aquifers and surface waters, and the environmental well being of the citizens of this geologically unique region.

Water contained in the High Plains Aquifer must be considered a finite resource and thus be recharged in a manner, and we believe it will receive necessary to carry out the Act for fiscal years 2003 through 2011.

By Mr. BINGAMAN:
S. 2776. A bill to provide for the protection of archaeological sites in the Galisteo Basin in New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, I am pleased today to introduce legislation to protect several important archaeological sites in the Galisteo Basin in New Mexico. This bill identifies approximately two dozen sites in northern New Mexico which contain the ruins of pueblos dating back almost 900 years. When Coronado and other Spanish conquistadores first entered what is now New Mexico in 1541, they encountered a thriving Pueblo culture with its own unique tradition of religion, architecture, and art, which was influenced through an extensive trade system. We know that these sites remain occupied up through the Pueblo revolt in 1680. After that, the sites were deserted, although we still don’t know why they were abandoned after over 700 years of continuous use.

Through these sites, we now have the opportunity to learn more not only about the history and culture of these Pueblos, but also about the first interactions between European and Native American cultures. The Cochiti Pueblo, in particular, is culturally and historically tied to these sites, which have tremendous historical and religious significance to the Pueblo. I am grateful for the support of the pueblo de Cochiti for this legislation. This bill has strong local support, including the Santa Fe Board of County Commissioners, the City of Santa Fe, and the Archdiocese of Santa Fe. I would also like to thank the Archaeological Conservancy for its efforts over the past several years to identify and protect many of these sites, and in helping with this legislation.

Many of these archaeological sites are on Federal land administered by the Bureau of Land Management. BLM archaeologists have already provided extensive background research on many of these sites, and I was pleased that the agency supported a similar bill I introduced in the previous Congress.

Many of the archaeological sites identified in the bill are on non-Federal land. I would like to emphasize that the bill only authorizes voluntary participation, and there is no restriction or other limitation imposed on these lands. Because this is a sensitive issue, I have added language to this year’s bill to explicitly state that the Secretary of the Interior has no authority to administer sites on non-Federal lands except to the extent provided for in a cooperative agreement entered into between the Secretary and the landowner. Similarly, the Secretary’s authority to acquire lands is limited to willing sellers only.

In the three years since I first introduced this proposal, many irreplaceable archaeological resources have been lost, whether by vandalism, ero-
designated as an archaeological protection
the Native American Graves Protection and
ment entered into between the Secretary and
extent provided for in a cooperative agree-
which are on non-Federal lands except to the
maintain the archaeological resources and
in a manner that will protect, preserve, and
archaeological protection sites in section 3 of
New Mexico, the New Mexico State Land
with regard to an archae-
(a) The Secretary shall
administer archaeological protection sites
located on Federal land in accordance with the
archaeological protection site, or portion thereof,
and
administer archaeological protection sites which
are on non-Federal lands except to the
archaeological resources and
provide for research thereon.
(2) The Secretary shall have no authority
to administer archaeological protection sites
which are on non-Federal lands except to the
end into between the Secretary and
the landowner.
(3) Nothing in this Act shall be construed
to extend the authorities of the Archaeo-
Natural Resources of the United States Senate and
the Committee on Natural Resources of the
United States House of Representatives, a
management plan for the identification,
research, protection, and public
interpretation of—
(A) the archaeological protection sites
located on Federal land; and
(B) for sites on State or private lands for
which the Secretary has entered into cooper-
agreements pursuant to section 6 of this
Act.
(2) Consultation.—The general manage-
ment plan shall be developed by the Secre-
raty in consultation with the Governor of New
Mexico, the New Mexico State
Commissioner, affected Native American
pueblos, and other interested parties.
SEC. 6. COOPERATIVE AGREEMENTS.
The Secretary is authorized to enter into
cooporative agreements with owners of non-
Federal lands with regard to an archae-
ological protection site, or portion thereof,
located on their property. The purpose of such
agreements shall be to enable the Secretary to
assist with the protection, pres-
servation, maintenance, and administration of
the resources and
the lands. Where appropriate, a cooperative agreement may also provide for public interpre-
tation of the site.
SEC. 7. ACQUISITIONS.
(a) General.—The Secretary is author-
ized to acquire lands and interests therein
within the boundaries of the archaeological
protection sites, including access thereto, by
donation, by purchase with donated or appor-
tioned funds, or by exchange.
(b) Consent of Owner Required.—The
Secretary may only acquire lands or inter-
est therein within the consent of the owner.
(c) State Lands.—The Secretary may ac-
quire lands on State lands owned by the
Secretary of New Mexico or a political subdivi-
sion thereof only by donation or exchange,
except that State trust lands may only be
acquired by donation.
SEC. 8. WITHDRAWAL.
Subject to valid existing rights, all Federal
lands within the archaeological protection
sites are hereby withdrawn
(1) from all forms of entry, appropriation,
or disposal under the public land laws and all
amendments thereto;
(2) from location, entry, and patent under
the mining law and all amendments thereto;
and
(3) from disposition under all laws relating
to mineral and geothermal leasing, and all
amendments thereto.
SEC. 9. SAVINGS PROVISIONS.
Nothing in this Act shall be construed—
(1) to authorize the regulation of privately
owned lands within the archaeological
protection site;
(2) to modify, enlarge, or diminish any au-
thority of Federal, State, or local govern-
ments to regulate any use of privately owned
lands; or
(3) to modify, enlarge, or diminish any au-
thority of Federal, State, tribal, or local
governments to manage or regulate any use of
land as provided for by law or regulation.
(4) to restrict or limit a tribe from pro-
tecting cultural or religious sites on tribal
lands.
SEC. 10. AUTHORIZATION OF APPROPRIATIONS.
There is authorized to be appropriated
such sums as may be necessary to carry out
this Act.
STATEMENTS ON SUBMITTED RESOLUTIONS
SENATE CONCURRENT RESOLUTION 130—EXPRESSING THE SENSE OF CONGRESS THAT FEDERAL MEDIATION AND CONCILIATION SERVICE SHOULD EXERT ITS BEST EFFORTS TO CAUSE THE MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION AND THE OWNERS OF THE TEAMS OF MAJOR LEAGUE BASEBALL TO ENTER INTO A CONTRACT TO CONTINUE TO PLAY PROFESSIONAL BASEBALL GAMES WITHOUT ENGAGING IN A STRIKE, A LOCKOUT OR ANY COERCIVE CONDUCT WHICH INTERFERES WITH THE PLAYING OF SCHEDULED PROFESSIONAL BASEBALL GAMES

Mr. MILLER submitted the following concurrent resolution; which was re-
ferred to the Committee on Health, Education, Labor, and Pensions.

Whereas major league baseball is a na-
tional institution and is commonly referred to as “the national pastime”;
Whereas major league baseball and its
players played a critical role in restoring
America’s spirit following the tragic events of September 11, 2001;
Whereas major league baseball players are
role models to millions of young Americans;
and
Whereas while the financial issues involved
in this current labor dispute are signifi-
cant, they pale in comparison to the damage
that will be caused by a strike or work stop-
page: Now, therefore, be it

Whereas the House of Representatives concurring. That it is the sense of Congress that the Federal Mediation and Conciliation Service, on its own motion and in consultation with the Chairman of the Labor Management Relations Act, 1947 (29 U.S.C. 173(b)), should immediately—
(1) proffer its services to the Major League Baseball Players Association and the owners of the teams of Major League Baseball to re-
solve labor contract disputes relating to en-
tering into a collective bargaining agree-
ment; and
(2) use its best efforts to bring the parties
to agree to such contract without engaging in
a strike, a lockout, or any other coercion
that interferes with the playing of scheduled
professional baseball games.

Mr. MILLER. Mr. President, today I
share with my colleagues a resolution
that calls on the Federal Mediation
and Conciliation Service to exert its
efforts to cause the Major League
Baseball Players Association and the
owners of the teams of Major League
Baseball to enter into a contract to
continue to play professional baseball
games without engaging in any coer-
cive conduct that interferes with
the playing of scheduled professional
baseball games.

Folks don’t agree on much around
this place. But, I think we can all agree
that baseball as we’ve known it, is in
danger.

Billion dollar owners and multi-mil-
dion dollar players refusing to come
Together and do what’s right for the
game.

Drug use rampant, according to an
article in Sports Illustrated.

And the best Senator DORGAN could
get out of a June hearing from the
Players Association Executive Director
was for him to say “We’ll have a frank
and open discussion on the matter.”

But the big problem is that the play-
er’s labor contract expired last year
and the negotiations on a new deal are
Going nowhere.

There have been eight different labor
agreements and each time there was a
work stoppage.

The last time the owners and players
tried to renew their contract back in
1994, it took a 232-day shutdown of the
game, including canceling the World Series for the first time in 90 years, to
finally get an agreement.

Hall of Famer and U.S. Senator Jim
Bunning has an op-ed piece in this
morning’s New York Times. He writes,

The last strike nearly killed the
game. I am afraid the next one will.”

There are many problems. Only five
out of thirty teams made a profit last
season. That means 25 ended up in
the red. The extreme ran from the Yankees
collecting $217.8 million and the Mont-
real Expos $9.8 million to the owners

The average player today, the aver-
age player, makes more than $2 million a year.
Ever since Abner Doubleday invented the game, a game is played until one team wins. That was part of the enchantment of the game: theoretically it could go on forever. Unless, that is, a commissioner calls it off and goes to dinner.

Ever since baseball was declared as entertainment instead of a business in a 1922 Supreme Court decision that gave the owners exemptions from laws against other monoplastic activities, we have probably been headed to this day. These anti-trust exemptions give owners tremendous power and any proposals to change it, like Rep. John Conyers tried to do not too long ago, have gone nowhere.

And, we’re not proposing that today. I’m not even sure I’m for that. I happen to think that it would kill the minor leagues.

And right now, these 160 teams are playing some of the purest baseball being played today.

So what do we do? Here’s how I see it. What would any of us do if we saw a loved one, someone you grew up with and loved like a member of your family, with a pistol in his hand, loaded with the safety off and aimed at their temple?

What if you had only a few seconds before that close personal friend blew his brains out? I’d try to stop him. And I think you would too. I’d lurch for the pistol and try to take it away from him by whatever force necessary. I’d do just about anything to save his life. I could go on with this analogy, but I think you get the picture.

For sixty summers I’ve followed the game of baseball. I live for the early days of February when the catchers and pitchers report for spring training.

And when the World Series ends in the late fall, I might as well be hibernating in a cave during the winter, or serving in the Senate, because my life is so empty.

But, I digress. Back to saving the life of that good friend about to blow his brains out.

That is what this resolution attempts to do.

Its purpose is to inject the Federal Government, with all its persuasive powers, into this dispute. Hopefully, with the end result of preventing the baseball players from striking and shutting down major league baseball.

I want to save this game for those who love it as I do and for those who will come after us. I do not want to see our way from the game our national once-upon-a-time.

**AMENDMENTS SUBMITTED AND PROPOSED**

SA 4313. Mr. DeWINE submitted an amendment intended to be proposed by him to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table.

**TEXT OF AMENDMENTS**

SA 4313. Mr. DeWINE submitted an amendment intended to be proposed by him to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table. (for Mr. DOGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Mr. MILLER, Mr. DERWIN, Mr. FEINGOLD, and Mr. HARKEN) to the bill (S. 812) supra.

**AMENDMENTS SUBMITTED AND PROPOSED**

SA 4315. Mr. HAGEL (for himself, Mr. ENZI, Mr. LUGAR, Mr. GRAMM, Mr. INHOPE, Mr. SANTORUM, Mr. GREGG, Mr. FRIST, and Mr. NICKLES) proposed an amendment to the amendment intended to be proposed by Mr. Reid (for Mr. DOGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Mr. MILLER, Mr. DERWIN, Mr. FEINGOLD, and Mr. HARKEN)) to the bill (S. 812) supra.

