House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, November 25, 2003, at 12 noon.

Senate

MONDAY, NOVEMBER 24, 2003

The Senate met at 9 a.m. and was called to order by the President pro tempore [Mr. STEVENS].

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal God, Who gives to us the swift and solemn trust of life, since we know not what a day will bring forth, we lift our hearts to You for wisdom and guidance. Take us above those habits that keep us from Your purposes and make us worthy stewards of Your world. Help us to make a real difference in these momentous times, improving the lives of humanity. Bless the Members of this body. May they remember to give You their burdens. Give them confidence that You will take care of each challenge. Keep these gifted leaders from slipping and falling. And force the enemies of freedom to retreat. Lord, let Your truth march on. Keep watch over this land we love, for You are the Lord Almighty. We pray this in Your triumphant Name. Amen.

NOTICE

If the 108th Congress, 1st Session, adjourns sine die on or before November 25, 2003, a final issue of the Congressional Record for the 108th Congress, 1st Session, will be published on Monday, December 15, 2003, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–410A of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Friday, December 12, 2003. The final issue will be dated Monday, December 15, 2003, and will be delivered on Tuesday, December 16, 2003.

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event that occurred after the sine die date.

Senators’ statements should also be submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at “Record@Sec.Senate.gov”.

Members of the House of Representatives’ statements may also be submitted electronically by e-mail, to accompany the signed statement, and formatted according to the instructions for the Extensions of Remarks template at http://clerkhouse.house.gov/forms. The Official Reporters will transmit to GPO the template formatted electronic file only after receipt of, and authentication with, the hard copy, and signed manuscript. Deliver statements to the Official Reporters in Room HT–60 of the Capitol.

Members of Congress desiring to purchase reprints of material submitted for inclusion in the Congressional Record may do so by contacting the Office of Congressional Publishing Services, at the Government Printing Office, on 512–0224, between the hours of 8:00 a.m. and 4:00 p.m. daily.

By order of the Joint Committee on Printing.

ROBERT W. NEY, Chairman.

• This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:
I pledge allegiance to the Flag of the United States of America, and to the Republican for which it stands, one nation under God, indivisible, with liberty and justice for all.

The PRESIDENT pro tempore. Does the Senator from Iowa seek recognition?

Mr. GRASSLEY. Mr. President, I was told we should report the bill first, and then I will make my statement.

RESERVATION OF LEADER TIME

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

MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003—CONFERENCE REPORT

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the conference report to accompany H.R. 1, which the clerk will report.

The assistant legislative clerk read as follows:

Conference report to accompany H.R. 1, an act to amend Title XVIII of the Social Security Act to provide for a voluntary prescription drug benefit under the Medicare Program and to strengthen and improve the Medicare Program, and for other purposes.

The PRESIDENT pro tempore. Under the previous order, the time until 12:30 shall be equally divided between the chairman of the Finance Committee or his designee and the Democratic leader or his designee, with the last 10 minutes prior to the vote to be allocated between the Democratic leader for 5 minutes to be followed by the majority leader for the final 5 minutes.

The Senator from Iowa.

SCHEDULE

Mr. GRASSLEY. Mr. President, I would like to state the plan for today. Under the previous order, the cloture vote will occur today at 12:30. The debate time until that vote is limited, and Members will only be allocated short debate times. The cloture vote on the conference report will be the first vote of the day. It is the leader's hope and expectation that cloture will be successful, and if cloture is invoked, the leader hopes we will be able to proceed to a vote on the passage of the Medicare prescription drug bill in very short order after that.

On our side, we are obviously going to start with the Senator from New Hampshire. But since the time is very tight, probably most Members would be limited to 5 minutes or less, beyond that of Senator Gregg. I would like to make sure people are very orderly as they come over here and ask me for time. I cannot speak for the Democratic side, but for the Republican side, it is very essential for people to be here and be ready to speak.

Does the Democratic whip wish to be recognized?

Mr. REID. Yes, if my distinguished friend will yield.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, we have, on this side, a number of people who wish to speak. It is my understanding, to make this debate fair, that on this side the time will be given to those who are opposed to cloture being invoked. So the people who stand on this side will be opposed to cloture. I want all the people who have asked for time on this side to understand that. And we are—this is just for Democrats—we are going to give 9 minutes to the following senators, and in no necessary order. Whoever is here can speak. They should all be alerted that if there are quorum calls, they are going to lose time. So, Mr. President, I would, on our side, grant 9 minutes to Senators AKAKA, LIEBERMAN, DODD, CLINTON, MIKULSKI, PRYOR, KENNEDY, with KENNEDY to have the last time before the Democratic leader speaks, closing the debate.

Now, again, I want to tell those listening, this side is for those who oppose cloture.

Mr. GRASSLEY. Mr. President, could I make an inquiry?

Mr. REID. Yes. And I think it would be better if we alternated back and forth until 12:30.

Mr. GRASSLEY. That is the point I wanted to make.

Mr. Frist. Mr. President, today we stand on the threshold of a truly historic moment. Not for Republicans. Not for Democrats. Or for the House of Representatives. Or the United States Senate. But, for over 40 million American seniors and individuals with disabilities, who may finally be getting prescription drug coverage under Medicare.

Saturday morning, the House of Representatives passed H.R. 1, the “Medicare Prescription Drug, Improvement, and Modernization Act of 2003.”

Also Saturday, President Bush called upon the Senate, once again, to finish the job. He urged us to send him legislation that will provide badly needed prescription drug coverage.

For years, Congress has debated, and how, to provide prescription drug coverage to seniors and to strengthen and improve the Medicare program. Now, it is time for us to act. Mr. President, this generation of physicians survived the depression, fought World War II, and helped make the United States into a prosperous and thriving Nation. Time and again, they stepped forward to serve. Now, the time to fulfill our duty to that great generation. No one is the time to answer their call.

What President Lyndon Johnson said in 1965 still stands:

...No longer will this Nation refuse the hand of justice to those who have given a lifetime of service and wisdom and labor to the progress of this...country.

Let us not stay that hand of justice now. Let us not turn our back on America’s seniors and individuals with disabilities.

There are nearly one quarter of a million seniors in my home State of Tennessee who have no prescription drug coverage. There are millions more across the Nation for whom this legislation, literally, means the difference between life and death. They cannot afford to wait any longer. I have treated thousands of Medicare patients. And I know firsthand that, without Medicare, millions of seniors would not have received needed medical services. Millions more would have faced financial ruin. Medicare has helped save and heal lives.

But this cherished program has failed to keep pace with medical and scientific progress. Prescription drugs are an integral part of modern medicine. They are as important as the surgeon’s knife. Yet, they are not part of the Medicare program.

In the nearly four decades since the Medicare program was created, the American medical system has transformed from one focused on treating episodic illness in hospitals to one characterized by an increasing emphasis on managing and preventing chronic disease in outpatient settings with advanced medical technologies and prescription drugs. Life expectancy has increased by nearly ten years. Death rates associated with heart disease have been cut in half, and new treatments and diagnostic tools have improved survival rates for prostate, colon, and breast cancer. Our medical and scientific knowledge and, along with it, our ability to treat illness and disease has improved dramatically over the past four decades. Yet, Medicare itself has not kept pace with these dramatic changes. It has been too inflexible, too bureaucratic, and too slow.

Sicken Americans, for the 1960s health care system, it has been unable to adapt to changing medical practice. Medicare does not provide true preventive coverage, disease management, or protection against catastrophic health care costs.

As a result, we have today glaring and unacceptable gaps in the coverage that is available to seniors and individuals with disabilities—the most obvious of which is the lack of prescription drug coverage.

Over the past three decades, for example, the death rate from atherosclerosis has declined by over 70 percent and deaths from ischemic heart disease have declined more than 6 percent, largely due to the advent of beta blockers and ACE inhibitors. Designed for the 1960s health care system, it has been unable to adapt to changing medical practice. Medicare does not provide true preventive coverage, disease management, or protection against catastrophic health care costs.

As a result, we have today glaring and unacceptable gaps in the coverage that is available to seniors and individuals with disabilities—the most obvious of which is the lack of prescription drug coverage.
Today, over 600 medicines are under development to treat or prevent diabetes, cancer, heart disease, stroke, neurological diseases, and other debilitating illness. Nearly 400 drugs have been produced during the past decade alone.

But, under today’s Medicare, these drugs simply are not available to seniors. We must act to ensure that this generation of seniors, and the next, has access to the healing miracles of modern medicine. And we must act to provide our seniors, and the next generation of seniors, with true health care security: quality preventive care, affordable prescription drugs, protection from catastrophic health care costs, better coordinated care, disease management, and access to modern technology.

As voluntary prescription drug coverage the bipartisan bill we are debating today takes a major step in that direction. It devotes $400 billion over the next decade to adding a new, voluntary prescription drug benefit to the Medicare program. And it takes concrete steps to speed less expensive generic drugs to the market to help make prescription drugs more affordable for all Americans.

Within months after this legislation is signed into law, seniors will be able to get a voluntary Medicare-approved prescription drug discount card that will reduce the costs of their drugs by an estimated 10-25 percent. Lower income seniors will get an additional subsidy of $600 on top of these discounts to help them purchase needed medicines. Thus, seniors will get immediate relief even before the comprehensive drug benefit is fully implemented, with additional help for those who need it the most.

Beginning in 2006, seniors will have access to the new drug benefit. Those who wish to add the new prescription drug plan to their traditional Medicare coverage will have that choice. The new drug benefit is completely voluntary and available to all seniors. Appropriately, it provides the most generous help to lower income seniors and those with catastrophic drug costs. SUBSTANTIAL ASSISTANCE FOR LOWER INCOME SENIORS

Seniors with incomes below 135 percent of the Federal poverty line ($11,648 for individuals and $14,965 for couples) will have no drug costs, plus only a modest co-payment for their comprehensive coverage. Beneficiaries with incomes below 150 percent of poverty ($12,942 for individuals and $16,327 for couples) will pay only a portion of the premium, and a $5 deductible. After that, the government will subsidize 85 percent of their drug costs.

In my home State, over 430,000 low income Medicare beneficiaries—nearly half of all beneficiaries in Tennessee—will have no drug costs under this bipartisan plan. One quarter of a million Tennessee seniors who today have no prescription drug coverage at all will gain access under this proposal, along with millions more across the Nation.

IMPROVEMENTS TO TRADITIONAL MEDICARE

The legislation also strengthens and improves the traditional Medicare Fee for Service program. It adds new preventive services for chronic diseases and cardiovascular disease. For the first time, Medicare will cover initial preventive physical examinations. And this agreement responds to the six percent of seniors with chronic disease who account for about 50 percent of all Medicare spending. It will launch a series of major pilot programs on disease management and quality payment incentives that could result in dramatic improvements in the care of the most ill and the most needy. This will help us better target health care resources to those who require it most.