**AGENDA**

The Senate met at 12:45 p.m., the Honorable Pat Roberts, of Kansas, Presiding.

Mr. DURBIN moved that the Senate proceed to the consideration of the resolution to be submitted to the President.

Mr. DICKEY moved that the Senate proceed to the consideration of the amendments offered to the resolution to be submitted to the President.

The motion to proceed to the consideration of the resolution to be submitted to the President was agreed to.

The Senate proceeded to the consideration of the amendments offered to the resolution to be submitted to the President.

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and
(2) by inserting after section 9812 the following:

"SEC. 9813. COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.

"A group health plan shall provide coverage of immunosuppressive drugs that is at least as comprehensive as the coverage provided in such plan on the day before the date of enactment of the Immunosuppressive Drug Coverage Act of 2002, and such requirement shall be deemed to be incorporated into this section.""

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning on or after January 1, 2003.

SA 4314. Mr. FINEGOLD submitted an amendment intended to be proposed to amendment SA 4399 proposed by Mr. GRAHAM (for himself and Mr. MILLER, Mr. KENNEDY, and Mr. CORZINE) to the bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table as follows:

Strike paragraph (2) of section 1860K(c) of the Social Security Act (as proposed to be added by section 202(a) (the amendment) and insert the following:

"(2) BUDGET NEUTRALITY.—Notwithstanding any other provision of this Act, this title, and the amendments made by the Medicare Prescription Drug Coverage Act of 2002, shall take effect on the date of enactment of an Act that raises Federal revenues or reduces Federal spending by an amount sufficient to offset the Federal budgetary cost of implementing this title.""

SA 4315. Mr. HAGEL (for himself, Mr. ENSIGN, Mr. LUGAR, Mr. GRAMM, Mr. INHOFE, Mr. SANTORUM, Mr. GREGG, Mr. FRIST, and Mr. NICKLES) proposed an amendment to amendment SA 4299 proposed by Mr. REID (for Mr. DORGAN (for himself Mr. WELSTONE, Mr. JERFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBEN, Mr. FEINGOLD, and Mr. HARINI)) to the bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; as follows:

Strike the last word, and insert the following:

TITLE—VOLUNTARY MEDICARE OUTPATIENT PRESCRIPTION DRUG DISCOUNT AND SECURITY PROGRAM

SEC. 00. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This title may be cited as the "Medicare Rx Drug Discount and Security Program of 2002."

(b) Table of Contents.—The table of contents of this title is as follows:

Sec. 00. Short title; table of contents.
Sec. 01. Medicare Outpatient Prescription Drug Discount and Security Program.

PART D—VOLUNTARY MEDICARE OUTPATIENT PRESCRIPTION DRUG DISCOUNT AND SECURITY PROGRAM

"Sec. 1860. Definitions.

Sec. 1860A. Establishment of program.

Sec. 1860B. Enrollment.

Sec. 1860C. Providing enrollment and coverage information to beneficiaries.

Sec. 1860D. Enrollment protections.

Sec. 1860E. Annual enrollment fee.

Sec. 1860F. Benefits under the program.

Sec. 1860G. Requirements for entities offering prescription drug coverage.

Sec. 1860H. Payments to eligible entities for administering the catastrophic benefit.

Sec. 1860I. Determination of income eligibility.

Sec. 1860J. Appropriations.

Sec. 1860K. Medicare Competition and Improvement Reformation Drug Advisory Board.

Sec. 02. Administration of Voluntary Medicare Outpatient Prescription Drug Discount and Security Program.

Sec. 03. Exclusion of part D costs from determination of part B months.

Sec. 04. Medigap revisions.

SEC. 01. VOLUNTARY MEDICARE OUTPATIENT PRESCRIPTION DRUG DISCOUNT AND SECURITY PROGRAM.

(a) Establishment of Program.—Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended—

(1) by redesignating part D as part E; and

(2) by inserting after part C the following new part:

"PART D—VOLUNTARY MEDICARE OUTPATIENT PRESCRIPTION DRUG DISCOUNT AND SECURITY PROGRAM

DEFINITIONS

"Sec. 1860. In this part:

(1) COVERED OUTPATIENT DRUG.—(A) IN GENERAL.—A prescription drug means—

(i) a drug that may be dispensed only upon a prescription and that is described in subparagraph (A)(i) or (A)(ii) of section 1927(k)(2); or

(ii) a biological product described in clauses (i) through (iii) of subsection (B) of such section or insulin described in subsection (C) of such section,

and such term includes a vaccine licensed under section 351 of the Public Health Service Act and any use of a covered outpatient drug for a medically accepted indication (as defined in section 1927(k)(6)).

(B) EXCLUSIONS.—

(i) IN GENERAL.—Such term does not include drugs or classes of drugs, or their medical uses, which may be excluded from coverage on the basis of (1) anything other than a covered outpatient drug under section 1927(d)(2), other than paragraph (E) thereof (relating to smoking cessation agents), or under section 1927(d)(3).

(ii) AVAILABILITY OF GENERIC COVERED DRUG.—A prescription drug for an individual that otherwise would be a covered outpatient drug under this part shall not be considered to be a covered outpatient drug under this part if a generic drug is available under part A or B for an individual entitled to benefits under part A and enrolled under part B.

(C) APPLICATION OF FORMULARY RESTRICTIONS.—A prescription drug discount program under this part shall be considered to exclude any covered outpatient drug under section 1907(a)(4)(B).

(D) APPLICATION OF GENERAL EXCLUSION PROVISIONS.—A prescription drug discount card plan or Medicare+Choice plan may exclude from qualified prescription drug coverage any covered outpatient drug—

(i) for which payment would not be made if section 1862(a) applied to part D; or

(ii) which are not prescribed in accordance with the requirements of this part with respect to that plan.

(E) VOLUNTARY NATURE OF PROGRAM.—Nothing in this part shall be construed as requiring an eligible beneficiary to enroll in the program under this part.

(F) ENROLLMENT.—The term "eligible beneficiary" means an individual who is—

(1) eligible for benefits under part A or enrolled under part B; and

(2) not eligible for prescription drug coverage under a State plan under the medicare plan under title XVII.

(3) ELIGIBLE ENTITY.—The term 'eligible entity' means any—

(A) pharmaceutical benefit management company;

(B) wholesale pharmacy delivery system;

(C) retail pharmacy delivery system;

(D) insurer (including any issuer of a Medicare supplemental policy under section 1882);

(E) Medicare+Choice organization;

(F) State (in conjunction with a pharmaceutical benefit management company);

(G) employer-sponsored plan;

(H) other entity that the Secretary determines to be appropriate to provide benefits under this part; or

(I) combination of the entities described in subparagraphs (A) through (H).

(4) OUT-OF-POCKET EXPENSES.—The term 'out-of-pocket expenses' means only those expenses for covered outpatient drugs that are incurred by the eligible beneficiary using the prescription drug discount card plan under this part that are paid by that beneficiary and for which the beneficiary is not reimbursed (through insurance or otherwise) by another person.

(5) POVERTY LINK.—The term 'poverty line' means the income official poverty line (as defined by the Office of Management and Budget) and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 applicable to a family of the size involved.

(6) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services.

"ESTABLISHMENT OF PROGRAM

"Sec. 1860A. (a) Provision of Benifit.—The Secretary shall establish a Medicare Outpatient Prescription Drug Discount and Security Program under which the Secretary endorses prescription drug card plans offered by eligible entities in which eligible beneficiaries may voluntarily enroll and receive benefits under this part.

(b) Enrollment of Prescription Drug Discount Card Plans—

(1) IN GENERAL.—The Secretary shall endorse a prescription drug card plan offered by an eligible entity with a contract under this part to the extent that the requirements of this part with respect to that plan.

(2) NATIONAL PLANS.—In addition to other types of plans, the Secretary may endorse national prescription drug plans under paragraph (1).

(C) VOLUNTARY NATURE OF PROGRAM.—Nothing in this part shall be construed as requiring an eligible beneficiary to enroll in the program under this part.

(D) FINANCING.—The costs of providing benefits under this part shall be payable from the Federal Supplementary Medical Insurance Trust Fund established under section 1841.

"ENROLLMENT

"Sec. 1860B. (a) Enrollment Under Part D—

(1) Establishment of process.—

(A) IN GENERAL.—The Secretary shall establish a process through which an eligible beneficiary (including an eligible beneficiary enrolled in a Medicare+Choice plan offered by a Medicare+Choice organization) may make an election to enroll under this part.

(2) Elects to be Enrolled.—In such process shall be similar to the process for enrollment under part B under section 1837.
“(B) REQUIREMENT OF ENROLLMENT.—An eligible beneficiary must enroll under this part in order to be eligible to receive the benefits under this part.

(2) ELIGIBLE BENEFICIARIES.—

(A) IN GENERAL.—Except as provided in this paragraph, an eligible beneficiary may not enroll in the program under this part during the period beginning on the effective date of section 1838.

(B) SPECIAL ENROLLMENT PERIOD.—In the case of eligible beneficiaries that have recently lost eligibility for prescription drug coverage under a State plan under the medicaid program under title XIX, the Secretary shall establish a special enrollment period which begins on the date on which the Secretary first begins to accept elections for enrollment under this part, during which any eligible beneficiary may—

(i) enroll under this part; or

(ii) enroll or reenroll under this part after having voluntarily declined or terminated such enrollment.

(3) PERIOD OF COVERAGE.—

(A) IN GENERAL.—Except as provided in subparagraph (B) or (C) of paragraph (2), an eligible beneficiary’s coverage under the program under this part shall become effective for the period provided under section 1838, as if that section applied to the program under this part.

(B) ENROLLMENT DURING OPEN AND SPECIAL ENROLLMENT.—An eligible beneficiary who enrolls under the program under this part under subparagraph (B) or (C) of paragraph (2) shall be entitled to the benefits under this part beginning on the first day of the month following the month in which such enrollment occurs.

(C) OPEN ENROLLMENT PERIOD IN 2003 FOR CURRENT BENEFICIARIES.—The Secretary shall establish a period, which shall begin on the date on which the Secretary first begins to accept elections for enrollment under this part, during which any eligible beneficiary may—

(i) enroll under this part; or

(ii) enroll or reenroll under this part after having voluntarily declined or terminated such enrollment.

(4) PART D COVERAGE TERMINATED BY TERMINATION OF COVERAGE UNDER PARTS A AND B OR ELIGIBILITY FOR MEDICAL ASSISTANCE.—

(A) IN GENERAL.—In addition to the causes of termination specified in section 1838, the Secretary shall terminate an individual’s coverage under this part if the individual—

(i) no longer enrolled in part A or B; or

(ii) eligible for prescription drug coverage under a State plan under the medicaid program under title XIX.

(B) EFFECTIVE DATE.—The termination described in subparagraph (A) shall be effective on the date the Secretary determines that the individual—

(i) the termination of coverage under part A or (if later) under part B; or

(ii) the coverage under title XIX.

(1) PROCESS.—The Secretary shall establish a process through which an eligible beneficiary who is enrolled under this part shall make an annual election to enroll in a prescription drug card plan offered by an eligible entity that has been awarded a contract under this part, and the Secretary shall take such actions as are necessary to ensure that a beneficiary is provided with such information at least equivalent to the benefits under a prescription drug card plan under this part.

(B) SPECIAL RULE FOR FIRST ENROLLMENT WITH ELIGIBLE ENTITY.—

(A) COVERAGE UNDER PRESCRIPTION DRUG CARD PLAN.—Prescription drug coverage under a prescription drug card plan offered by an eligible entity under this part shall be equivalent to the benefits under a prescription drug card plan under this part.