The legislation also puts in place national standards for electronic prescribing, along with incentives for doctors to fill prescriptions electronically. These reforms should dramatically improve medication therapy management, reduce medical errors, and improve patient safety.

As the Senator from Montana, the Ranking Member of the Senate Finance Committee, has said so eloquently during these past several days, this bill does nothing to destroy the existing Medicare program. In fact, it immensely strengthens the traditional Medicare program.

As my colleagues know, this legislation has received broad support from well over 350 organizations, including from the AARP—which represents 35 million seniors. In its letter of endorse last week, the AARP also makes clear that, at a result of this legislation, “millions of older Americans and their families will be helped by this legislation.” In addition, AARP writes: “The integrity of Medicare will be protected.”

NEW HEALTH CARE CHOICES

Today, most seniors choose to enroll in the traditional Medicare Fee for Service program. But this may not be the best choice for all seniors, and it may not be the choice of all seniors in the future.

There are about five million seniors who are covered by private health plans under the Medicare program today. Beginning immediately, the legislation requires Medicare’s local HMO coverage. It will help stabilize and improve the coverage of those five million seniors in the current Medicare+Choice program. As a result, Medicare+Choice will become a more stable, secure, and strong option for those seniors who have already chosen to enroll in coordinated care plans.

This bipartisan plan also provides seniors with even more choices—the choice to enroll in regional preferred provider organizations—a PPO. The majority of Americans under age 65 get health coverage through PPOs. Most members of Congress, Federal employees, and Federal retirees also get coverage through PPOs. Employees covered by PPOs report high levels of satisfaction with their coverage. PPOs typically provide coverage for preventive care, chronic care management, disease management, and access to a broad range of doctors.

Under the bipartisan agreement, seniors will have the opportunity to participate in these innovative plans if they choose.

Moreover, beginning in 2010, we will test on a limited basis whether these private health plans provide higher quality than traditional Medicare. We will also test whether Medicare private health plans are most cost effective than traditional Medicare. All beneficiaries will be protected during this test. And the demonstration cannot be expanded or extended unless Congress acts to do so.

Throughout, seniors will always be able to stay in the traditional Medicare Fee for Service program. And they will have the option of adding prescription drug coverage. Meanwhile, tomorrow’s seniors, many of whom are covered through PPOs now, may choose to continue private coverage when they retire. We are laying down the road to prepare for the Baby Boomers who will need to be ready now, not scrambling when it is too late.

STRENGTHENING HEALTH CARE IN RURAL AMERICA

This bill contains the most sweeping and strong rural provisions ever in a Medicare bill to come before this Congress. It also makes improvements to payments for graduate medical education and takes concrete measures to protect seniors’ access to physicians.

For example, hospitals in my home State of Tennessee will receive $655 million under this legislation. Physicians, who otherwise would face real cuts next year of 4.4 percent, would instead see a 1.5 percent payment increase in both 2004 and 2005. I am very proud that the American Hospital Association, the Tennessee Medical Association, the American Hospital Association, the American Association of Medical Colleges, and the Alliance for Specialty Medicine strongly support this legislation. The bill has also received strong support from the Rural Health Care Association, the Rural Hospital Coalition and the Coalition for Health Care Excellence.

CONTROLLING PRESCRIPTION DRUG COSTS

Some of my colleagues have said that this legislation does nothing to control prescription drug costs. I respectfully disagree.

First, of all, under this bill, seniors will be able to get a drug discount card right away. They will be able to present their Medicare discount card to their pharmacist and receive a 10 to 25 percent cut right off of the top. Second, this bill also contains drug costs before the drugs get to the pharmacist’s shelf. It does so in a number of ways. The bill speeds generic drugs to the market. It encourages competition
to lower prices, and it gives the Medi-
care recipient new power to compari-
on shop.

Let’s start with the generic drug pro-
visions. In 1984, Congress passed the Hatch-Waxman law to encourage cheaper generics drugs to come onto the market. Under that law, generic com-
petition has flourished. When the law
was passed, generics drugs were less
than 20 percent of the market. Today,
generic drugs represent nearly 50 per-
cent of the market.

The Hatch-Waxman Act has been in-
credibly successful in allowing con-
sumers to get low cost alternatives.
But there have been some abuses.
Therefore, we are moving to close loop-
holes in the system through this bill.
And the core of the provisions build on
the work of Senator Gregg and Sen-
ator Schumer.

Under the new system, a new drug
applicant will receive only one 30-
month stay of approval of a generic
application. This is a major change.
Under the old system, drug com-
panies could receive multiple stays
of approval for generic rivals. Now,
they will get one stay only.

The agreement calls for additional steps
to generic drugs to the market faster—through which patients will get
safe, effective, low cost generic drug al-
ternatives to brand name medicines.

That is why this bill is supported by the
Generic Pharmaceutical Associa-
tion and the Coalition for a Competi-
tive Pharmaceutical Market.

The bipartisan Medicare agreement also empowers drug plans to negotiate
discounts from drug companies. The
Congressional Budget Office says that
this approach will enable drug plans to
significantly control drug costs for
their beneficiaries.

Moreover, the savings negotiate will not be subject to Federal limits.

They will get the lowest prices possible, even if those prices are
lower than those negotiated under Medicaid. The Congressional Budget
Office has estimated that this provi-
sion alone will save $18 billion dollars.

Not only will the Medicare agree-
ment help lower prices, it will help
give consumers more information
about their medical options. This bill
expands Federal research into the com-
parative effects of different drugs and
treatments.

With this new information, seniors
will be able to comparison-shop in the
medical marketplace, just like they
would for any other product or service.

Patients and their doctors will be able
to compare treatment options and
choose the course of action that best
addresses their medical needs. And
Medicare and health consumers will
get better value for their money.

**HEALTH SAVINGS ACCOUNTS**

I am also very pleased that this legis-
lation will take tax-preference Health
Savings Accounts available to all
Americans. HSAs will help control
costs over time, and give individuals
the ability to better control their
health care dollars and health care de-
cisions.

I wish we could have gone even fa-
ther. I wish we could have added provi-
sions from the House bill that would
have allowed individuals to roll over
some of their out-of-pocket flexi-
ble spending accounts. I also believe we
must do more in the coming years to allo-
Able individuals to invest funds on a

The past year has seen serious financial and demo-
graphic pressures in the coming years.

Between now and 2030 the number of
seniors will nearly double from 40 mil-
million to 77 million; the program’s costs
will grow from nearly $45 billion annually, even before we add
prescription drug coverage or improve
other benefits; the number of taxpayers
paying into the system to finance
health coverage for seniors will drop
from 4 today, to 2.4 by 2030; seniors,
who represent 12 percent of the popu-
lation today, will represent 22 percent of the population in 2030, and one last
fact: each senior will be in the Medi-
care program longer. Life expectancy
at age 65 will increase approximately 10
percent over the next 30 years.

The demographic underpinning has
been defined: more seniors; each senior
living longer; and fewer workers to
support each senior.

So, while we need to act to provide
prescription drug coverage to seniors,
we also need to do so responsibly. This
legislation takes an important first
step in linking Medicare payments to
quality. It also relies on competitive
market forces to help control health
care spending.

Moreover, for the first time in Medi-
care’s history, we will ask those sen-
iors who can afford to pay more for
their coverage, to do so. And we will
put in place more accurate and more
transparent measurements of Medi-
care’s fiscal strength—as well as spe-
cial procedures for attempting to bet-
ter control Medicare spending growth
in the future.

These reforms do not go far enough
for some of my colleagues. At the same
time, they go too far for others. Over-
all, however, I believe this is a bal-
anced, bipartisan bill that is worthy of
the support of the United States Sen-
ate.

It is not a perfect bill. But, it is a
meaningful step in the right direction.
It will provide substantial relief from
high prescription drug costs for mil-

ions of seniors. It will help rectify
payment inequities from rural health
care providers. And it will begin to in-
ject into the Medicare program new
health care choices and much needed
flexibility so that seniors will have the

Today, America is one step closer to
being a more caring society for mil-
lions of seniors and individuals with
stronger prescription drug coverage,
drugs and outdated, often inadequate medical care. Today,
we are one step closer to providing real
health security to seniors all across the Nation.

As a physician, I have written thou-
tousands of prescriptions that I knew
would go unfilled because patients
could not afford them. With this bill,
that will change. As a senator, I have
watched as a decades-old Medicare pro-
gram has operated without flexibility,
and without comprehensive and coordi-
nated preventive care, disease manage-
ment and catastrophic protection against
high out-of-pocket medical costs.

With this bill, that will change
as well.

This legislation is historic. By dra-
amically expanding opportunities for
private sector innovation, it offers the
possibility of genuine reform that can
dramatically improve the quality of
care available to seniors today. And
that is why this legislation preserves tradi-
tional Medicare for those who choose it.
It combines the best of the public
and private sectors and gives today’s
seniors innovative health care options
and positions Medicare to serve tomor-
row’s seniors as well.

This legislation is possible because
of the work and dedication of every Mem-
ber. I would like to take a moment to
thank those whose commitment was
critical to this effort. First and fore-
most, Chairman Charles Grassley
and Ranking Member Max Baucus de-
serve credit. As does Senator John
Breaux who joined me six years ago on
the Bipartisan Commission on Medi-
care and again on this Conference Com-
mitee. All Members of the Conference
Committee showed a degree of dedica-
tion and resolve seldom seen in either
Chamber, especially Senators Hatch,
Nickles, and Kyl. But we wouldn’t
have reached this point without build-
ing on the strong foundation laid by
Members over the last several years,
especially Senators Snowe, Jeffords,
Gregg, Hagel, Ensign and Wyden. Fi-
nally, the Senate could not have done
this alone. The House Leadership,
Chamber, especially Senators Hastert
and Leader Delay, deserve special recognition, as does the
Chairman of the Conference, Chairman
Bill Thomas, and the Chairman of the
House Energy and Commerce Com-
mitee, Chairman Billy Tauzin.

In closing, I would like to thank
goingly to every member of this body who
has worked so hard on this legisla-
tion—not just in this year, but in the
previous six years of our most recent
effort to strengthen and improve Medi-
care. I urge every Senator to support
this bill. I imploring Senator to avoid
filibusters and other partisan poli-

cal maneuvers that threaten the
prescription drug coverage, and health
Mr. GRASSLEY. Mr. President, I yield 15 minutes to the Senator from New Hampshire.

The PRESIDENT pro tempore. The Senator from New Hampshire is recognized for 15 minutes.