(B) PROVIDING ENROLLMENT AND COVERAGE INFORMATION TO BENEFICIARIES.—

SEC. 1860C. (a) ACTIVITIES.—The Secretary shall provide for activities under this part in the manner described in (and in coordination with) section 1831(d)(2) to broadly disseminate information to eligible beneficiaries (and prospective eligible beneficiaries) regarding enrollment under this part and the prescription drug card plans offered by eligible entities.

(b) SPECIAL RULE FOR FIRST ENROLLMENT UNDER THE PROGRAM.—To the extent practicable, the activities described in subsection (a) shall ensure that eligible beneficiaries are provided with such information at least 60 days prior to the first enrollment period described in section 1831.

SEC. 1860D. (a) REQUIREMENTS FOR ALL ELIGIBLE ENTITIES.—Each eligible entity shall meet the following requirements:

(1) GUARANTEED ISSUANCE AND NON-DISCRIMINATION.—

(A) GUARANTEED ISSUANCE.—

(i) IN GENERAL.—An eligible beneficiary who is eligible to enroll in a prescription drug card plan offered by an eligible entity under section 1860(b) for prescription drug coverage under this part at a time during which the individual is eligible for enrollment with respect to the coverage shall not be denied enrollment based on any health status—
related factor (described in section 2702(a)(1) of the Public Health Service Act) or any other factor.

(ii) Medicare+Choice limitations permitting exceptions of paragraphs (2) and (3) (other than subparagraph (C)(1), relating to default enrollment) of section 1851(g) (relating to priority and limitation on terminations of initial elections) shall apply to eligible entities under this subsection.

(B) NONDISCRIMINATION.—An eligible entity offering prescription drug coverage under this part shall not provide for a service area in a manner that would discriminate based on health or economic status of potential enrollees.

(2) GRIEVANCE MECHANISM, COVERAGE DETERMINATIONS, AND RECONSIDERATIONS.—

(A) IN GENERAL.—With respect to the benefit under this part, each eligible entity offering a prescription drug card plan shall provide meaningful procedures for hearing and resolving grievances between the organization (including any entity or individual through which the eligible entity provides covered benefits) and enrollees with prescription drug card plans of the eligible entity under this part in accordance with section 1822(f).

(B) APPLICATION OF COVERAGE DETERMINATION AND RECONSIDERATION PROVISIONS.—Each eligible entity shall meet the requirements of paragraphs (1) through (3) of section 1822(g) with respect to covered benefits under the prescription drug card plan it offers under this part in the same manner that such requirements apply to a Medicare+Choice organization with respect to benefits it offers under a Medicare+Choice plan under part C.

(C) REQUEST FOR REVIEW OF TIERED FORMULARY DETERMINATIONS.—In the case of a prescription drug card plan offered by an eligible entity, the plan shall provide for tiered cost-sharing for drugs included within a formulary and provides lower cost-sharing for preferred drugs included within the formulary, an individual who is enrolled in the plan may request coverage of a nonpreferred drug under the terms applicable for preferred drugs if the prescribing physician determines that the preferred drug for treatment of the same condition is not as effective for the individual or has adverse effects for the individual.

(3) APPEALS.—

(A) IN GENERAL.—Subject to subparagraph (B), each eligible entity offering a prescription drug card plan shall meet the requirements of paragraphs (1) and (2) of section 1822(g) with respect to drugs not included on any formulary in the same manner as such requirements apply to a Medicare+Choice organization with respect to benefits it offers under a Medicare+Choice plan under part C.

(B) FORMULARY DETERMINATIONS.—An individual enrolled in a prescription drug card plan offered by an eligible entity may appeal to obtain coverage under this part for a covered outpatient drug that is not on a formulary of the eligible entity if the prescribing physician determines that the formulary drug for treatment of the same condition is not as effective for the individual or has adverse effects for the individual.

(4) CONFIDENTIALITY AND ACCURACY OF ENROLLEE RECORDS.—Each eligible entity offering a prescription drug discount card plan shall meet the requirements of the Health Insurance Portability and Accountability Act of 1996.

(5) DISCLOSURE OF INFORMATION.—

(A) INFORMATION.—Each eligible entity with a contract under this part to provide a prescription drug discount card plan shall disclose, in a clear, accurate, and standardized form to each eligible beneficiary enrolled in a prescription drug discount card program offered by such entity under this part at the time of enrollment and at least annually thereafter, the information described in paragraph (1) relating to such prescription drug coverage.

(B) SPECIFIC INFORMATION.—In addition to the information described in subparagraph (A), each such contract under this part shall disclose the following:

(i) How enrollees will have access to covered outpatient drugs, including access to such drugs through a pharmacy network;

(ii) How any formulary used by the eligible entity functions;

(iii) Information on grievance and appeals procedures;

(iv) Information on enrollment fees and prices charged to the enrollee for covered outpatient drugs;

(v) Any other information that the Secretary determines is necessary to promote informed choices by eligible beneficiaries among eligible entities.

(6) DISCLOSURE UPON REQUEST OF GENERAL COVERAGE, UTILIZATION, AND GRIEVANCE INFORMATION.—Upon request of an eligible beneficiary, the eligible entity shall provide the information described in paragraph (3) to such beneficiary.

(7) RESPONSE TO HOSPICE CARE QUESTIONS.—Each eligible entity offering a prescription drug discount card plan may not have a mechanism for providing specific information to enrollees upon request. The entity shall make available, through an Internet website and, upon request, in writing, information on specific changes in its formulary.

(8) ELIGIBLE ENTITIES OFFERING A DISCOUNT CARD PROGRAM.—If an eligible entity offers a discount card program under this part, in addition to the requirements under subsection (a), the entity shall meet the following requirements:

(i) ACCESS TO COVERED BENEFITS.—

(A) ASSURING PHARMACY ACCESS.—

(i) IN GENERAL.—The eligible entity offering the prescription drug discount card plan shall assure the participation in its network of a sufficient number of pharmacies that dispense (other than by mail order) drugs directly to the drug beneficiary, including such pharmacies as determined by the Secretary and in accordance with the criteria for network pharmacies, which shall include, at a minimum:

(1) PHARMACY AND THERAPEUTIC (P&T) COMMITTEE.—The eligible entity shall establish a pharmacy and therapeutic committee.

(2) Provider education.—The committee shall establish and review the formulary, the committee shall include a majority of its members shall consist of independent practitioners, outcomes research data, and such other information as the committee determines to be appropriate.

(3) INCLUSION OF DRUGS IN ALL THERAPEUTIC CATEGORIES.—The formulary must include drugs within each therapeutic category and class of drugs (although not necessarily for all drugs within such categories and classes).

(iv) PROVIDER EDUCATION.—The committee shall establish and review the formulary, and at least annually thereafter, the information described in subparagraph (A).

(v) GRIEVANCES AND APPEALS RELATING TO APPLICATION OF FORMULARIES.—For provisions relating to grievances and appeals of coverage, see paragraphs (2) and (3) of section 1860D(a).

(d) FRAUD, ABUSE, AND WASTE CONTROL.—The committee shall establish a program to control fraud, abuse, and waste.

(2) COST EFFECTIVENESS AND QUALITY Assurance, MEDICATION THERAPY MANAGEMENT PROGRAM—

(A) GENERAL.—Each eligible entity offering a prescription drug discount card plan may have in place with respect to covered outpatient drugs:

(i) an effective cost and drug utilization management program, including medically appropriate incentives to use generic drugs and therapeutic interchange, when appropriate;

(ii) quality assurance measures and systems to reduce medical errors and adverse drug interactions, including a medication therapy management program described in subparagraph (B).

Nothing in this section shall be construed as impairing an eligible entity from applying cost management tools (including differential payments) under all methods of operation.

(B) MEDICATION THERAPY MANAGEMENT PROGRAM.—

(A) IN GENERAL.—A medication therapy management program described in this paragraph is a program of drug therapy management and medication administration that is designed to ensure, with respect to beneficiaries with chronic diseases (such as diabetes, asthma, hypertension, and congestive heart failure) or multiple prescriptions, that the available outpatient drugs under the prescription drug discount card plan are appropriately used to achieve therapeutic goals.
and reduce the risk of adverse events, including adverse drug interactions.

(ii) ELEMENTS.—Such program may include:

(A) enhanced beneficiary understanding of such appropriate use through beneficiary education, counseling, and other appropriate means;

(B) increased beneficiary adherence with prescription medication regimens through medication refill reminders, special packaging, and other appropriate means; and

(C) detection of patterns of overuse and underuse of prescription drugs.

(iii) PROGRAM OF DEVELOPMENT IN COOPERATION WITH LICENSED PHARMACISTS.—The program shall be developed in cooperation with licensed pharmacists and physicians.

(iv) CONSIDERATIONS IN PHARMACY FEES.—Each eligible entity offering a prescription drug discount card plan that includes a medication therapy management program shall take into account, in establishing fees for pharmacists and others providing services under the medication therapy management program, the resources and time used in implementing the program.

(C) TREATMENT OF ACCREDITATION.—Section 3509(a)(2)(B) (relating to requirements for accreditation) shall apply to prescription drug discount card plans under this part with respect to the following requirements, in the same manner as such Section applies to Medicare+Choice plans under part C with respect to the requirements described in a clause of section 1395(e)(4)(B)."
Treasury may, upon written request from the Secretary, disclose to officers and employees of the Centers for Medicare & Medicaid Services such return information as is necessary to determine the determinations described in clause (1). Return information disclosed under the preceding sentence may be used by officers and employees of the Centers for Medicare & Medicaid Services for the purposes of, and to the extent necessary, in making such determinations.

(1) Definition of modified adjusted gross income. — "Modified adjusted gross income" means adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986).—

(i) In General. — The Secretary shall find the eligible entity is in compliance with the reporting requirements as specified in paragraph (2) to enter into a contract, the Secretary shall consider whether the bid submitted by the entity meets at least the following requirements:

(A) Savings to Medicare beneficiaries. — The program passes on to Medicare beneficiaries who enroll in the program discounts negotiated with manufacturers.

(B) Prohibition on application only to mail order. — The program applies to drugs that are available other than solely through mail order and provides convenient access to retail pharmacies.

(C) Administrative fee bid. —

(1) Submission. — For the bid described in section (b), each entity shall submit to the Secretary information regarding administration of the discount card and catastrophic benefit under this part.

(2) Bid submission requirements. —

(A) Administrative fee bid submission. — In submitting bids, the entities shall include separate data concerning the discount card component, if applicable, and the catastrophic benefit. The entity shall submit the administrative fee bid in a form and manner specified by the Secretary, and shall include a statement of projected enrollment and a separate statement of the projected administrative costs for at least the following functions:

(i) Enrollment, including income eligibility determination.

(ii) Claims processing.

(iii) Audit, including fraud and abuse prevention.

(B) Negotiated administrative fee bid amounts. — The Secretary has the authority to negotiate regarding the bid amounts only if mandated by the administrative cost information provided in the bid as specified in subparagraph (A).

(C) Payment to plans based on administrative fee bid amounts. — The Secretary shall require plans to submit a benchmark amount consisting of the enrollment-weighted average of all bids for each function and each class of entity. The class of entity is either a regional or national entity, or such other classes as the Secretary may determine to be appropriate. The functions provided by such plans are consistent with the requirements of this part.

(D) Definition of modified adjusted gross income. — "Modified adjusted gross income" means adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986).—

(ii) In General. — The Secretary shall find the eligible entity is in compliance with the reporting requirements as specified in paragraph (2) to enter into a contract, the Secretary shall consider whether the bid submitted by the entity meets at least the following requirements:

(A) Savings to Medicare beneficiaries. — The program passes on to Medicare beneficiaries who enroll in the program discounts negotiated with manufacturers.

(B) Prohibition on application only to mail order. — The program applies to drugs that are available other than solely through mail order and provides convenient access to retail pharmacies.

(C) Administrative fee bid. —

(1) Submission. — For the bid described in section (b), each entity shall submit to the Secretary information regarding administration of the discount card and catastrophic benefit under this part.

(2) Bid submission requirements. —

(A) Administrative fee bid submission. — In submitting bids, the entities shall include separate data concerning the discount card component, if applicable, and the catastrophic benefit. The entity shall submit the administrative fee bid in a form and manner specified by the Secretary, and shall include a statement of projected enrollment and a separate statement of the projected administrative costs for at least the following functions:

(i) Enrollment, including income eligibility determination.

(ii) Claims processing.

(iii) Audit, including fraud and abuse prevention.

(B) Negotiated administrative fee bid amounts. — The Secretary has the authority to negotiate regarding the bid amounts only if mandated by the administrative cost information provided in the bid as specified in subparagraph (A).

(C) Payment to plans based on administrative fee bid amounts. — The Secretary shall require plans to submit a benchmark amount consisting of the enrollment-weighted average of all bids for each function and each class of entity. The class of entity is either a regional or national entity, or such other classes as the Secretary may determine to be appropriate. The functions provided by such plans are consistent with the requirements of this part.

For purposes of establishing the best price under section 1927(c)(1)(C).

(4) Requirements for other eligible entities. — If an eligible entity is not offering the discount card plan then the entity must be licensed under State law to provide insurance benefits or shall meet the requirements of the Employee Retirement Income Security Act of 1974 that apply with respect to such plan. Such an entity shall not be required to meet the requirements of subsection (d)(3).

(5) Beneficiary access to savings and rebates. — The Secretary shall require eligible entities offering a discount card program to pass on savings and rebates negotiated with manufacturers to eligible beneficiaries enrolled with the entity.

(6) Negotiated agreements with employers-sponsoring plans. — Except as provided in any other provision of this part, the Secretary may negotiate agreements with employer-sponsored plans under which eligible beneficiaries are provided with prescription drug coverage that is more generous than the benefit that would otherwise have been available under this part if such an agreement results in cost savings to the Federal Government.

"PENSIONS TO ELIGIBLE ENTITIES FOR ADMINISTERING THE CATASTROPHIC BENEFIT "SEC. 1860L. (a) In General. — The Secretary may establish such regulations as are necessary to establish policies and procedures to safely, securely, and efficiently provide for covered outpatient prescription drugs to beneficiaries eligible for the benefit under this part in accordance with subsection (b); and

(ii) no less than 90 percent of the costs of providing covered outpatient prescription drugs to beneficiaries eligible for the benefit under this part in accordance with subsection (b); and

(iii) costs incurred by the entity in administering the catastrophic benefit in accordance with section 1860G.

"PAYMENTS FOR COVERED OUTPATIENT PRESCRIPTION DRUGS. "SEC. 1860F. (a) In General. — Except as provided in section (b) and subject to paragraph (2), the Secretary may negotiate the price for covered outpatient drugs furnished by the eligible entity to an eligible beneficiary enrolled with such entity under this part for use with the catastrophic benefit under section 1860F(b).

(2) Limitations.

(A) Formulary restrictions. — Insofar as an eligible entity with a contract under this part uses a formulary, the Secretary may not make any payment for a covered outpatient drug that is not included in such formulary.

(B) Negotiated prices. — The Secretary may pay no amount for a covered outpatient drug furnished to an eligible beneficiary that exceeds the negotiated price (including applicable discounts) that the beneficiary would have been responsible for under section 1860F(b) or the price negotiated for insurance coverage for prescription drugs under the Medicare+Choice program under part C, a Medicare supplemental policy, employer-sponsored coverage, or other coverage.

(3) Cost-sharing limitations. — An eligible entity may not charge an individual enrolled with such entity who is eligible for the catastrophic benefit any co-payment, tiered copayment, coinsurance, or other cost-sharing that exceeds 10 percent of
the cost of the drug that is dispensed to the individual.

(3) Payment in competitive areas.—In a geographic area in which 2 or more eligible entities offer a plan under this part, the Secretary may negotiate an agreement with the entity to reimburse the entity for costs incurred in providing the benefit under this part at a rate determined under this subsection.

(c) Secondary payer provisions.—The provisions of section 1862(b) shall apply to the benefits provided under this part.

(Determination of income levels.—

Sec. 1860I. (a) Determination of income levels.—

(1) In general.—The Commissioner of Social Security shall determine income levels of eligible beneficiaries for purposes of this part.

(2) Authorizations of appropriations.—There are authorized to be appropriated such sums as may be necessary for the Commissioner of Social Security to make the determinations required by paragraph (1).

(b) Enforcement of income determinations.—In any circumstance in which the Secretary makes a determination with respect to income under this section, the Secretary may require such information as the Secretary determines to be relevant to carry out the provisions of this section.

(2) Periodic audits.—The Inspector General of the Department of Health and Human Services shall conduct periodic audits to ensure that the system established under paragraph (1) is functioning appropriately.

(3) Quality control system.—

(a) In general.—The Secretary shall establish a quality control system to monitor income determinations made by eligible entities under this section and to produce appropriate and comprehensive measures of error rates.

(b) Periodic audits.—The Inspector General of the Department of Health and Human Services shall conduct periodic audits to ensure that the system established under paragraph (1) is functioning appropriately.

(c) Quality control system.—

(1) In general.—The Secretary shall establish a quality control system to monitor income determinations made by eligible entities under this section and to produce appropriate and comprehensive measures of error rates.

(2) Periodic audits.—The Inspector General of the Department of Health and Human Services shall conduct periodic audits to ensure that the system established under paragraph (1) is functioning appropriately.

The Secretary shall require, if the Secretary determines that payments were made under this part to which an eligible beneficiary was not entitled, (A) to refund any excess payments with interest and a penalty.

(c) Quality control system.—

(1) In general.—The Secretary shall establish a quality control system to monitor income determinations made by eligible entities under this section and to produce appropriate and comprehensive measures of error rates.

(2) Periodic audits.—The Inspector General of the Department of Health and Human Services shall conduct periodic audits to ensure that the system established under paragraph (1) is functioning appropriately.

(3) Quality control system.—

(a) In general.—The Secretary shall establish a quality control system to monitor income determinations made by eligible entities under this section and to produce appropriate and comprehensive measures of error rates.

(b) Periodic audits.—The Inspector General of the Department of Health and Human Services shall conduct periodic audits to ensure that the system established under paragraph (1) is functioning appropriately.

The Secretary shall require, if the Secretary determines that payments were made under this part to which an eligible beneficiary was not entitled, (A) to refund any excess payments with interest and a penalty.

(c) Quality control system.—

(1) In general.—The Secretary shall establish a quality control system to monitor income determinations made by eligible entities under this section and to produce appropriate and comprehensive measures of error rates.

(2) Periodic audits.—The Inspector General of the Department of Health and Human Services shall conduct periodic audits to ensure that the system established under paragraph (1) is functioning appropriately.
(A) A PMODULE MODEL REGULATION.—If, within 9 months after the date of enactment of the Medicare Rx Discount and Security Act of 2002, a National Association of Insurance Commissioners (referred to as the ‘NAIC’) changes the 1991 NAIC Model Regulation (described in subsection (p)(2)) to revise the benefit package classified as ‘A’ with a high deductible feature, as described in subsection (p)(1)(A) so that—

(1) the coverage for outpatient prescription drugs available under such benefit package is replaced with coverage for outpatient prescription drugs that complements but does not duplicate the benefits for outpatient prescription drugs that beneficiaries are otherwise entitled to under this title;

(ii) a uniform format is used in the policy with respect to such revised benefits; and

(iii) such revised standards meet any additional requirements imposed by the Medicare Rx Discount and Security Act of 2002.

subsection (p)(2)(A) shall be applied in each State, effective for policies issued to policy holders on and after January 1, 2004, as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the 1991 NAIC Model Regulation as changed under this subparagraph (such changed regulation referred to in this section as the ‘2004 NAIC Model Regulation’).

(B) REGULATIONS BY THE SECRETARY.—If the NAIC does not make the changes in the 1991 NAIC Model Regulation within the 9-month period specified in subparagraph (A), the Secretary shall promulgate, not later than 9 months after the end of such period, a regulation and subsection (g)(2)(A) shall be applied in each State, effective for policies issued to policy holders on and after January 1, 2004, as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the 1991 NAIC Model Regulation as changed by the Secretary under this subparagraph (such changed regulation referred to in this section as the ‘2004 Federal Regulation’).

(C) CONSULTATION WITH WORKING GROUP.—In promulgating standards under this paragraph, the NAIC or Secretary shall consult with a working group of representatives of the working group described in subsection (p)(4)(D).

(D) MODIFICATION OF STANDARDS IF MEDICARE BENEFITS CHANGE.—If benefits under part D of this title are changed and the Secretary determines, in consultation with the NAIC, that changes in the 2004 NAIC Model Regulation or 2004 Federal Regulation are needed to reflect such changes, the preceding provisions of this paragraph shall apply to the modification of standards previously established in the same manner as they applied to the original establishment of such standards.

(2) CONSTRUCTION OF BENEFITS IN OTHER MEDICARE SUPPLEMENTAL POLICIES.—Nothing in the benefit packages classified as ‘A’ under the standards established by subsection (p)(2) (including the benefit package classified as ‘F’ with a high deductible feature, as described in subsection (p)(1)(A)) shall be construed as providing coverage for benefits for which payment may be made under this part.

(3) APPLICATION OF PROVISIONS AND CONFORMING REFERENCES.—

(A) APPLICATION OF PROVISIONS.—The provisions of paragraph (10) of subsection (p) shall appliy under this section, except that—

(i) any reference to the model regulation applicable under that subsection shall be deemed to be a reference to the applicable 2004 NAIC Model Regulation or 2004 Federal Regulation; and

(ii) any reference to a date under such paragraphs of subsection (p) shall be deemed to be a reference to the appropriate date under this subsection.

NOTICES OF HEARINGS/MEETINGS

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that an additional bill has been added to the hearing agenda for the hearing that was previously scheduled before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources on Tuesday, July 30, 2002, beginning at 2:30 p.m. in room 366 of the Dirksen Senate Office Building in Washington, DC. The additional measure to be considered is S. 2652, to authorize the Secretary of Agriculture to sell or exchange certain land in the State of Florida, and for other purposes.

For further information, please contact Kira Finkler of the Committee staff at (202) 224-8164.

SUBCOMMITTEE ON WATER AND POWER

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that two additional bills have been added to the hearing agenda for the hearing that was previously scheduled before the Subcommittee on Water and Power of the Committee on Energy and Natural Resources on Wednesday, July 31, 2002, beginning at 10 a.m. in room 366 of the Dirksen Senate Office Building in Washington, DC.

The additional measures to be considered are S. 2773, to authorize the Secretary of the Interior to cooperate with the High Plains Aquifer States in conducting a hydrogeologic characterization, mapping modeling, and monitoring program for the High Plains Aquifer and for other purposes; and H.R. 2990, to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize additional projects under that Act, and for other purposes.

For further information, please contact Patty Beneko at (202) 224-5461 or Mike Connor at (202) 224-5479, of the Committee staff.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. EDWARDS. 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 Tuesday, July 23, 2002, at 10 a.m. to conduct a hearing on the nominations of Ms. Cynthia A. Glassman, of Virginia, to be a member of the Securities and Exchange Commission; and Mr. Roel C. Campos, of Texas, to be a member of the Securities and Exchange Commission.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. EDWARDS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, July 23, 2002 at 10:30 a.m. to hold a hearing on the Moscow Treaty.