Mr. GREGG. I thank the Senator from Iowa.

Mr. President, I rise today to express my concerns about the proposal before us. I think it has to be put in the proper context. This is a $400 billion subsidy over the 10 years that it exists, but over the actuarial life of this program, it is a $7 trillion subsidy—$7 trillion. It is not paid for.

Now, I have heard a number of speakers come to this floor and say this drug benefit is paid for by the senior citizens. Well, unlike the past, where seniors paid into their HI accounts, their health insurance accounts, and paid for their Medicare, that is not the case with this drug benefit. This drug benefit will be paid for essentially by working Americans who are working at the time that the seniors who benefit from the drug benefit receive that benefit.

The real concern arises when the baby boom generation, which is my generation, retires, because at that point we are going to have a massive influx of seniors into our system, and the cost that we owe during their working life in order to support a drug benefit for retired Americans and Americans who are about to retire, without any underlying reform to try to control the cost so that tax is not so high that it overwhelms the ability of our children and our children’s children to live the quality of life that we have lived.

It seems incredibly unfair for one generation to do this to another generation, for us to use our political clout because we are in office to benefit our generation at the expense of our children and our children’s children. Yet that is what, essentially, this bill does. It attempts reform, but it does not accomplish reform. It claims to have a competitive model, but the competitive model is PPOs. It says it has cost containment, but it really does not have cost containment at all.

Then, in one of the truly ironies of the bill, it takes people who already have private plans which are paid for by the private sector and moves those people into public plans, so we end up paying almost $100 billion to subsidize private plans to stay private. What an outrageous waste of taxpayers money at an issue for the purposes of political gain. Unfortunately, we have spoken and said this time will be different. We want to make sure there is no significant attempt to address the reform issue. So the practical effect of this bill is that it puts in place a massive new benefit without any control over the costs of the underlying Medicare system. And the effect of that is that the children of tomorrow—basically, my children and my grandchildren and the children of anybody who was born after 1940—will end up paying a huge amount in order to support us in our retirement.

This bill proponents simply, is the largest intergenerational tax increase in the history of this country, and it should not be sugarcoated. It is a massive tax increase being placed on working, young Americans and Americans who have not yet been born in order to support a drug benefit for retired Americans and Americans who are about to retire, without any underlying reform to try to control the cost so that tax is not so high that it overwhelms the ability of our children and our children’s children to live the quality of life that we have lived.

As Republicans, we should be afforded the ability of our children and our children’s children to have a lower quality of life than we have had. And we, as the people taking advantage of this program, will have to take no actions that are responsible in the area of containing the costs of our health care delivery system.

As Republicans, we should be afforded the ability of our children and our children’s children to have a lower quality of life than we have had. And we, as the people taking advantage of this program, will have to take no actions that are responsible in the area of containing the costs of our health care delivery system.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, I make an announcement to Democrat Senators. I have spoken and said that I will be unable to vote on this bill. I want to make sure there is no debate this morning. Some people
have not had an opportunity to speak, so our time will be for those who are opposed to the legislation, the bill itself. They can make up their mind whatever they want to do on cloture.

I ask unanimous consent that the names be read. —Senator LEVIN, SAKA, LAUTENBERG, DODD, KERRY, LIEBERMAN, CLINTON, MIKULSKI, PRYOR, and KENNEDY—all be allotted 9 minutes, the amount of time on the Democratic side that they would be entitled to, and no more. I ask consent that that order be entered.

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

The Senator from Arkansas.

Mr. PRYOR. Mr. President, I rise today to express my opposition to this bill, a Medicare prescription drug benefit in name only that has very few benefits for the seniors in my State. In June of this year, I voted for a bipartisan Senate bill which, while not perfect, was a good step toward providing our seniors with the prescription drug help they need.

Let us be clear. This legislation does nothing to lower the cost of prescription drugs. The Congressional Budget Office says this legislation will actually cause prescription drug prices to increase by 35 percent. Under this legislation, Arkansans will not be able to reimport cheap FDA-approved drugs from other industrialized countries, and this legislation expressly prohibits the Federal Government from negotiating with drug companies to bring down the high cost of prescription drugs.

This means that our seniors will continue to pay more for their prescription drugs than anybody else in the world. It means they will continue to pay much more for their drugs than do our neighbors in Canada.

This means that a woman in America suffering from breast cancer will continue to be charged over $90 a month to take tamoxifen, while the same drug, made by the same company, can be bought in Canada for $22 for a month.

This means that people in my State will continue to pay: 37 percent more for cholesterol controlling Lipitor; 50 percent more for the anti-depressant Paxil, and 58 percent more for the arthritis drug Vioxx.

For the last decade drug spending has been driving up the cost of health care and private insurance premiums to reach for many Americans. We finally got our chance to help these seniors by lowering the cost of prescription drugs, but this bill wastes that opportunity.

It is bad enough our seniors are getting gouged by artificially high prices in the United States. I strongly believe we need to fix that. But now, with the passage of this bill, if indeed it passes, we are talking about taxpayers' dollars. Not only is it the right thing to fix it, it is the duty that we fix it.

Under this legislation, thousands of Arkansans will be worse off than when they started. According to the CBO, 2.7 million Arkansans will be worse off than when they started. According to the CBO, 27 million Americans are expected to lose their retiree health care benefits as a result of this legislation. That includes 19,000 Arkansas seniors. In addition, under this bill, 109,100 Arkansas Medicaid beneficiaries will receive worse coverage than what they get now and they will face considerable new restrictions on the drugs they can choose.

Mr. President, 40,750 fewer seniors in Arkansas will qualify for low-income protections against the assets test and lower qualifying income levels. I, for one, do not think it is fair that natural Americans living on a farm should be penalized because they own a tractor or other farm equipment. And 11,020 Medicare beneficiaries will pay more for Part B premiums because of income.

This bill also starts us down the treacherous path to dismantling Medicare as we know it. It takes $12 billion away from Medicare and gives it to private insurers and then forces Medicare to compete with heavily subsidized HMOs.

This allows private insurers to cherry-pick the healthiest and wealthiest people to their plans while leaving the poorest and the sickest in Medicare to pay more in premiums. People need to know that this bill was written to accommodate 400 corporate lobbyists, many of whom work for the pharmaceutical industry. It amazes me that we would seek permission from the pharmaceutical lobby before we would do the right thing for the people we serve. From my perspective, that 400 lobbyists have more influence over Congress than the 40 million people who are currently enrolled in Medicare.

People need to know that the pharmaceutical industry is going to be handed a taxpayer-subsidized windfall with the passage of this bill. Analysts at Goldman Sachs project the new Medicare benefit could increase industry revenue by 9 percent or about $13 billion a year. And it is no coincidence that Pfizer stock prices increased by $19 billion.

I direct my colleagues to this bar graph behind me. The large bar represents Pfizer and the $19 billion they have increased in worth over the last week. Now look at the other bar, this little bitty bar, this small bar that you may have to squint and look closely to see is worth 400 corporate lobbyists. This bar represents the entirety of the cost savings provisions related to generic drugs and reimportation. Seniors will save over the next 10 years $0.06 billion. To reiterate, we have a $19 billion increase in the value of a company over 1 week, and $0.06 billion savings for seniors in the Medicare system over 10 years.

It is very easy to figure out who are the real winners and who are the real losers. You can make this conclusion, there are some people in this body who believe we need this bill right now because the seniors have been waiting such a long time. They have. But from the seniors I have talked to personally when I was home in Little Rock over the weekend, to the hundreds who have called my office in the last week, they don’t just want to get it done. They want us to get it done right. There is a big difference in just getting the bill done and getting it done right.

They want more than hollow promises that this legislation offers. My plea is simple: Let’s get it right so that our seniors can finally have a real benefit. The bill we pass today will wind up doing more harm than good.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield 5 minutes to the Senator from Wyoming. I urge people who are proponents of this bill and want me to yield them time to be here. When there is nobody here, I will yield some of that time, but I am very glad to quit and put my statements in the Record to accommodate my colleagues. It is just a case of if we don’t want to waste any of this valuable time, get over here.

Mr. REID. Mr. President, if the Senator will yield, I would say the same thing. We have a long list of people who have said they want to come. When our time is called and we are not here, that time will run off of our time.

So the 9 minutes people have, that time will run off of our time. When our time is called and we are not here, that time will be limited. If people come and want extra time, I would have to object to protect other Senators.

The PRESIDENT pro tempore. The Senator from Wyoming is recognized for 5 minutes.

Mr. THOMAS. Mr. President, first let me thank the chairman of the committee who has worked so hard in bringing this proposal to the Senate floor. Not only has this been a part of his activity lately, but also the Energy bill. The Senator from Iowa deserves a great deal of support for what he has done.

I am very pleased to support this first real opportunity that we have had to modernize and strengthen Medicare, the first time in over 30 years. I am a little surprised at how negative some of our friends are in terms of being able to take this opportunity. Nobody suggests everything is perfect in this bill, but also the Energy bill. The Senator from Iowa deserves a great deal of support for what he has done.

I am very pleased to support this first real opportunity that we have had to move to modernize and strengthen Medicare.
We can't let that slip through our fingers because of partisan politics. Access to new technologies in Medicare currently takes an act of Congress. That is no way to care for our elderly. We need to have a modern program in place. We need to improve the quality of care for our sickest seniors and ensure they have access to appropriate medications.

Medicare is already making progress in implementing coordinated care programs. Medicare needs to catch up. This is our opportunity to not only allow that but to provide for that.

Medicare Program is outdated and inefficient. There is absolutely no effort to coordinate care for seniors with chronic illnesses with the most expensive prescription drug needs. Over 90 percent of Medicare dollars are spent caring for folks who have already gotten sick, the most expensive type of care. We only spend 10 percent of Medicare dollars on preventive medicine. We need to focus on those folks as 6 percent of the seniors account for 95 percent of Medicare costs.

We need to make some sense that Medicare today only designed to give them new benefits. That could cause as many as 6 million people to pay more money for fewer benefits.

Mr. KERRY. I thank the Chair.

Mr. President, the real test of this bill, in the final analysis, is what it is really going to do for the senior population of the country. I know the arguments have been made forcefully that it is going to take $400 billion to give seniors something. The test is whether we are going to give them something, the test is whether or not we are going to do more harm than good.