Agenda

Witnesses

Panel I: The Honorable Sam Nunn, Co-Chair and Chief Executive Officer, Nuclear Threat Initiative, Washington, DC; Gen. Eugene E. Habiger, USAF (Ret.), Former Commander, U.S. Strategic Command, United States Air Force, Offutt, Nebraska; The Honorable Ken Adelman, Former Director of the Arms Control and Disarmament Agency, Senior Counselor, Edelman Public Relations Worldwide, Washington, DC; Mr. Christopher E. Paine, Co-Director, Nuclear Warhead Elimination and Nonproliferation Project, Natural Resources Defense Council, Charlottesville, Virginia; Mr. Frank J. Gaffney, Jr., President and CEO, Center for Security Policy, Washington, DC; Mr. Dimitri K. Simes, President, The Nixon Foundation, Washington, DC; Mr. Robert L. Torti, Senior Counselor, International Affairs, U.S. Armament Agency, Senior Counselor, International Affairs, U.S. Armament Agency, San Antonio, Texas; Mr. Edward Toman, Former Director, U.S. Strategic Command, United States Air Force, San Antonio, Texas; Mr. John Deutch, Distinguished Fellow, The Nixon Foundation, Washington, DC; Mr. William J. Perry, Co-Chair and Chief Executive Officer, Nuclear Threat Initiative, Washington, DC; Mr. Arthur Gordon, National Executive Board Member, Federal Law Enforcement Officers Association, Woodbine, MD; Mr. John Cornyn, former U.S. Senator (R-TX); Mr. Richard Burr, U.S. Senator (R-NC)

Panel II: Mr. Bill Nelson, U.S. Senator (D-FL); Mr. Joe Lieberman, U.S. Senator (D-CT); Mr. Bob Menendez, U.S. Senator (D-NJ); Mr. Chuck Hagel, U.S. Senator (R-NE); Mr. James Inhofe, U.S. Senator (R-OK); Mr. Richard Lugar, U.S. Senator (R-IN); Mr. Ben Cardin, U.S. Senator (D-MD); Mr. John Kerry, U.S. Senator (D-MA)

Panel III: Mr. Richard Lugar, U.S. Senator (R-IN); Mr. Ben Cardin, U.S. Senator (D-MD); Mr. Robert Menendez, U.S. Senator (D-NJ); Mr. John Kerry, U.S. Senator (D-MA); Mr. Joseph Lieberman, U.S. Senator (D-CT); Mr. Chuck Hagel, U.S. Senator (R-NE); Mr. Bill Nelson, U.S. Senator (D-FL)

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. EDWARDS. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Tuesday, July 23, 2002 at 10 a.m. to hold a closed hearing on the Joint Inquiry into the events of September 11, 2001.

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

SUBCOMMITTEE ON NATIONAL PARKS

Mr. EDWARDS. Mr. President, I ask unanimous consent that the Subcommittee on National Parks of the Committee on Energy and Natural Resources be authorized to hold a Hearing during the session of the Senate on Tuesday, July 23, 2002 at 2:30 p.m. in SD-366. The purpose of this hearing is to receive testimony on the following bills: S. 2494, to revise the boundary of the Petrified Forest National Park in the State of Arizona; S. 2598, to enhance the criminal penalties for illegal trafficking of archaeological resources, to provide for the protection of paleontological resources on Federal lands; and H.R. 3954, to designate certain waterways in the Caribbean National Forest in the Commonwealth of Puerto Rico as components of the National Wild and Scenic Rivers System, and for other purposes.

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

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. EDWARDS. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs be authorized to meet on Tuesday, July 23, 2002, at 9:30 a.m., for a hearing entitled "The Role of the Financial Institutions In Enron's Collapse."

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

PRIVILEGES OF THE FLOOR

Mr. REID. Mr. President, I ask unanimous consent that a fellow in the office of Senator Jeffords, Drew Kuperis, be granted floor privileges for the remainder of the consideration of the measure dealing with prescription drugs.

Mr. BROWNBACK. Mr. President, I ask unanimous consent that Malinda Baehr, an intern in my office, be granted floor privileges during the remainder of this debate.

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

NATIONAL VETERANS AWARENESS WEEK

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 502, S. Res. 293.

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

THE PRESIDING OFFICER. The clerk will report the resolution by title. The assistant legislative clerk read as follows:

A resolution (S. Res. 293) designating the week of November 10 through November 16, 2002, as “National Veterans Awareness Week” to emphasize the need to develop educational programs regarding the contributions of veterans to the country.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to on a motion to reconsider be laid on the table, and that any statements relating thereto be printed in the RECORD at the appropriate place as if given, without intervening action or debate.

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

The resolution (S. Res. 293) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. Res. 293

Whereas tens of millions of Americans have served in the Armed Forces of the United States during the past century;

Whereas hundreds of thousands of Americans have given their lives while serving in the Armed Forces during the past century;

Whereas the contributions and sacrifices of the men and women who served in the Armed Forces have been vital in maintaining our freedoms and way of life;

Whereas the advent of the all-volunteer Armed Forces has resulted in a sharp decline in the number of individuals and families who have had any personal connection with the Armed Forces;

Whereas this reduction in familiarity with the Armed Forces has resulted in a marked decrease in the awareness by young people of the nature and importance of the accomplishments of those who have served in the Armed Forces, despite the current educational efforts of the Department of Veterans Affairs and the veterans service organizations;

Whereas our system of civilian control of the Armed Forces makes it essential that...
the future leaders of the Nation understand the history of military action and the contributions and sacrifices of those who conduct such actions; and
Whereas on November 30, 2001, President George W. Bush issued a proclamation urging all Americans to observe November 11 through November 17, 2001, as National Veterans Awareness Week, therefore, be it
Resolved, That the Senate—
(1) designates the week of November 10 through November 16, 2002, as “National Veterans Awareness Week” for the purpose of emphasizing educational efforts directed at elementary and secondary school students concerning the contributions and sacrifices of veterans; and
(2) requests that the President issue a proclamation calling on the people of the United States to observe National Veterans Awareness Week with appropriate educational activities.

NATIONAL AIRBORNE DAY

Mr. REID. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 242 and the Senate proceed to its immediate consideration.

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

The clerk will read the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 242) designating August 16, 2002, as “National Airborne Day”.

Mr. REID. Mr. President, I ask unanimous consent that the resolution and the preamble be agreed to, the motion to reconsider be laid on the table, and that statements regarding this matter be printed in the RECORD.

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

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

Whereas the airborne forces of the United States Armed Forces have a long and honorable history as units of adventuresome, hardy, and fierce warriors who, for the national security of the United States and the defense of freedom and peace, project effective ground combat power of the United States by Air Force air transport to the far reaches of the battle area and, indeed, to the far corners of the world;
Whereas August 16, 2002, marks the anniversary of the first official validation of the innovative concept of inserting United States ground combat forces behind battle lines by means of parachute;
Whereas the United States experiment of airborne infantry attack was begun on June 25, 1940, when the Army Parachute Test Platoon was first authorized by the United States Department of War, and was launched when 48 volunteers began training in July 1940;
Whereas the Parachute Test Platoon performed the first official Army parachute jump on August 16, 1940;
Whereas the leaders of the Parachute Test Platoon in the days immediately preceding the entry of the United States into World War II led to the formation of a formidable force of airborne units that, since then, have served with distinction and repeated success in armed hostilities;
Whereas those units are the former 11th, 13th, and 17th Airborne Divisions, the venerable 82nd Airborne Division, the versatile 101st Airborne Division (Air Assault), and the airborne regiments and battalions (some as components of those divisions, some as separate units) that achieved distinction as the elite 7th Infantry (Ranger) regiment, 506th, 507th, 517th, 541st, and 542nd airborne infantry regiments, the 88th Glider Infantry Battalion, and the airborne infantry battalions;
Whereas the achievements of the airborne forces during World War II provided a basis for evolution and diversified force of parachute and air assault units that, over the years, have fought in Korea, Vietnam, Grenada, Panama, the Persian Gulf region, and Somalia, and have engaged in peacekeeping operations in Lebanon, the Sinai Peninsula, the Dominican Republic, Haiti, Bosnia, and Kosovo;
Whereas the modern-day airborne force that has evolved from those World War II beginnings is an agile, powerful force that, in large part, is composed of the 82nd Airborne Division, the Division (Air Assault), and the 75th Infantry (Ranger) regiment which, together with other units, comprise the quick reaction force of the Army’s XVIIIth Airborne Corps when not operating separately under the command of a Commander in Chief of one of the regional unified combatant commands;
Whereas that modern-day airborne force also includes other elite forces composed entirely of airborne trained and qualified special operations warriors, including Army Special Forces, Marine Corps Reconnaissance, Navy SEALs, Air Force Combat Control Teams, Air Sea Rescue, and Airborne Engineer Aviation Battalions, all or most of which comprise the forces of the United States Special Operations Command;
Whereas, in the aftermath of the terrorist attacks on the United States on September 11, 2001, the 75th Infantry (Ranger) regiment, Special Forces units, and units of the 101st Airborne Division (Air Assault), together with other United States Armed Forces, have been prosecuting the war against terrorism, carrying out combat operations in Afghanistan, training the Afghan National Army, training the Philippine security forces, and other operations elsewhere;
Whereas, of the members and former members of the Nation’s combat airborne forces, all have had the distinction bestowed upon them the right to wear the airborne’s “Silver Wings of Courage”, thousands have achieved the distinction of making combat jumps, 69 have earned the Distinguished-Honor, and hundreds have earned the Distinguished-Service Cross, Silver Star, or other decorations and awards for displays of such traits as heroism, gallantry, intrepidity, and utter disregard of near certain destruction;
Whereas, the members and former members of the Nation’s combat airborne forces are members of a proud and honorable fraternity of the profession of arms that is made exclusive by those distinctions which, together with their special skills and achievements, distinguish them as intrepid combat parachutists, special operations forces, and (in former days) glider troopers; and
Whereas the history and achievements of the members and former members of the airborne forces warrant special expressions of the gratitude of the American people as the airborne community celebrates August 16, 2002, as National Airborne Day;
Now, therefore, be it
Resolved, That the Senate requests and urges the President to issue a proclamation—
(1) designating August 16, 2002, as “National Airborne Day”;
(2) calling on Federal, State, and local administrators and the people of the United States to observe “National Airborne Day” with appropriate programs, ceremonies, and activities.

HONORING THE BUFFALO SOLDIERS AND COLONEL CHARLES YOUNG

Mr. REID. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 97 and the Senate proceed to its immediate consideration.

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

The clerk will read the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 97) honoring the Buffalo Soldiers and Colonel Charles Young.

Whereas there be no objection, the Senate proceeded to consider the resolution.

Mr. REID. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to, the motion to reconsider be laid upon the table, and any statements regarding this matter be printed in the RECORD at the appropriate place.