I believe when we measure the overall impact of this legislation on seniors and on the overall Medicare system, the bottom line is this does more harm than good. That is why I believe the Senate should stop the bill where it is. Why I would like to pass a prescription drug benefit. All of us want that. This bill could be better. It could be better by being closer to what was sent out of the Senate which had the support of my colleague, Senator Kennedy, and others because it did more good than harm. But this bill moves in the wrong direction because while it was in the conference with the House, it was loaded up with major giveaways to the drug companies, insurers companies, and has put some measures in such a way that on the ability of the Federal Government to even negotiate for bulk purchases and thereby lower costs, which is an extraordinary reduction in the ability of the Government to try to constraining the costs overall of prescription drugs. These are the reasons I think this bill does more harm than good:

No. 1, the prescription drug benefit for many is not affordable, it is not comprehensive, and it is not guaranteed. There are huge gaps in coverage and co-payments. The coverage gaps are too high, and seniors are still charged premiums even after their benefits shut down in the so-called donut hole.

Seniors are not assured a Government fallback plan with a set national premium. So if there are places where you don't have HMOs or there are other problems, they are going to have increases in their premiums under Medicare. It seems we ought to have a fallback with some sort of fixed price that will be affordable. At least 3 million seniors are projected to lose their gold-plated retiree prescription drug plan and be forced into a lesser benefit under the Medicare system.

The bill fail to adequately fix protections for low-income seniors and people with disabilities who currently rely on both Medicare and Medicaid for their coverage. That could cause as many as 6 million people to pay more money for fewer benefits.

For seniors who think this bill is only designed to give them new benefits, they are going to be shocked to...
find that this legislation actually raises $25 billion in new revenue directly out of the pockets of senior citizens by increasing the costs for traditional Medicare coverage of doctor and hospital visits. The Senate is also surprised to find out that while we are in such a rush to pass this bill, the benefit is not actually going to come to them until 2006. In the meantime, seniors get a disingenuous discount card. Most of them have four or five of the cards today anyway with the same amount of seduction, and it will give them no more discount than any of those handful of cards available to them in the marketplace now.

The question ought to be asked: Why are we not beginning a Medicare prescription drug benefit until 2006? It took 11 months to put the entire Medicare Program in place. Are we telling seniors we can’t, in the age of computers, put a prescription drug benefit in place in a matter of months? Why 2006?

We all understand why. It has to do with the private companies and their taking time to ramp up the amount of money they are going to get, and the unaffordability today.

One of the biggest failures of this bill is its silence on controlling the rising prices of prescription drugs. Without an effective means to restrain double-digit drug price increases, this bill does nothing to protect seniors from ever-growing out-of-pocket costs. When they are pushed off Medicare into HMOs and the HMOs raise the prices, seniors are going to be screaming about the increased cost of prescription drugs.

This bill prohibits the Government, as I mentioned earlier, from using its bulk purchasing power to negotiate volume discounts for Medicare prescription drugs. That doesn’t make sense. As I mentioned from the State of Maine, they have done that with good results. It is interesting, they were taken to the Supreme Court and challenged in their right to do that, and the Supreme Court upheld their right to do that. As a consequence, they are able to provide more affordable prescription drugs to their citizens.

This bill is more about shifting medical costs to beneficiaries than actually reining in prescription drug costs. It is the ins and outs of private competition and to prevent the Federal Government from running the program, the Republicans came up with an unprecedented $12 billion slush fund to entice private plans to participate in this risky market. On top of giving them extra payments to participate, the bill does nothing to require that those private plans operate efficiently.

The Medicare Program in its entirety now spends only 2 percent of its total expenses on administration. By contrast, many of the health plans in the private market often commit as much as 15 to 20 percent of their expenditures to administration. So every dollar that goes to administrative costs is a dollar not available to improve benefits for Medicare beneficiaries. Smart stewards of taxpayer funds ought to demand that private plans be more efficient if they want to participate.

So this bill is not just about adding a prescription drug benefit to Medicare, it is also a bill that represents an ideological excess by some who want to force the traditional Medicare Program down the path to privatization. Under this bill, seniors will be given this choice: pay more for Medicare and get forced into an HMO, give up on choosing your own doctor and hospital or watch your bills skyrocket. This so-called premium support provision is, in my judgment, irresponsible and unfair.

The so-called cost containment provisions add insult to injury. By essentially placing a cap on future Medicare spending, this bill is going to attempt to force future Congresses to reconcile Medicare spending growth by cutting benefits, raising premiums, or increasing the payroll tax. I think that is unacceptable.

In addition, this bill squanders another $6 billion on tax breaks for wealthy people, and that is going to have an impact in harming Medicare. The reason is that when a tax-free, high-deductible, catastrophic health policy, known as a health savings account, is authorized, there is a provision going to be used by those who have the money who can afford it. The result is it is going to undermine traditional Medicare by cherry-picking the healthiest people and the wealthiest seniors out of the risk pool, thereby raising premiums by as much as 60 percent for those who are left behind.

In the end, we have to ask ourselves who wins and who loses in this bill. I think I have shown how seniors lose. They lose $25 billion from a PDP, a private drug plan, a PPO, or the fallback, this benefit is guaranteed for all seniors. It is guaranteed in this bill. Fee for service is held harmless in this bill in all respects. So a senior can always get a standard prescription drug benefit under this bill. Whether one takes it from a PDP, a private drug plan, a PPO, or the fallback, the benefit is guaranteed for all seniors. It is guaranteed in this bill.

As I mentioned earlier, this benefit is an entitlement. It is a $400 billion entitlement expansion we have tried to pass in past years but are only able to get passed now. I have heard some Senators claim that this is not the Senate bill because it contains something called premium support, and it has a so-called slush fund. Let me remind Senators, the so-called premium support is extremely watered down from what was in the House bill. It is time limited to 6 years. Only six cities will be demonstration projects. Low-income seniors in each of those six cities will be held harmless. They get full protection. In addition, the premiums for those who are not low income are limited to a 5 percent co-payment. The fee for service is held harmless in all respects. The fees are held harmless in all respects, except the...
Part B premium may go up by no more than 5 percent. Any other change in these demonstration areas has to be enacted by Congress—enacted by to Congress to extend, enacted by Congress to expand, enacted by Congress to change.

What has happened in the past when we have had these demos? They have been repealed. They have not been extended. In 1997, Congress set up premium support demonstration projects. Congress then rushed in to repeal them as quickly as it possibly could. They were gone. The same will happen here. Do my colleagues know why? Because the dollars provided to private plans in the premium support demonstration areas will be much less than in other parts in the country. The private plans will not be able to survive.

Mark my word, those plans, those physicians, and those providers in the demonstration MSAs are going to come to Congress and ask us to repeal it. Remember, this so-called $14 billion slush fund, $12 billion was in the Senate bill, which seventy-six Senators voted for. This is just $2 million more, and it does not come out of the $400 billion for drug benefits. That $400 billion for drug benefits is still there, but the conference report does have $2 billion more than the Senate bill, for which 76 Senators voted.

To close, I will return to my main point. This is a very good bill. We have the opportunity now to provide prescription drug benefits for seniors. We are not going to have this opportunity in the future. Beneficiaries have waited a long time for this benefit. This bill is much closer to the Senate bill than it is to the House bill. If we do not pass this now, I must ask you, what are we going to tell our seniors when they say to us, Mr. Senator, Ms. Senator, you told us you were going to give us prescription drug benefits but you found some reason to say no and you voted against it? Do you want to give it to us? Why did you give us the help you promised? We have an obligation to help our seniors pass this legislation.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I rise to talk about the bill before us.

When the Senate first voted on a prescription drug benefit for seniors back on July 30, 1965 and 11 months later July 1, 1966—all the people who were eligible for the program were enrolled in the program.

The entire system was created from scratch in 11 months.

I know the President is desperate to take credit for passing a prescription drug bill when he faces voters next year. But he does not want the many shortcomings in this plan to be fully evident to seniors until well after the election. My Republican friends are hoping that seniors won't find out what they don't get from this legislation until it is too late. It is almost a cruel joke.

When a prescription drug benefit is signed into law, all of our offices will be flooded with calls by seniors asking a simple question: "How can I sign up for this benefit?" They will have seen President Bush during the campaign. And when seniors call to find out how soon they can receive the benefit, we will have to tell them "2006." Sorry, President Bush's 2003 Medicare Prescription Drug Plan will not start until 2006.

No one wants to provide a real Medicare prescription drug benefit to seniors more than the Democrats. After all, Democrats created Medicare, and we have protected it for decades.

Everyone knows that Republicans resisted the creation of Medicare and have opposed it ever since. It wasn't too long ago that former House Speaker Newt Gingrich expressed his desire to see Medicare "wither on the vine." Well, the President today is the first major step toward the disintegration of Medicare as we know it.

In reality, this bill isn't as much a benefit for seniors as it is a big benefit for HMOs and other private sector special interests. As you know, HMOs will use something called a "formulary." A formulary is a list of drugs that are covered under the health plan. If a particular drug is not on the formulary then it is not covered.

That means that an HMO with a $20 deductible and little or no out-of-pocket costs will have an advantage over a seniors-only plan. Under the plan as it is written, seniors will be on their own to find the drugs they need. It will be difficult for seniors who may not have access to the Internet to know which drugs are covered. And it will be difficult for seniors to know which drugs are not covered.

There is another way to look at this plan. There is another way to look at this bill. Mr. President, this bill goes to great lengths to prop up and protect HMOs at the expense of Medicare. This bill does not expand Medicare; it opens the door for HMOs to take over the program. And that means that seniors will be at the mercy of these HMOs. And as everyone knows, HMOs will not pay for all prescription drugs. Under this bill, seniors will be limited to the prescription drugs covered by their drug plan or HMO. In order to keep costs down, these drug plans and HMOs will use something called a "formulary." A formulary is a list of drugs that are covered under the health plan. If a particular drug is not on the formulary then it is not covered.

That means that after a senior has paid her premium and her deductible if she needs a certain medication not on the list used by her drug plan or HMO, then she will pay 100 percent of the cost of that medication.

Where is the benefit in that? More seniors won't have the choice that they have had in the past. This bill goes to great lengths to prop up and protect HMOs at the expense of seniors. Included in this bill is something called the "Stabilization Fund." It should be called the "HMO Slush Fund." This fund is designed to ensure that HMOs succeed by offering artificially low premiums and better benefits than traditional Medicare. This bill has provisions that make it easier for HMOs to set low premiums. The costs of this slush fund will be paid for by seniors. And Congress won't tell seniors how to use this money. We have made a choice to create a $12 billion slush fund for the insurance industry.
I want to spend a few minutes talking about the overall impact of this bill on seniors in the State I represent—New Jersey.

The most important reason why I am voting against this bill is because I am convinced that more seniors in my State will be hurt by this legislation than helped.

In New Jersey, approximately 1.1 million seniors will lose their existing drug coverage. Currently 430,000 New Jersey retirees receive prescription drug coverage from their former employers. Because this legislation gives a disincentive to employers to continue offering coverage to retirees, over 90,000 seniors in New Jersey will lose their existing drug coverage, which often offers more generous benefits.

This bill is also going to make poor seniors in my State worse off. In New Jersey, Medicaid covers the drug costs for seniors up to 100 percent of the federal poverty level. That is an income of approximately $9,000 a year for an individual or $12,000 a year for a couple.

In New Jersey, low-income seniors currently on Medicaid have access to what they need and they don’t have any co-pay for their prescriptions. Under this bill, however, they will now pay $1 per prescription for generic drugs and $3 per prescription for brand-name drugs.

Low-income seniors tend to be in worse health and, as a result, they have higher annual drug spending. A senior with an annual income of $7,000 or $8,000 a year doesn’t have the discretionary income to shell out $15 or $20 or $25 for the prescriptions that she or he may need.

In New Jersey, the cost is just like a lot of money to my colleagues, but for low-income Americans, it can force them to choose between buying medication and buying food or buying medication and keeping the heat turned on in the winter.

Mr. President, this bill represents an enormous opportunity squandered. We had a real chance to do something right for seniors. We had a $400 billion to invest to improve the lives of 34 million seniors, 14 million of whom don’t have any prescription drug coverage right now. Frankly, we blew it.

When I look at this bill, I see a bill that makes seniors in New Jersey worse off.

I see a bill that makes poor seniors worse off.

I see a bill that takes away choices from seniors.

I see a bill that wastes taxpayer money on a slush fund for HMOs.

I see a bill that “hides the ball” until 2006.

And I see a bill that I cannot, in good conscience, support.

I yield the floor.

Mr. GRASSLEY. Mr. President, let me inquire of the Democrats. Could we have a Democrat speak?

Mr. FID. Mr. President, Senator AKAKA is here and raring to go.

Mr. GRASSLEY. Thank you very much.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, I rise today to express my opposition to the conference report for H.R. 1, the Medicare Prescription Drug and Modernization Act of 2003.

For far too long Medicare has lacked a prescription drug benefit. The lack of this benefit has been the gaping hole in the Medicare safety net. I have consistently supported efforts to establish a meaningful Medicare prescription drug benefit, including H.R. 1, the Prescription Drug and Medicare Improvement Act of 2003, because it would have been an important step forward in meeting the prescription drug needs of seniors. I am concerned, however, that instead of making improvements in the Senate-passed bill, the conference report is now a false promise to our seniors. Mr. President, the conference report contains too many flaws to warrant passage. The conference report lacks appropriate prescription drug coverage for seniors. Indeed, many seniors will be worse off under this proposal.

The prescription drug coverage in this legislation is simply not comprehensive enough. Too small an allowance is provided within the legislation to establish a meaningful prescription drug benefit for seniors. Instead of reducing the size of the coverage gap, the conference report would require that seniors pay for all of their drug costs after their total drug spending reaches $2,250. Despite continuing to pay their premiums, they will have to pay any additional costs until they spend about $5,000. This gap is about twice as large as the gap that was contained in the Senate-passed bill. Why should seniors have to continue to pay premiums when they do not receive any benefits if they are in the gap? This coverage gap must be filled.

Mr. President, for too many seniors in Hawaii the prescription drug coverage will be worse under the provisions in the conference report. Seniors who are currently provided prescription drugs through their state Medicaid programs will have federally mandated copayments imposed on them. For example, Hawaii’s seniors who have incomes of less than 100 percent of the poverty level and obtain their medications through Hawaii’s Medicaid program will be worse off under this plan. They will now have to pay copayments to get their prescription medication. Hawaii’s seniors are no different for Budget and Policy Priorities believes that most of the 6.4 million individuals that have dual eligibility for Medicare and Medicaid will be charged more under the conference agreement for medication than under existing law.

I am afraid that too many low-income seniors will not be able to afford these meager copayments. Those seniors who receive benefits will be denied access to the medications they are currently being provided. Again, they will go without the treatment they need. In addition, the new drug benefit that Congress approved in the conference report places on states may lead to a reduction in other Medicaid services that states will no longer be able to afford, because of the substantial share of prescription drug costs that states will have to pay for the federal government for seniors who are eligible for Medicare and Medicaid.

Mr. President, I am also concerned about the millions of retirees that will lose their existing coverage. We have seen over the past few years that there has been a disturbing trend of reducing benefits for retirees. Creating this voluntary benefit will only accelerate this trend. The intent of the legislation is for Medicare prescription drug coverage for seniors, not merely to shift the financial burden of existing coverage to the federal government. Many seniors will be forced to rely on Medicare, which will provide a less generous benefit than what they currently enjoy. It is estimated that 17,850 Medicare beneficiaries in my home state of Hawaii will lose their retiree health benefits as a result of the enactment of this legislation. If Medicare beneficiaries lose their employer-based coverage, they may have to pay more for a Medicare drug benefit that provides less comprehensive coverage. Despite the subsidies included in this report to encourage the continuation of existing coverage, it is estimated that approximately 2.5 million people will lose their coverage.

Mr. President, I along with Senators WARNER, ALLEN, MIKULSKI, SARBANES, JOHNSON, and COZZENS legislation that the conferees include our bill, S. 1369, in the conference report to ensure that present and future federal retirees receive the same level of prescription drug coverage. The government’s Federal Employee Health Benefit (FEHBP) program for its employees and retirees stands as a model for all employer-sponsored health care plans. Our legislation would protect prescription drug benefits for federal employees and retirees ensuring parity for these benefits with other FEHBP subscribers. The other body approved companion legislation, H.R. 2631, on July 8, 2003. While the Medicare reform bill includes subsidies and tax credits to employers who retain existing drug benefits for their retirees, such incentives provide no guarantee of the FEHBP drug benefit for the government’s own annuitants. If FEHBP is the model for this reform, the federal government must not drop or reduce drug benefits for retired FEHBP enrollees. Our legislation sends a message to other employer-sponsored plans that the federal government will honor its commitment to retired workers. I will continue to work to bring about the enactment of this bill.

Mr. President, the cost containment provisions in the legislation provide a fast-track legislative process to cut Medicare drug benefits for federal retirees to ensure funding for the entire Medicare program exceeds 45 percent. This arbitrary process is included while more meaningful provisions to control the costs of prescription drugs are excluded. The conference report prevents the federal government from using the bargaining power of 40 million senior citizens to
bring down the cost of prescription drugs for the Medicare program.

Mr. President, the conference report weakens Medicare. It imposes means tests for Medicare Part B premiums and for low-income subsidies for the prescription drug benefit. This is the beginning of the end of Medicare being as a universal benefit. This is the first step towards means testing other parts of the existing Medicare program.

Means tests place greater burdens on seniors. They also create administrative difficulties for the Centers for Medicare and Medicaid Services.

Even more objectionable is the assets test used to determine the low-income subsidies for the prescription drug benefit. The assets test is completely unrealistic. According to Families USA, the assets test will deny subsidies to 2.8 million very low-income seniors if they have even a small amount of assets. For example, the assets test disqualifies people who have household goods and clothing worth more than $2,000. Medicare is an entitlement and personal effects worth more than $2,000. Medicare is an entitlement and personal effects worth more than $2,000. Medicare is an entitlement and personal effects worth more than $2,000. Medicare is an entitlement and personal effects worth more than $2,000.

Mr. President, this legislation also threatens existing Medicare benefits because it includes billions of dollars for subsidies for private plans. This increase premiums for seniors, raises government costs for health care, and damages the solvency of the Medicare trust fund.

Mr. President, I also want to express my disappointment that language similar to an amendment that I had offered, which was accepted as part of the manager's package for S. 1, was not included in the conference report. While I thank Chairman Grassley and ranking member Baucus for their assistance with this provision, it was not included in the conference report. The amendment would have allowed my home state of Hawaii to benefit from the increase in Medicaid disproportionate share hospital (DSH) payments included in the bill. Medicaid DSH payments are designed to provide additional support to hospitals that treat large numbers of Medicaid and uninsured patients. The Balanced Budget Act of 1997 (BBA) created specific DSH allotments for each state based on their Medicaid DSH expenditures for fiscal year 1995. In 1994, the State of Hawaii implemented the QUEST demonstration program that was designed to reduce the number of uninsured and improve access to health care. The prior Medicaid DSH program was incorporated into QUEST. As a result of the demonstration program, Hawaii did not have DSH expenditures in 1995 and was not provided a DSH allotment.

The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 made further changes to the DSH program, which included the establishment of a floor for DSH allotments. However, states without allotments were again left out. Other states that have obtained waivers similar to Hawaii's waiver have retained their DSH allotments. Only two states, Hawaii and Tennessee, do not have DSH allotments.

The conference report provides that states without DSH allotments could receive additional assistance if their waiver was terminated or removed. While this may possibly benefit Tennessee, this language will prevent Hawaii from obtaining any additional Medicaid DSH support that is included in this bill. The conference report includes an additional $6.35 billion in Medicaid DSH relief to the states. Hawaii does not receive any of these funds. Hawaii's hospitals are struggling to meet the healthcare needs of the uninsured. Hawaii cannot continue to be left out. Additional DSH payments would help Hawaii hospitals to meet the rising health care needs of our communities and reinforce our health care system. If any additional Medicaid DSH support is included in this bill, I will continue to work to correct this inequity.

Mr. President, as I said at the start of my remarks, this legislation is a false promise that will undermine the existing Medicare program. It imposes new and burdensome means tests for Medicare Part B premiums and for low-income subsidies for the prescription drug benefit. Additional DSH payments would help Hawaii hospitals to meet the rising health care needs of our communities and reinforce our health care system. If any additional Medicaid DSH support is included in this bill, I will continue to work to correct this inequity.

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Mr. President, as I said at the start of my remarks, this legislation is a false promise that will undermine the existing Medicare program. It imposes new and burdensome means tests for Medicare Part B premiums and for low-income subsidies for the prescription drug benefit. Additional DSH payments would help Hawaii hospitals to meet the rising health care needs of our communities and reinforce our health care system. If any additional Medicaid DSH support is included in this bill, I will continue to work to correct this inequity.

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plans, there would be a Government fallback to ensure that every senior, regardless of where they live in America, would have access to affordable drug coverage, and we would target the most assistance to those most in need. While this is not an end-all or should be, we have to measure the results against the status quo.