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

The resolution (S. Res. 97) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

Whereas the 9th and 10th Horse Cavalry Units (in this resolution referred to as the “Buffalo Soldiers”) have made key contributions to the history of the United States by fighting to defend and protect our Nation; whereas the Buffalo Soldiers maintained the trails and protected the settler communities during the period of westward expansion; whereas the Buffalo Soldiers were among Theodore Roosevelt’s Rough Riders in Cuba during the Spanish-American War, and crossed into Mexico in 1916 under General John J. Pershing; whereas African-American men were drafted into the Buffalo Soldiers to serve on harsh terrain and protect the Mexican Border; whereas the Buffalo Soldiers went to North Africa, Iran, and Italy during World War II and served in many positions, including as paratroopers and combat engineers; whereas in the face of fear of a Japanese invasion, the Buffalo Soldiers were placed along the rugged border territory of the Baja Peninsula and protected dams, power stations, and rail lines that were crucial to San Diego’s war industries; whereas among these American heroes, Colonel Charles Young, of Ripley, Ohio, stood out as a shining example of the dedication, service, and commitment of the Buffalo Soldiers; whereas Colonel Charles Young, the third African-American to graduate from the United States Military Academy at West Point, served his distinguished career as a
member of the Buffalo Soldiers throughout the world, traveling to the Philippines during the Spanish-American War, Haiti as the first African-American military attache for the United States, Liberia and Mexico as a military attache, Monrovia as advisor to the Liberian government, and several other stations within the borders of the United States, holding commands during most of these tours;

Whereas Colonel Charles Young took a vested interest in the development of African-American youth by serving as an educator, teaching in local high schools and at Wilberforce University in Ohio, and developing a military training ground for African-American enlisted men to help them achieve officer status for World War I at Fort Huachucha;

Whereas Colonel Charles Young achieved so much in the face of race-based adversity and while he fought a fatal disease, Bright’s Disease, which eventually took his life; and

Whereas there are currently 21 existing chapters of the 9th and 10th Cavalry Association, with 20 domestic chapters and 1 in Germany; Now, therefore, be it

Resolved, That the Senate—

(1) honors the bravery and dedication of the Buffalo Soldiers throughout United States and world history;

(2) honors 1 of the Buffalo Soldiers’ most distinguished heroes, Colonel Charles Young, for his lifetime achievements; and

(3) recognizes the continuing legacy of the Buffalo Soldiers throughout the world.

ORDERS FOR WEDNESDAY, JULY 24, 2002

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 a.m., Wednesday, July 24; that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate be in a period of morning business until 11 a.m., with Senators permitted to speak for up to 10 minutes each, with the first half under the control of the Democratic leader or his designee and the second half of the time under the control of the Republican leader or his designee; that at 11 a.m. the Senate resume consideration of S. 812 under the previous order; and, further, at 3:40 p.m. there will be a moment of silence in observance of the deaths of Officer Chestnut and Detective Gibson which occurred on July 24, 1998, 4 years ago.

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

PROGRAM

Mr. REID. Mr. President, the next rollcall vote will occur at approximately 1:30 p.m. tomorrow on adoption of the supplemental appropriations conference report and in relation to the Hagel second-degree amendment.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order. There being no objection, the Senate, at 7:10 p.m., adjourned until Wednesday, July 24, 2002, at 10 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate July 23, 2002:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

RICHARD H. CARONA, OF ARIZONA, TO BE MEDICAL DIRECTOR IN THE REGULAR CORPS OF THE PUBLIC HEALTH SERVICE, SUBJECT TO QUALIFICATIONS THEREFOR AS PROVIDED BY LAW AND REGULATIONS, AND TO BE SURGEON GENERAL OF THE PUBLIC HEALTH SERVICE FOR A TERM OF FOUR YEARS.

The above nomination was approved subject to the nominee’s commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.
Daily Digest

HIGHLIGHTS
The House failed to pass H.J. Res. 101, disapproving the extension of the waiver authority contained in section 402(c) of the Trade Act of 1974 with respect to Vietnam thereby maintaining normal trade relations with Vietnam.

Senate

Chamber Action
Routine Proceedings, pages S7179–S7242
Measures Introduced: Five bills and one resolution were introduced, as follows: S. 2772–2776, and S. Con. Res. 130.

Measures Reported:
S. 2489, to amend the Public Health Service Act to establish a program to assist family caregivers in accessing affordable and high-quality respite care, with an amendment in the nature of a substitute.

Measures Passed:

National Veterans Awareness Week: Senate agreed to S. Res. 293, designating the week of November 10 through November 16, 2002, as “National Veterans Awareness Week” to emphasize the need to develop educational programs regarding the contributions of veterans to the country.

National Airborne Day: Committee on the Judiciary was discharged from further consideration of S. Res. 242, designating August 16, 2002, as “National Airborne Day”, and the resolution was then agreed to.

Honoring Buffalo Soldiers: Committee on the Judiciary was discharged from further consideration of S. Res. 97, honoring the Buffalo Soldiers and Colonel Charles Young, and the resolution was then agreed to.

Greater Access to Affordable Pharmaceuticals Act: Senate continued consideration of S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals, taking action on the following amendments proposed thereto:

Withdrawn:
Graham Amendment No. 4309, to amend title XVIII of the Social Security Act to provide coverage of outpatient prescription drugs under the Medicare program.

Hatch (for Grassley) Amendment No. 4310, to amend title XVIII of the Social Security Act to provide for a Medicare voluntary prescription drug delivery program under the Medicare program, and to modernize the Medicare program.

Pending:
Reid (for Dorgan) Amendment No. 4299, to permit commercial importation of prescription drugs from Canada.

Hagel Amendment No. 4315 (to Amendment No. 4299, as amended), to provide Medicare beneficiaries with a drug discount card that ensures access to affordable outpatient prescription drugs.

During consideration of this measure today, Senate also took the following actions:
By 52 yeas to 47 nays (Vote No. 186), three-fifths of those Senators duly chosen and sworn, not having voted in the affirmative, Senate failed to agree to the motion to waive the Congressional Budget Act with respect to Graham Amendment No. 4309 (listed above). Subsequently, the point of order that the amendment violates section 302(f) of the Congressional Budget Act of 1974 was sustained, and the
amendment was withdrawn, pursuant to the order of July 18, 2002.

By 48 yeas to 51 nays (Vote No. 187), three-fifths of those Senators duly chosen and sworn, not having voted in the affirmative, Senate failed to agree to the motion to waive the Congressional Budget Act with respect to Hatch (for Grassley) Amendment No. 4310 (listed above). Subsequently, the point of order that the amendment violates section 302(f) of the Congressional Budget Act of 1974 was sustained, and the amendment was withdrawn, pursuant to the order of July 18, 2002.

A unanimous-consent-time agreement was reached providing for further consideration of Hagel Amendment No. 4315, listed above, on Wednesday, July 24, 2002, with a vote to occur in relation to the amendment to occur following the vote on adoption of the conference report on H.R. 4775, Supplemental Appropriations (listed below).

A unanimous-consent agreement was reached providing for further consideration of the bill at 11 a.m., on Wednesday, July 24, 2002.

Supplemental Appropriations Conference Report—Agreement: A unanimous-consent-time agreement was reached providing for consideration of the conference report on H.R. 4775, Supplemental Appropriations, at 1 p.m., on Wednesday, July 23, 2002, with a vote on adoption of the conference report to occur at 1:30 p.m.

Nominations Confirmed: Senate confirmed the following nomination:

Richard H. Carmona, of Arizona, to be Medical Director in the Regular Corps of the Public Health Service, subject to qualifications therefor as provided by law and regulations, and to be Surgeon General of the Public Health Service for a term of four years.

Prior to this action, by a unanimous vote of 98 years (Vote No. Ex. 185), three-fifths of those Senators duly chosen and sworn, having voted in the affirmative, Senate agreed to the motion to close debate on the nomination of Richard H. Carmona, of Arizona, to be Medical Director in the Regular Corps of the Public Health Service, subject to qualifications therefor as provided by law and regulations, and to be Surgeon General of the Public Health Service.

Committee Meetings

(Committees not listed did not meet)

APPROPRIATIONS—AGRICULTURE

Committee on Appropriations: Subcommittee on Agriculture, Rural Development, and Related Agencies approved for full committee consideration an original bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2003.

APPROPRIATIONS—DISTRICT OF COLUMBIA

Committee on Appropriations: Subcommittee on District of Columbia approved for full committee consideration an original bill making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against revenues of said District for the fiscal year ending September 30, 2003.

APPROPRIATIONS—VA/HUD

Committee on Appropriations: Subcommittee on VA, HUD, and Independent Agencies approved for full committee consideration an original bill making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2003.

NOMINATIONS

Committee on Banking, Housing, and Urban Affairs: Committee concluded hearings on the nominations of Cynthia A. Glassman, of Virginia, and Roel C. Campos, of Texas, each to be a Member of the Securities and Exchange Commission, after the nominees testified and answered questions in their own behalf.
BUSINESS MEETING
Committee on Commerce, Science, and Transportation: Committee ordered favorably the nominations of Steven Robert Blust, of Florida, to be a Federal Maritime Commissioner, Kathie L. Olsen, of Oregon, and Richard M. Russell, of Virginia, each to be an Associate Director of the Office of Science and Technology Policy, Frederick D. Gregory, of Maryland, to be Deputy Administrator of the National Aeronautics and Space Administration, Jonathan Steven Adelstein, of South Dakota, to be a Member of the Federal Communications Commission, and one United States Coast Guard promotion list.

ARCHAEOLOGICAL RESOURCES
Committee on Energy and Natural Resources: Subcommittee on National Parks concluded hearings on S. 2598, to enhance the criminal penalties for illegal trafficking of archaeological resources; S. 2727, to provide for the protection of paleontological resources on Federal lands; and H.R. 3954, to designate certain waterways in the Caribbean National Forest in the Commonwealth of Puerto Rico as components of the National Wild and Scenic Rivers System; after receiving testimony from Christopher Kearney, Deputy Assistant Secretary for Policy, Management and Budget, Department of the Interior; Elizabeth Estill, Deputy Chief for Programs and Legislation, U.S. Forest Service, Department of Agriculture; and Richard K. Stucky, Denver Museum of Nature and Science, Denver, Colorado.

STRATEGIC OFFENSIVE REDUCTIONS TREATY

ENRON COLLAPSE
Committee on Governmental Affairs: Permanent Subcommittee on Investigations resumed hearings to examine the role of financial institutions in the collapse of Enron Corporation, focusing on their contribution to Enron’s use of complex transactions and questionable accounting practices in order to inaccurately improve the appearance of the company’s financial status, receiving testimony from Robert L. Roach, Chief Investigator, Permanent Subcommittee on Investigations, and Gary M. Brown, Special Counsel, both of the Senate Committee on Governmental Affairs; Lynn E. Turner, Colorado State University Center for Quality Financial Reporting, Broomfield, former Chief Accountant, Securities and Exchange Commission; and Pamela M. Stumpf and John C. Diaz, both of Moody’s Investors Service, Ronald M. Barone and Nik Khakee, both of Standard’s and Poor, Donald H. McCree, Robert W. Traband, and Jeffrey W. Dellapina, all of JP Morgan Chase and Company, David C. Bushnell, James F. Reilly, Jr., Richard Caplan, and Maureen Hendricks, all of Salomon Smith Barney/Citigroup, all of New York, New York.

Hearings will resume on Tuesday, July 30.

NOMINATIONS
Committee on the Judiciary: Committee concluded hearings on the nominations of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit, Timothy J. Corrigan, to be United States District Judge for the Middle District of Florida, and Jose E. Martinez, to be United States District Judge for the Southern District of Florida, after the nominees testified and answered questions in their own behalf. Ms. Owen was introduced by Senators Gramm and Hutchison, and Representative Granger, and Mr. Corrigan and Mr. Martinez were introduced by Senator Bill Nelson.

LAW ENFORCEMENT OFFICERS SAFETY
Committee on the Judiciary: Committee concluded hearings on S. 2480, to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from state laws prohibiting the carrying of concealed handguns, after receiving testimony from Senator Baucus; Representative Cunningham; Steve Young, Marion, Ohio, on behalf of the Fraternal Order of Police; Arthur Gordon, Woodbine, Maryland, on behalf of the Federal Law Enforcement Officers Association; David Johnson, Cedar Rapids Police Department, Cedar Rapids, Iowa; and Lonnie J. Westphal, Colorado State Patrol, Denver, on behalf of the International Association of Chiefs of Police.
House of Representatives

Chamber Action

Measures Introduced: 15 public bills, H.R. 5179–5193; and 1 resolution, H. Con. Res. 445, were introduced.

Reports Filed: Reports were filed today as follows:

H.R. 4547, to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense and to prescribe military personnel strengths for fiscal year 2003, amended (H. Rept. 107–603);

H.R. 4965, to prohibit the procedure commonly known as partial-birth abortion (H. Rept. 107–604);

H.R. 3609, to amend title 49, United States Code, to enhance the security and safety of pipelines, amended (H. Rept. 107–605, Pt. 1);

H.R. 3609, to amend title 49, United States Code, to enhance the security and safety of pipelines, amended (H. Rept. 107–605, Pt. 2);

H. Res. 437, requesting that the President focus appropriate attention on neighborhood crime prevention and community policing, and coordinate certain Federal efforts to participate in “National Night Out”, including by supporting local efforts and neighborhood watches and by supporting local officials to provide homeland security (H. Rept. 107–606);

H. Res. 497, providing for the consideration of H.R. 4628, to authorize appropriations for fiscal year 2003 for intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System (H. Rept. 107–607);

H. Res. 498, providing for consideration of H.R. 4965, to prohibit the procedure commonly known as partial-birth abortion (H. Rept. 107–608); and


Speaker Pro Tempore: Read a letter from the Speaker wherein he appointed Representative Schrock to act as Speaker pro tempore for today.

Guest Chaplain: The prayer was offered by the guest Chaplain, Captain Jeff Struecker, Chaplain, United States Army, 1st Battalion, 319th Airborne Field Artillery Regiment of Ft. Bragg, North Carolina.

Journal: The House agreed to the Speaker’s approval of the Journal of Monday, July 22 by a yea-and-nay vote of 339 yeas to 45 nays with 1 voting “present”, Roll No. 326.
title 31, Code of Federal Regulations (the Cuban Assets Control regulations) with respect to travel to Cuba (agreed to by a recorded vote of 262 ayes to 167 noes with 1 voting "present", Roll No. 351); (See next issue.)

Flake amendment No. 20 printed in the Congressional Record of July 18 that prohibits the use of any funding to enforce any restriction on remittances to nationals of Cuba (agreed to by a recorded vote of 251 ayes to 177 noes, Roll No. 332); and

Moran of Kansas amendment No. 9 printed in the Congressional Record of July 15 that prohibits the use of any funding to implement sanctions imposed by the United States on private commercial sales of agricultural commodities, medicine, or medical supplies to Cuba. (See next issue.)

Rejected:

Goss amendment printed in H. Rept. 107-585 that sought to require the President to certify to Congress that the Government of Cuba does not possess biological weapons, is not developing or providing terrorist states or terrorist organizations the technology to develop biological weapons, and is not providing support or sanctuary to international terrorists before any limitation on funding is applied to the enforcement and administration of travel restrictions to Cuba (rejected by a recorded vote of 182 ayes to 247 noes, Roll No. 330); and (See next issue.)

Rangel amendment No. 5 printed in the Congressional Record of July 15 that sought to prohibit the use of any funding to implement, administer, or enforce the economic embargo of Cuba (rejected by a recorded vote of 204 ayes to 226 noes, Roll No. 333). (See next issue.)

Points of Order sustained Against:

Language on page 74, lines 15 through 25 dealing with affidavits signed by employees to certify their recorded vote of 204 ayes to 167 noes, Roll No. 351); and (See next issue.)

Section 646 that deals with corporate expatriates. (See next issue.)

The House agreed to H. Res. 488, the rule that is providing for consideration of the bill on July 18. (See next issue.)

Order of Business—Further Consideration of Treasury and Postal Operations Appropriations: Agreed that during further consideration of H.R. 5120 in the Committee of the Whole pursuant to H. Res. 488, no further amendment to the bill may be offered except: Pro forma amendments offered by the Chairman or ranking minority member of the Committee on Appropriations or their designees for the purpose of debate; amendments numbered 2, 8, 12, and 18 in the Congressional Record, which shall be debatable for 5 minutes each; an amendment by Representative Barr of Georgia regarding a national media campaign and an amendment by Representative George Miller of California regarding a Federal Acquisition Regulation, both of which shall be debatable for 20 minutes each; amendment numbered 16 in the Congressional Record, an amendment by Representative Hoyer regarding High Sea Repairs, and the amendment by Representative Hefley, placed at the desk, all of which shall be debatable for 10 minutes each; amendment numbered 21 in the Congressional Record, which shall be debatable for 40 minutes; and an amendment by Representative Sanders regarding taxation of pension plans, which shall be debatable for 30 minutes. Each such amendment may be offered only by the member designated in this request, or a designee, or the Member who caused it to be printed, or a designee, shall be considered as read, shall be debatable for the time specified, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole. (See next issue.)

Suspensions: The House agreed to suspend the rules and pass the following measures:

National Aviation Capacity Expansion: H.R. 3479, amended, to expand aviation capacity in the Chicago Area (agreed to by a yea-and-nay vote of 343 yeas to 87 nays, Roll No. 327). Agreed to amend the title so as to read: "To expand aviation capacity."; and Pages H5114–91 (continued next issue)

Pipeline Infrastructure Protection: H.R. 3609, amended, to enhance the security and safety of pipelines (agreed to by a yea-and-nay vote of 423 yeas to 4 nays, Roll No. 334). (See next issue.)

Suspension Proceedings Postponed: The House completed debate on motions to suspend the rules and pass the following measures. Further proceedings on the motions were postponed:

Improving Access to Long-Term Care: H.R. 4946, amended, to amend the Internal Revenue Code to provide health care incentives related to long-term care; and Pages H5107–14


Privileged Resolution: Representative Sanchez notified the House of her intention to offer a resolution as a question of the privileges of the House and that the text reads as follows: In the matter of James A. Traficant, Jr.; Resolved, that, pursuant to Article 1,
Section 5, Clause 2 of the United States Constitution, Representative James A. Traficant, Jr., be, and he hereby is, expelled from the House of Representatives.

(See next issue.)

Discharge Petitions: Pursuant to Clause 2 of Rule XV, Representative Carson moved to discharge the Committee on Rules from the consideration of H. Res. 479, providing for consideration of H.R. 3818, to protect investors by enhancing regulation of public auditors, improving corporate governance, overhauling corporate disclosure made pursuant to the securities laws (Discharge Petition No. 9) and Representative Phelps moved to discharge the Committee on Rules from the consideration of H. Res. 480, providing for consideration of H.R. 4098, to provide for criminal prosecution of persons who alter or destroy evidence in certain Federal investigations or defraud investors of publicly traded securities, to disallow debts incurred in violation of securities fraud laws from being discharged in bankruptcy, to protect whistleblowers against retaliation by their employers (Discharge Petition No. 10).

(See next issue.)

Late Report Select Committee on Homeland Security: Agreed that the Select Committee on Homeland Security have until 3 a.m. on Wednesday, July 24 to file a report on H.R. 5005, to establish the Department of Homeland Security. (See next issue.)

Amendments: Amendments ordered printed pursuant to the rule appear on pages H5195–H5200.

Quorum Calls—Votes: Five yea-and-nay votes and four recorded votes developed during the proceedings of the House today and appears on pages H5098 (continued next issue). There were no quorum calls.

Adjournment: The House met at 9 a.m. and adjourned at 12:13 a.m. on Wednesday, July 24.

Committee Meetings

COMMERCIAL SHIPBUILDING

Committee on Armed Services: Special Oversight Panel on the Merchant Marine held a hearing on commercial shipbuilding in the United States and the Maritime Security Program. Testimony was heard from public witnesses.

WHAT'S NEXT FOR SCHOOL CHOICE?

Committee on Education and the Workforce: Held a hearing on “What’s Next for School Choice?” Testimony was heard from Representative Armey; and public witnesses.

COMPULSORY UNION DUES AND CORPORATE CAMPAIGNS

Committee on Education and the Workforce: Subcommittee on Workforce Protections held a hearing on “Compulsory Union Dues and Corporate Campaigns.” Testimony was heard from public witnesses.

INSURANCE COVERAGE OF MENTAL HEALTH BENEFITS

Committee on Energy and Commerce: Subcommittee on Health held a hearing titled “Insurance Coverage of Mental Health Benefits.” Testimony was heard from public witnesses.

OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT’S RISK-BASED CAPITAL STRESS TEST FOR FANNIE MAE AND FREDDIE MAC

Committee on Financial Services: Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises held a hearing regarding the Office of Federal Housing Enterprise Oversight’s (OFHEO) risk-based capital stress test for Fannie Mae and Freddie Mac. Testimony was heard from Armando Falcon, Jr., Director, Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development.

HOMELAND SECURITY; PROTECTING STRATEGIC PORTS

Committee on Government Reform: Subcommittee on National Security, Veterans’ Affairs, and International Relations held a hearing on Homeland Security: Protecting Strategic Ports. Testimony was heard from Maj. Gen. Kenneth L. Privratsky, USA, Commander, Military Traffic Management Command, Department of Defense; the following officials of the Department of Transportation: William G. Schubert, Maritime Administrator; and Rear Adm. Paul J. Pluta, USCG, Assistant Commandant, Marine Safety and Environmental Protection, U.S. Coast Guard; Raymond Decker, Director, Defense Capabilities and Management Team, GAO; and a public witness.

MISCELLANEOUS MEASURES

Committee on International Relations: Subcommittee on Africa approved for full Committee action the following resolutions: H. Con. Res. 287, expressing the sense of Congress relating to efforts of the Peace Parks Foundation in the Republic of South Africa to facilitate the establishment and development of transfrontier conservation efforts in southern Africa; and H. Con. Res. 421, recognizing the importance of inheritance rights of women in Africa.
PACIFIC ISLAND NATIONS

Committee on International Relations: Subcommittee on East Asia and the Pacific held a hearing on Pacific Island Nations: Current Issues and U.S. Interests. Testimony was heard from the following officials of the Department of State: Matthew Daley, Deputy Assistant Secretary, Bureau of East Asian and Pacific Affairs; and Mary Beth West, Deputy Assistant Secretary, Bureau of Oceans and International Environmental Scientific Affairs; and a public witness.

MISCELLANEOUS MEASURES


NINTH CIRCUIT COURT OF APPEALS REORGANIZATION ACT

Committee on the Judiciary: Subcommittee on Courts, the Internet and Intellectual Property held a hearing on H.R. 1203, Ninth Circuit Court of Appeals Reorganization Act of 2001. Testimony was heard from the following Judges of the U.S. Court of Appeals for the Ninth Circuit: Mary M. Schroeder, Chief; Diarmuid F. O'Scanlon and Sidney R. Thomas; and Alan G. Lance, Attorney General, State of Idaho.

OVERSIGHT

Committee on Resources: Subcommittee on Energy and Mineral Resources held an oversight hearing on Availability of Bonds to Meet Federal Requirement for Mining, Oil and Gas Projects. Testimony was heard from Tom Fulton, Deputy Assistant Secretary, Land and Minerals Management, Department of the Interior; and public witnesses.

INTELLIGENCE AUTHORIZATION ACT

Committee on Rules: Granted, by voice vote, a modified open rule providing 1 hour of debate on H.R. 4628, Intelligence Authorization Act for Fiscal Year 2003. The rule waives all points of order against consideration of the bill. The rule provides that it shall be in order to consider as an original bill for the purpose of amendment the amendment in the nature of a substitute recommended by the Permanent Select Committee on Intelligence now printed in the bill. The rule waives all points of order against the committee amendment in the nature of a substitute. The rule provides that no amendment shall be in order except pro-forma amendments for the purpose of debate and those printed in the Congressional Record, which shall only be offered by the Member who caused it to be printed or his designee and shall be considered as read. Finally, the rule provides one motion to recommit with or without instructions. Testimony was heard from Chairman Goss and Representatives Pelosi, Roemer and Hastings of Florida.