I would like to focus for a few moments on one of the issues that has been talked about consistently and understated in the presentation of Medicare. There is no question that I certainly would not support anything that would lead to the privatization of Medicare. In fact, the Senate-passed bill had nothing in the feature of a premium support proposal. Now we have to discuss what is before the conference and what has actually changed from what was in the House-passed legislation. I think it is critical that we understand the differences in what is included in this conference report. The House set me and 43 of my colleagues wrote a letter saying no on an open-ended, permanent nationwide privatization of Medicare through an untested and untried approach known as the premium support proposal. It is certainly no secret that I was totally opposed to this approach, as was many of us here in the Senate. But it is also critical to know what is now being applied in this conference report, and there should be no mistake that this conference report puts an end to that proposal. It puts an end to that effort to privatize.

I certainly would have said the privatization approach in the House bill could have led us down the path of what the program of health care looked like prior to 1965 when Medicare was created, which was a patchwork delivery of health care to seniors in America. We don't want to go back to that; that would be a retreat. The House approach would have wild fluctuations in premiums, as we saw in the charts that were issued by CMS within the Department of Health and Human Services. There would be wild fluctuations not only between States but within States and even within congressional districts.

In response to that concern, I and 43 of my colleagues wrote a letter saying that it would be totally unacceptable—not only the open-ended, permanent nationwide system that the House-passed bill included but also even the narrowed-down version of a demonstration program that would have captured 10 million seniors. That was unacceptable.

I want to make clear where we are today. We have eliminated the whole approach of the House. Now, what is in this conference report as shown in this chart here today is one Federal demonstration program. That is what it is all about. Where the effort once centered on an open-ended national program that would have ultimately ended up in the wholesale undermining and destabilization of the Medicare Program, we now have a pared back demonstration project that would be limited to 46 metropolitan statistical areas; that certain criteria will be included which will determine those areas; but according to the Congressional Budget Office, based on that criteria that, in fact, it would not include more than 650,000 to 1 million seniors.

What we were talking about originally in the House-passed bill was a nationwide program, but we are now back to a pared-down demonstration project, and we include criteria that would limit the demonstration project to 650,000 to 1 million, according to the Congressional Budget Office. Also, there is protection for low income. Where the original proposal by the House had no protection for low income under 150 percent of poverty level, now they are protected as well. They will not be included in this demonstration project.

It is very important to understand some of those changes.

In House, the program sunsets in 2016. It doesn't start until 2010. We obviously have time between now and then after passage of the legislation to address any further concerns. But we move the date from 2008 to 2010. There is an extension to 2016. No extensions are allowed without new legislative action.

There are six MSAs with criteria that I mentioned earlier. Now we are not talking about open-ended, nationwide; we are not talking about even 10 million seniors. We are talking about 650,000 to 1 million.

As far as any premium fluctuations, it is limited to 5 percent. Without the compounding, that would have had the net effect of having a 30 percent increase over 6 years. Now that would be phased in.

I should also mention that this demonstration project is phased in starting in 2010. It is not totally in place until 2015. As we saw in the charts, with the 5 percent, it will be phased in over 4 years. It represents 5 percent each year. We have made substantial changes. It is a wholesale change of what was in the House proposal.

This is a limited Federal demonstration program that allows for the testing of perhaps new ideas. But nothing can be implemented—nothing can be done—until the Congress would want to address those issues based on the results of that demonstration project.

That is very important for Members of this Senate to understand in terms of the differences in scope, size, implementation effect, and what it would do to the underlying program.

Finally, one other additional point with respect to this demonstration project:

Also in this legislation we terminated the financial incentives that are offered to private plans participating in the demonstration when it begins in 2010. I think we have to understand what the true facts are.

This demonstration project will not undermine the underlying traditional Medicare Program as we know it. Obviously, it would be preferable not to have it in this legislation, but this is the essence of a compromise that is before us, and it is very limited in terms of size and scope.

It is important for Members of the Senate to realize that.

In the final analysis, I think we cannot lose this opportunity. This is an idea whose time has not only come, but it is long overdue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I yield myself 9 minutes.

Mr. President, let me commend the Senator from Iowa, the Senator from Louisiana, the Senator from Montana, and others who have worked on this so very hard. I want to express my grati
tude to them for spending so much time on this issue.

Let me also briefly thank my own staff. I am not a member of the Finance Committee. But this issue transcends committees. This is legislation that all of us have a deep interest in. I thank Jim Fenton and Ben Berwick of my staff for the tremendous effort and the time they have put into this.

I spoke at some length on Friday about this issue. Let me divide the issue very quickly. A prescription drugs benefit, I think, would pass 100 to 0. If we had a vote on the prescription drug benefit—you would hear speeches that it didn't go far enough and concerns about the donut hole and whether or not 150 percent of poverty was the right margin to be drawn—but I suspect all Members in the final analysis would support the initiation of a prescription drug benefit on the assumption that we would work to improve it in the years ahead.

If I were voting on that issue alone, I would stand here and raise concerns about other matters included in this provision, but it would have my whole hearted support as a long overdue proposition. I won't dwell on that aspect of the legislation here this morning.

The second piece of this bill, however, is one that causes me concern. This second piece is more difficult to understand, it is less clear than just $400 billion for prescription drugs. The second part of this bill is a major change in Medicare. The program has been around for 40 years and is currently serving 41 million Americans. It is probably the most successful and the most widely supported Federal program of the 20th century. I can't think of any program, except Social Security, which has been so widely supported. We are about to take that program which has worked so tremendously well, and I think disadvantage it significantly. Let me explain briefly why.

The sponsors of the legislation say they think the for-profit option is the traditional Medicare. They claim they are simply creating competition as a result of offering seniors a choice. Let us talk about this so-called “competition.”
Private plans under this bill will be reimbursed at a higher rate than traditional Medicare—9 percent higher. On top of that, this bill also makes available $12 billion in a slush fund to be used to lure private plans into the market under traditional Medicare. You get a 9 percent differential and $12 billion. That is what you get to compete with Medicare. You do not have to have a Ph.D. in math or a Ph.D. in business law to understand that kind of an advantage certainly is not what I call a level competition. It is not competition, it is a rigged game. The bill stacks the deck against traditional Medicaid and the effects are self-perpetuating. Traditional Medicare grows weaker, private plans grow stronger, forcing more beneficiaries out of the traditional programs and into the open arms of HMOs.

It is easy to get bogged down in the complexities of this bill. Let me state it simply: The weakening of the traditional Medicare Program caused by this bill will force seniors to pay more and face the prospect of fewer benefits. Remember, Medicare initially said whether you are wealthier and healthier or poorer and sicker, we all work together. Now we are splitting off the wealthier and healthier and leaving the sicker and poorer on the side.

This bill will actually mean less choice, in many ways, for seniors. Seniors like the traditional Medicare Program as it is currently determined by the bill’s authors when they talk of a cap at 5 percent premium increase. How is Medicare going to compete then? The outcome is predetermined, forcing some seniors into an experiment.

The outcome is predetermined, forcing some seniors into an experiment, the very thing the supporters of this bill claim to be providing. Under the current system, seniors have a choice of doctors. But that choice would soon disappear with a rise in private managed care plans.

I hope this prediction is wrong but I am fearful it is right. If this prediction is wrong, it most likely means seniors have elected not to move into private plans and HMOs will leave the market in many areas, as we have seen in the past with the Medicare-Choice plan, taking $12 billion with them that might have been used to reduce the cost of prescription drugs rather than provide a subsidy for the private plans to compete with Medicare.

Even more ironic is that this highly unfair system is being championed by self-proclaimed champions of free enterprise. This bill gives $12 billion to HMOs to unfairly compete and it does nothing to lower drug prices. Under law, Medicare is prevented from using its purchasing power to negotiate with drug companies for lower prices. What is wrong with letting free enterprise work here in order to lower drug prices?

If Medicare is in need of reform, why in this bill are we subsidizing private companies and not allowing the Medicare program to compete for lower drug prices? The reason is simple: The champions of free enterprise know that private plans cannot compete with traditional Medicare on a level playing field. The subsidies are necessary because Medicare is actually more efficient. Medicare delivers services at a lower cost.

In 2000, a provision included in this bill will go into effect that begins an experiment with private plans for Medicare beneficiaries. Why are we taking our seniors, the most vulnerable, and turning them into guinea pigs for an experiment is beyond me. That is what we are beginning to do. Given the unlevel playing field I believe a competition would further disadvantage the traditional Medicare Program.

The bill writes into it right now a cap of 5 percent premium increases for each year it is in effect by this premium support experiment. The bill anticipates premium increases even before we have tried the program, and they are going to take 6 million seniors and throw them into an experiment, a pilot program, the outcome of which has already been determined by the bill’s authors when they talk of a cap at a 5 percent premium increase. How is Medicare going to compete then? The outcome is predetermined, forcing those seniors into a disadvantaged program. The weaker and the poorer and the sicker seniors will end up paying more or having benefits cut.

I am afraid we can only conclude one thing: The architects of the bill, with all its billions of dollars to spend, are not trying to reform Medicare, but to dismantle it. It puts patients out there to wither on the vine, as Newt Gingrich said 8 years ago. If the man who wanted that embraces this legislation, that could mean one of two things: Either his opinion has changed or this legislation really is intended to end Medicare.

I submit that I see no evidence his opinion has changed.

We set out to add prescription drug benefit to Medicare. I applaud that. We could have had a bipartisan bill that did just that. It could have been approved by this Chamber overwhelmingly. But instead, we are being asked to vote on a patchwork. The second part of the bill, the changes in Medicare that will affect 41 million seniors, two-thirds of whom make less than $30,000 and above $34,740, for those in that category, this bill offers disturbing alternatives.

For those reasons, I urge that when the cloture vote occurs, Members vote against it. We can do better. I applaud the efforts made, but we can do better on this legislation than we have done. I believe I used 9 minutes, but others have gone over 9 minute. I yield back my time for those on the Democratic side who would like to be heard on the legislation.

Mrs. LINCOLN, Mr. President, I rise to speak about the Medicare prescription drug coverage conference report before the Senate today.

I do strongly believe this is a historic opportunity. I believe we should not let it pass by. This proposal represents a $400 billion expansion of the Medicare Program, the largest expansion of Medicare since it was created nearly 40 years ago.

While I intend to support this measure, I think what is most important at this juncture is to be honest with the American people. For me, it means being honest particularly with the people of Arkansas and the Arkansas seniors that if this bill can rise it will not be all things to all people. The bill will not provide free drugs for everyone. Some seniors, because we have talked about this for so long, have come to their own conclusion that what we were trying to get was free drugs for all seniors in this country.

I have to remind people we are in debt in our country up to our eyeballs, as far as the eye can see. We did not have an opportunity to provide free drugs to all seniors in this country. Therefore, we have to do the best we can do right now with what we have. I am not pleased about the debt. I didn’t support the last tax bill and I am scared to death of the debt we are creating for my twin boys who are 7 years old right now.

The fact is, in this year’s budget we have $400 billion dedicated to American seniors. We have to do the best job we can to make that productive for them in this current circumstance because next year and the year after that, it will not be there; we will still be in debt up to our eyeballs.

We have a tremendous amount to do. This bill starts that. It is unfortunate the issue of adding a prescription drug benefit to Medicare has become so politicized. Several Democratic conferees, many of them experts on this issue in their very own right, were not permitted the opportunity to negotiate the final bill. They were prohibited from being part of this very important conference. This bill would have been better had they been involved.

Despite the flaws in this legislation and the partisan process we witnessed over the last few months, Democrats and seniors should be pleased that many of the principles we fought for are contained in this bill.

Is this the bill I would have written? Absolutely not. But there are components in this bill that are productive and move us forward. On behalf of our seniors, we must seize that opportunity.

The bill before the Senate today will provide all of the 453,448 Medicare beneficiaries in Arkansas with access to a Medicare prescription drug benefit in this current cloture conference.

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Ms. LINCOLN. I thank the Senator from Iowa.

Mr. President, I have a lot more to say, and I hope I will have an opportunity to do it at some point.

I think the most important point to be made today is to talk about those who will be served. Over 170,700 beneficiaries in Arkansas will pay no premium for their prescription drug coverage and a nominal copay of no more than $2 for generic drugs, $5 for brand-name drugs. They also will not have a gap in their drug coverage.

We are addressing some of the neediest individuals in our country at this juncture. Over 40,200 additional seniors in Arkansas will qualify for reduced premiums, lower deductibles and coinsurance, and no gaps in their drug coverage. All told, over 40 percent—over 40 percent—of Medicare beneficiaries in Arkansas will receive the much-needed special help.

This low-income assistance is of special importance to Arkansans' older women. Medicare seniors are disproportionately women and disproportionately poor, and will be served well by this special assistance.

There is much I would have done to strengthen the low-income provisions, such as not having an assets test for everyone and ensuring that Medicare could wrap around the cost-sharing requirements in the Medicare bill and that Medicaid could pay for prescription drugs not on the private plan's formulary.

I fought to include a new benefit providing screening for diabetes. The new prevention benefit will help with the fact that approximately one third of the 7 million seniors with diabetes—or 2.3 million people—are undiagnosed.

They simply do not know that they have this very serious condition—a condition whose complications include heart disease, stroke, vision loss and blindness, amputations, and kidney disease.

This bill takes a number of steps to protect seniors' access to community pharmacies.

I worked hard to ensure that private PBMs must disclose any price concessions made available by manufacturers, that the Secretary of Health and Human Services has the authority to audit the financial statements and records of plans to ensure that they are complying with these disclosure requirements, and that the Federal Trade Commission study whether the PBMs are keeping down mail order pharmacy prices.

In addition, private plans must allow any willing pharmacist to be a provider under its plan. And for the first time, local pharmacists will be allowed to offer 90-day prescriptions just like mail-order pharmacies.

These provisions are vital to rural hospitals, physicians, ambulance providers, home health providers, and rural health clinics in Arkansas. I have worked with my colleagues for a number of years on these provisions, and long-sought rural equity is finally achieved.

This bill also contains several good additions to the traditional Medicare Program that seeks to improve the health and well-being of seniors.

Among the provisions that I fought to include is my demonstration program on chronic care management that will allow doctors and the healthy outcomes that result when a geriatrician is paid appropriately for caring for a patient with multiple chronic conditions.

I also fought to include coverage for insulin syringes. Roughly 40 percent of the senior population with diabetes—or 1.8 million seniors—use syringes to inject insulin into their bodies to control their diabetes every day.

Without a prescription drug benefit—their insulin purchases—which can be especially expensive for seniors on fixed incomes—would not count towards cost-sharing and yearly maximum out-of-pocket expenses.

The low-income assistance in the Senate bill was much more generous. It helped 3 million more seniors. And I pledge to these seniors that I will continue to work on strengthening these provisions in the future.

I am pleased that the conference agreement provides financial incentives for employers to continue offering prescription drug coverage for their retirees.

I have received many calls this week from constituents who want to ensure they don't lose the health coverage they worked for their entire lives. It is frustrating that employers are already dropping retiree health coverage.

So I am glad this bill provides tax incentives to employers and unions so they don't drop drug coverage. Employer groups have told me that this bill will actually encourage them to retain rather than drop coverage in the future.

This bill also creates the most comprehensive rural package we've seen in years. By significantly decreasing or eliminating the disparities in Medicare payments that exist between rural and urban health care providers, seniors in rural areas will have better access to the care they need.

To conclude, we must seize this opportunity before it is too late. This is not the bill I would have written, but it is a step forward.

Yesterday, I talked with Cecil Malone, the president of the Arkansas AARP. We both agree that this moment must not be wasted. We must act now to get a bill passed into law. Once it is there, it can only get better.

I promise the seniors of Arkansas that I will work day in and day out to make this prescription drug plan better.

I will also work to preserve and protect the Medicare Program so it can continue to be a safety net for all those who are uninsurable in the private market—millions of seniors, individuals with disabilities, and people with kidney failure.

The Medicare Program has prevented these most vulnerable individuals from being uninsured. We must remember the Medicare Program's origins and do no harm as we proceed—and do no harm to it.

Finally, Mr. President, I thank Finance Chairman GRASSLEY, Ranking Member BAUCUS, Senator BREAUX, and the members of their staffs who worked so hard over the last several months to bring us to this historical moment.

This bill also ensures that seniors have convenient access to pharmacies

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by adopting the same standard that TRICARE uses to determine access.

The bill also includes my provision to waive temporarily the late enrollment penalty for military retirees and their spouses who sign up for Medicare Part B and remain on a year-round enrollment so that retirees can access the new benefits immediately.

I am glad that this bill takes some steps to contain the skyrocketing price of prescription drugs. One provision in the bill would bring generic drugs to the market faster, and another provision would give the Government authority to create a system for the importation of drugs from Canada by pharmacists, wholesalers, and individuals once safety standards are met.

I have long supported drug re-importation but both the Clinton and Bush administrations have refused to implement drug reimportation authorized by Congress, citing concerns about drug safety.

I am glad that this bill directs the Secretary of Health and Human Services to conduct a comprehensive study that identifies current problems with implementing the current reimportation law we already have on the books so Congress can enact a law that will allow reimportation to go forward.

Mr. President, there is a lot to be talked about here. I hope we will continue to work together to improve upon the shortcomings in this legislation as we work to see it implemented.

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The American people know, as I have heard their calls, that something is wrong with the bill that promises instant relief but does not help a single senior really until 2006.

Would you buy a drug with that kind of lag time? In fairness, there is at least one good thing to say about that delay. It means that when another President comes to occupy the Oval Office early in 2005, he can set about fixing the bill, if it passes before it goes into effect.

The proponents of this Medicare prescription drug bill have tampered with America’s seniors. They have broken the seal on the compromise we had reached over the summer, emptied the contents of the legislative bottle, slipped a write-in cure for a course of poison pills, and put it back on the shelf for us to buy. America’s seniors are not buying it. They know what is in the bottle. We shouldn’t buy it either. I cannot and will not vote for this bill. I urge my colleagues to do the same.

I yield the floor.

THER JOHN DODD, (V. Presiding Officer). Mr. LIEBERMAN.

Mr. DODD. Mr. President, I ask unanimous consent for the 1 minute that Senator Dodd did not use. He delegated me to have that minute.

The PRESIDENT. Without objection, it is so ordered.

Mr. LIEBERMAN. Proponents of this prescription drug bill have tampered with America’s seniors. They have broken the seal on the compromise we had reached over the summer, emptied the contents of the legislative bottle, slipped a write-in cure for a course of poison pills, and put it back on the shelf for us to buy. America’s seniors are not buying it. They know what is in the bottle. We shouldn’t buy it either. I cannot and will not vote for this bill. I urge my colleagues to do the same.

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THE MEDICARE PRESCRIPTION DRUG LEGISLATION

Mr. LIEBERMAN. Mr. President, I cannot, in good conscience, vote for closure and I intend to vote against this bill. With reservation, I voted in the favor of the Senate Medicare prescription drug bill. I felt the Senate bill, though flawed, brought us closer to offering seniors the universal prescription drug benefit that they needed and deserved. My hope was that the problems in the bill could be fixed in conference. The bill that has emerged from the House-Senate conference, however, does too much harm to the overall Medicare program.

We need to modernize Medicare by providing beneficiaries with a prescription drug benefit. But just because we need a bill creating a Medicare prescription drug benefit, does not mean we need a bill that provides little help for Medicare beneficiaries and takes too many risks with the overall Medicare program, and I am not willing to take those risks.

One of the things that I am most concerned about with respect to this bill is the lack of true cost containment. If we are to ensure that Medicare remains solvent in the years to come, especially after adding a new $400 billion prescription drug benefit, we need to make sure that we take fair measures to keep the cost of Medicare down. This is especially important given the number of baby-boomers who will soon be enrolling in Medicare. Although this bill came in under the budgeted $400 billion, because it fails to make any real effort to bring down the skyrocketing prices of prescription drugs, the true cost of this bill is likely to surpass what has been budgeted for it. This is fiscal irresponsibility. We cannot put Medicare in financial jeopardy by ignoring the impact of rising health care costs on the overall Medicare program.

I am also greatly concerned by the efforts included in this bill to make Medicare a private, managed care program. This bill includes $12 billion in additional subsidies to encourage private insurance companies to offer managed care plans under Medicare. The bill also includes a demonstration project, which could affect up to 25 percent of Medicare beneficiaries, that may cause them to pay more in premiums, should they decide to stay in traditional Medicare. Those who cannot afford these higher premiums will be forced to choose a private plan, which may limit their access and choice of doctors and other providers. Seniors should not be forced to enroll in private plans simply because they cannot pay more to stay in traditional Medicare.

One of my greatest concerns is how this bill will impact Wisconsinites. While providing, at best, a minimal prescription drug benefit for some, the bill will make others worse off than they currently are. It is estimated that, because of this bill, 60,000 retirees in Wisconsin will lose the health insurance they currently have from their employers. Over 110,000 of poor, disabled or elderly Wisconsinites who currently pay nothing for their prescription drugs will now face increased payments for their prescription drugs because of this bill. This bill will also drive up costs for the State, in a time of fiscal crisis, because Wisconsin will lose the ability to negotiate drug costs and will face increased administrative costs.