PARTIAL-BIRTH ABORTION BAN ACT

Committee on Rules: Granted, by voice vote, a closed rule providing 2 hours of debate in the House on H.R. 4965, Partial-Birth Abortion Ban Act of 2002. The rule waives all points of order against consideration of the bill. Finally, the rule provides one motion to recommit with or without instructions. Testimony was heard from Chairman Sensenbrenner and Representatives Nadler, Scott, Jackson-Lee of Texas, Hoyer and Edwards.

INCREASED STEEL TARIFFS—AMERICAN MANUFACTURERS—UNINTENDED CONSEQUENCES

Committee on Small Business: Held a hearing on “Unintended Consequences of Increased Steel Tariffs on American Manufacturers.” Testimony was heard from public witnesses.

AVIATION SECURITY

Committee on Transportation and Infrastructure: Subcommittee on Aviation held a hearing on Aviation Security. Testimony was heard from the following officials of the Department of Transportation: Norman Y. Mineta, Secretary; Michael Jackson, Deputy Secretary; and Adm. James M. Loy, USCG, Acting Assistant Secretary, Security; and Alexis Stefani, Assistant Inspector General, Auditing, GAO.

The Subcommittee also met in executive session to continue hearings on Aviation Security. Testimony was heard from departmental witnesses.

MEDICARE’S GEOGRAPHIC COST ADJUSTORS

Committee on Ways and Means: Subcommittee on Health held a hearing on Medicare’s Geographic Cost Adjustors. Testimony was heard from Representatives Nussle, Roukema, Kanjorski, Visclosky, Shays, Peterson of Minnesota, Hinchey, Smith of Michigan, Watt of North Carolina, Kelly, Aderholt, Moran of Kansas, Peterson of Pennsylvania, Sandlin and Sherwood; William J. Scanlon, Director, Health Financing and System Issues, GAO; Glenn D. Hackbart, Chairman, Medicare Payment Advisory Commission; and a public witness.
Joint Meetings

9/11 INTELLIGENCE INVESTIGATION

Joint Hearing: Senate Select Committee on Intelligence held joint closed hearings with the House Permanent Select Committee on Intelligence to examine events surrounding September 11, 2001.

Select Committee will meet again Thursday, July 25.

COMMITTEE MEETINGS FOR WEDNESDAY, JULY 24, 2002

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Appropriations: business meeting to mark up an original bill making appropriations for energy and water development for the fiscal year ending September 30, 2003, 10 a.m., S–128, Capitol.

Subcommittee on Transportation, business meeting to mark up proposed legislation making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 2003, 4 p.m., SD–116.

Committee on Banking, Housing, and Urban Affairs: Subcommittee on Housing and Transportation, to hold oversight hearings to examine management challenges of the Department of Housing and Urban Development, 2:30 p.m., SD–538.

Committee on Commerce, Science, and Transportation: Subcommittee on Science, Technology, and Space, to hold hearings to examine women in science and technology, 2:30 p.m., SR–253.

Committee on Energy and Natural Resources: to hold hearings to examine issues surrounding the Federal Energy Regulatory Commission, 3 p.m., SD–366.

Committee on Environment and Public Works: with the Committee on Foreign Relations, to hold joint hearings to examine implementation of environmental treaties, 10:30 a.m., SD–406.

Committee on Foreign Relations: with the Committee on Environment and Public Works, to hold joint hearings to examine implementation of environmental treaties, 10:30 a.m., SD–406.

Committee on Foreign Relations: with the Committee on Environment and Public Works, to hold joint hearings to examine implementation of environmental treaties, 10:30 a.m., SD–406.

Committee on Governmental Affairs: business meeting to mark up pending legislation, 9 a.m., SR–428A.

Committee on Veterans’ Affairs: to hold hearings to examine mental health care issues, 9:30 a.m., SR–418.

House

Committee on Education and the Workforce, hearing on “Implementation of the No Child Left Behind Act,” 10:30 a.m., 2175 Rayburn.

Committee on Energy and Air Quality, Subcommittee on Energy and Air Quality, to mark up H.R. 3880, to provide a temporary waiver from certain transportation conformity requirements and metropolitan transportation planning requirements under the Clean Air Act and under other laws for certain areas in New York where the planning offices and resources have been destroyed by acts of terrorism, 4 p.m., 2125 Rayburn.

Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit, hearing on H.R. 3424, Community Choice in Real Estate Act, 2 p.m., 2128 Rayburn.

Subcommittee on Technology and Procurement Policy, hearing entitled “An Oversight Hearing to Review the Findings of the Commercial Activities Panel,” 1 p.m., 2154 Rayburn.

Committee on International Relations, hearing on Economic Development and Integration as a Catalyst for Peace: A “Marshall Plan” for the Middle East, 10:15 a.m., 2172 Rayburn.

Subcommittee on Europe, to mark up the following measures: H. Con. Res. 164, expressing the sense of Congress that security, reconciliation, and prosperity for all Cypriots can be best achieved within the context of membership in the European Union which will provide significant rights and obligations for all Cypriots; H. Con. Res. 437, recognizing the Republic of Turkey for its cooperation in the campaign against global terrorism, for its commitment of forces and assistance to Operation Enduring Freedom and subsequent missions in Afghanistan, and for initiating important economic reforms to build a stable and prosperous economy in Turkey; and H. Con. Res. 327, commending the republic of Turkey and the State of Israel for the continued strengthening of their political, economic, cultural, and strategic partnership and for their actions in support of the war on terrorism, 12:30 p.m., 2255 Rayburn.

Subcommittee on International Operations and Human Rights, to mark up the following measures: H. Con. Res. 349, calling for an end to the sexual exploitation of refugees; and H. Con. Res. 351, expressing the sense of Congress that the United States should condemn the practice of execution by stoning as a gross violation of human rights, 2:30 p.m., 2255 Rayburn.

Subcommittee on Western Hemisphere, hearing on the Coffee Crisis in the Western Hemisphere, 2:30 p.m., 2200 Rayburn.

Committee on Resources, to mark up the following bills: H.R. 2099, to amend the Omnibus Parks and Public Lands Management Act of 1996 to provide adequate funding authorization for the Vancouver National Historic Reserve; H.R. 2301, to authorize the Secretary of the Interior to construct a bridge on Federal land west of and adjacent to Folsom Dam in California; H.R. 2534, Lower Los Angeles River and San Gabriel River Watersheds Study Act of 2001; H.R. 2748, National War Permanent Tribute Historical Database Act; H.R. 3148, to amend the Alaska Native Claims Settlement Act to provide equitable treatment of Alaska Native Vietnam Veterans; H.R. 3407, Indian Financing Act Reform Amendment; H.R. 3434, McLoughlin House National Historic Site Act; H.R. 3449, to revise the boundaries of the George Washington Birthplace National Monument; H.R. 4622, Gateway Communities Cooperation Act of 2002; H.R. 4682, Allegheny Portage Railroad National Historic Site Boundary Revision Act; H.R. 4708, Fremont-Madison Conveyance Act; H.R. 4917, Los Padres National Forest Land Exchange Act; H.R. 4919, Tonto And Coconino National Forests Land Exchange Act; H.R. 4938, to direct the Secretary of the Interior, through the Bureau of Reclamation, to conduct a feasibility study to determine the most feasible method of developing a safe and adequate municipal, rural, and industrial water supply for the Santee Sioux Tribe of Nebraska; H.R. 4953, to direct the Secretary of the Interior to grant Deschutes and Crook Counties in the State of Oregon a right-of-way to West Butte Road; H.R. 4966, National Oceanic and Atmospheric Administration Act; H.R. 4968, Federal- Utah State Trust Lands Consolidation Act; H.R. 5039, Humboldt Project Conveyance Act; S. 329, Peopling of America Theme Study Act; S. 423, Fort Clatsop National Memorial Expansion Act; S. 491, to authorize the Secretary of the Interior, pursuant to the provisions of the Reclamation Wastewater and Groundwater Study and Facilities Act to participate in the design, planning, and construction of the Denver Water Reuse project; S. 509, Kenai Mountains-Turnagain Arm National Heritage Area Act of 2001; S. 941, Rancho Corral de Tierra Golden Gate National Recreation Area Boundary Adjustment Act of 2001; S. 1097, to authorize the Secretary of the Interior to issue right-of-way permits for natural gas pipelines within the boundary of the Great Smoky Mountains National Park; and S. 1105, Grand Teton National Park Land Exchange Act, 10 a.m., 1324 Longworth.

Committee on Rules, to consider H.R. 5005, Homeland Security Act of 2002, 4 p.m., H–313 Capitol.

Committee on Science, Subcommittee on Environment, Technology and Standards, hearing on Satellite Data Management at NOAA, 10 a.m., 2318 Rayburn.

Committee on Transportation and Infrastructure, to consider the following: Several U.S. Army Corps of Engineers Survey resolutions; GSA Fiscal Year 2003 Capital Investment and Leasing Program; Courthouse Construction Prospects and Lease Prospects Resolutions; H. Con. Res. 442, recognizing the American Road and Transportation Builders Associations for reaching its 100th Anniversary and for the many vital contributions of its members in the transportation construction industry to the American economy and quality of life through the multi-modal transportation infrastructure network its members have designed, built, and managed over the past century; H.R. 4727, Dam Safety and Security Act of 2002; and H.R. 5157, to amend section 5307 of title 49, United States Code, to allow transit systems in urbanized areas that, for the first time, exceeded 200,000 in population according to the 2000 census to retain flexibility in the use of Federal transit formula grants in fiscal year 2003, 11 a.m., 2167 Rayburn.

Committee on Veterans’ Affairs, Subcommittee on Benefits, hearing on the following bills: H.R. 5111, Servicemember’s Civil Relief Act; and H.R. 4017, Soldiers’ and Sailors’ Civil Relief Equity Act, 10 a.m., 334 Cannon.

Permanent Select Committee on Intelligence, executive, on Global Hot Spots, 1:30 p.m., H–405 Capitol.

Subcommittee on Technical and Tactical Intelligence, executive, on Future Imagery Architecture, 3 p.m., H–405 Capitol.

Joint Meetings

Joint Economic Committee: to hold hearings to examine the measuring of economic change, 10 a.m., 311 Cannon Building.
Next Meeting of the Senate
10 a.m., Wednesday, July 24

Senate Chamber

Program for Wednesday: After the transaction of any morning business (not to extend beyond 11 a.m.), Senate will continue consideration of S. 812, Greater Access to Affordable Pharmaceuticals Act.

At 1 p.m., Senate will consider the Conference Report on H.R. 4775, Supplemental Appropriations, with a vote on adoption of the conference report to occur at 1:30 p.m.; followed by a vote on Hagel Amendment No. 4315 (to Amendment No. 4299) to S. 812 (listed above).

Next Meeting of the HOUSE OF REPRESENTATIVES
10 a.m., Wednesday, July 24

House Chamber

Program for Wednesday: Consideration of H.R. 5120, Treasury and Postal Operations Appropriations (complete consideration, unanimous consent order);

Consideration of H.R. 4965, Partial-Birth Abortion Ban Act (closed rule, two hours of general debate);

Consideration of H. Res. 495, In the Matter of Representative James A. Traficant, Jr. (privileged); and

Consideration of H.R. 4628, Intelligence Authorization Act (modified open rule, one hour of general debate).