There are some who will benefit because of this bill. Due to subsidies, the tilted playing field toward private insurance plans, and the lack of any cost containment on prescription drug prices, this bill will be a windfall for pharmaceutical and insurance companies. All we have to do is take a look at how the stocks of pharmaceutical companies and insurance companies soared recently in response to this bill. While these selected industries will profit, however, retirees and many low-income Medicare beneficiaries will suffer.

I am truly disappointed that I cannot support this bill, because there are some good things about it. I am pleased that the provisions that will bring us closer to having fairness in the Medicare reimbursement system were included in this measure, and I support the effort we have fought for a fair share of Medicare dollars for states like Wisconsin for years. I am proud to have authored the amendment that passed in the Senate Finance Committee earlier this year, which helped make the inclusion of Medicare fairness provisions in this bill possible. These particular provisions will help reduce the gross inequity in the division of Medicare dollars across the country.

But, on balance, I cannot vote for this bill because of the negative impact it will have on the Medicare program. The harm this bill does to Medicare and those who depend on it outweighs the benefits. Instead of privatizing Medicare, Congress needs to go back to the drawing board and create a real Medicare prescription drug benefit without undermining the Medicare system itself.

The PRESIDENT. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield 6 minutes to Senator Breaux.

Mr. BREAUX. Mr. President, I thank the chairman of the committee.

We have now come to the time of decision with regard to whether we are going to have the committee and the Senate pass a bill that creates a program that is substantially better than the 40 million seniors currently have under Medicare.

When Medicare was created in 1965, it was bipartisan. It was a change. Some said we should not change it. I would argue that Democrats have never feared change. In 1935, when we wrote the Social Security Program under Franklin Roosevelt’s leadership, Democrats changed the status quo. When we led in 1965 the effort to provide medical assistance for our Nation’s seniors, we challenged the status quo. We stood up for change and created a new program. Today, over 38 years later, we have the opportunity to once again change our nation’s health care for our observed seniors well but not nearly as well as they deserve. Democrats should not fear that type of change.

Medicare today, on average, does not cover 75 percent of the Medicare’s health care costs in this country. Not one of us in this institution—our employees, Members of Congress—has health care insurance that is that deficient in what it does not cover. Forty-one percent of those costs have to be borne by the senior citizen individually or, if they do not have enough money, by their children or their grandchildren or, if they become so poor,
they are put into the State Medicare Program for the poorest of the poor. That is unacceptable. That is not in keeping with the greatness of this Nation, to have a health care program for seniors that is that deficient.

The best way to solve health care problems is to do everything, keep the Government out of it, and we can design a program with the free enterprise system that will work just fine.

Unfortunately, there are some on my side who would say: No, the Government should have nothing to do with it. The private sector should do everything, and we can design a program with the free enterprise system that will work just fine. The private sector cannot be involved at all.

Both of those approaches are incorrect. The best way to solve health care problems is to do what this bill does; that is, to combine the best of what government can do with the best of what the private sector can do and come up with legislation that says: Yes, the Federal Government can superintend the micromanagement of the Federal Government can help pay for it through the tax system—and this bill does that—but the private sector needs to be involved as well. The private sector can bring about innovation. They can come up with new ideas and new concepts faster than we can in the Congress and in the Federal bureaucracies here in Washington. The private sector can bring about a degree of competition which is sorely lacking under the current micromanaged system with 133,000 pages of rules and regulations. That does not allow innovation or competition. That is one of the reasons the program as we know it today, as good as it is, can be made a lot better.

The issue for our Nation’s seniors is not just living longer lives; it is also about living better lives. For the first time, seniors will know that when they need prescription drugs, they will be available. Four hundred billion dollars will be spent on drugs where they will have insurance that covers prescription drugs, just as in 1965 when we made changes that said the Federal Government will help provide insurance to cover hospitalization, we said that for the first time the Federal Government will help with a program that will provide insurance coverage for doctors. This is a good program. We should not fear change. This is a major step in the right direction.

The agent of change is the President. The Senator’s time has expired.

The Senator from Maryland. Ms. MIKULSKI. Good morning, Mr. President. I ask unanimous consent to use such time as is necessary to complete my statement.

The agent of change is the President. The Senator is recognized for up to 9 minutes. Ms. MIKULSKI. Mr. President, this was a day I had always looked forward to, a day when the Senate would be voting on a prescription drug benefit. I have devoted my life to the advocacy of senior citizens and to standing up for ordinary people to make sure they could make sure that government was on their side when they needed it, when they were at risk. But today I come to this vote with indeed a heavy heart.

The bill the Senate is voting on today is a hollow promise for a prescription drug benefit for seniors. This bill takes what I call talk and promises prescription drugs to seniors yet it will create a skimpy benefit for the middle class, cause 2.7 million seniors who already have drug coverage from their employer to lose their coverage, force seniors to go into HMOs which means seniors could lose the doctors of their own choosing, provides lavish subsidies to insurance companies, creates tax dodges for those making over $250,000, while doing absolutely nothing to stop the soaring cost of prescription drugs.

When I voted for a bill in June, it was a modest, but genuine bipartisan effort. I believed it was a start. For years Congress had talked about Medicare. But talk, talk, talk; when all was said and done, it meant more discussion than got done. And when you can’t talk your way out of diabetes, you need insulin. You can’t talk your way out of high cholesterol; you need Lipitor. So I thought Congress should move on. But when I voted for the bill, I said that was as far as I would go. I said when the plan came back, if it helped the insurance companies instead of seniors, goodbye to my vote. I said if it increases costs for seniors, say goodbye to my vote. And if it puts prescriptions into HMOs which means seniors could lose the doctors of their own choosing, provides lavish subsidies to insurance companies, creates tax dodges for those making over $250,000, while doing absolutely nothing to stop the soaring cost of prescription drugs.

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means if you are forced into an HMO, you are going to lose your doctor. You will get the doctor that a bureaucrat tells you you should have rather than the doctor you want to have.

It also creates tax dodges for those making over $250,000, the so-called health savings account—another $6 billion, which they should be paying taxes on. But oh, no, it is one more gimmick, a tax dodge. If you take that $12 billion plus the $6 billion, it would give us $18 billion of Medicaid money. And the only reason for that is because we have made people eligible for Medicaid now eligible for Medicare. Those are the dual eligibles.

One of the reasons we are doing so is because there are many on the other side of the aisle who wanted dual eligibles to be covered under Medicare. The copayment for those dual eligibles is the same as under Medicaid. It is $1 for generics and $3 for name brand drugs. That is hardly a very high cost for prescription drugs. It is nowhere near the average of those copayments for people who are in nursing homes and have other sources of coverage. So what we have done is that so many on the other side wanted us to do, is take people out of Medicare and put everyone in Medicaid. That makes some sense, but it is an enormous cost to the Federal Government.

To the seniors of Maryland, I am going to vote against this bill. I am not voting against you. I am voting for you so that you have the benefit that you need. We have an affordable program for the U.S. Government. We can hold our heads up high, but know that when my name is called, I am going to vote no on this bill and, yes, that we can do it better, and we can do it better tomorrow.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, on our side, I think the time we have allocated for speeches on our side is coming to an end. We have a little time left, is that true?

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

Who yields time?

The Senator from Wyoming.

Mr. THOMAS. I yield 5 minutes to the Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I rise in support of this conference report. I congratulate all those who have worked on this bill, I have to admit, I have mixed emotions. There are a lot of things in the bill I like and some things that I don’t like.

One of the criticisms I have heard leveled against this bill is that it does harm to those who are in the Medicaid population, the very low-income, under 100 percent of poverty. The interesting thing is that some suggested it does harm because we have made people eligible for Medicare. Those are the dual eligibles.

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One of the reasons we are doing so is because there are many on the other
behind the sheep, and they would scare them off and try to get him before he got the hens and the sheep.

The wolf got really smart. The wolf found some poor old sheep that hadn't quite made it back from the hills and, unfortunately, killed that sheep, got that sheepskin, and snuck in. When people saw it moving across the ground, they thought: That's just an old sheep.

Lo and behold, the wolf got to the hen house and the sheep, and that poor old farmer didn't have any hens or sheep left by the time the wolf got done.

Make no mistake, that is what is going on here. You can dress it up, you can talk about how significant a benefit it is going to turn out to be, how we are modernizing and changing Medicare for the 21st century, but remember that fairy tale. Fairy tales are rooted in ancient folk wisdom and history, and what we have here is just a classic wolf in sheep's clothing.

There are many reasons to oppose this bill, and my colleagues have been going around and doing one after another. I think the bottom line is, No. 1, this bill does very little of what it actually advertises doing. It advertises it is going to be a sea change—a positive sea change—for seniors, and that is not the case.

We have been fighting over prescription drug benefits for seniors for years. A decade ago, when I was working on behalf of the Clinton administration with respect to health care, we included a drug benefit. Some of you may remember that debate. That debate went down, and it went down for many reasons, but one was that it was a 1,300-page bill—a bill that would guarantee health insurance to every American, a bill that would have gone across the border and get those cheaper drugs. In this bill, that is going to continue to be a problem and a prohibition in reality, if not legally, because drug companies are going to be given the go-ahead to basically violate antitrust rules so they can cut back on the amount of drugs they send to Canada.

I don't blame the drug companies. They have a captive market in our country. Our tax dollars do the research and determine the efficacy of drugs, quality, and safety, and then other countries, such as Canada, Europe, and other places, bargain with the drug companies. They say, OK, we have a big market. We have millions of people. It is kind of like Sam's Club, only think of it as the Canadian club or the European Union club. They bargain with these drug companies and they drive the prices down because they are going to buy in volume.

We have to look at who is doing what in this debate to figure out where the sheep are, where the hens are, and where the wolves are. One of the biggest wolves who has been after Medicare for as long as he has been in public life is our old friend, Newt Gingrich, former Speaker of the House, when he called for Medicare to wither on the vine.

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Well, guess who showed up to try to whip those House Republicans in line to vote for this bill, which is why they had to leave the vote open for more than 3 hours, the longest time they have ever had to leave a vote open because basically, there was the wolf in sheep's clothing going up to the House Republicans and saying: Do not worry, we are going to say all of these good things about this bill, but just wait until we get our hands on it, just wait until we get into that hen house.

I do not blame them if that is what they believe. Nevertheless, we are the ones who are going to be paying the price.

I ask unanimous consent for an additional 2 minutes.

The PRESIDING OFFICER. That will be 2 minutes off the Democratic side. Since there is no one from the Democratic side objecting, it is so ordered.

Mrs. CLINTON. I will put a chart up that gives a short summary for any American, and particularly for any senior citizen, watching. This bill sacrifices seniors' interest to special interests.

Seniors need lower drug prices. Forget it. The drug industry wants higher profits.

Seniors need predictable premiums. Forget it. Managed care wants the flexibility to raise their rates even in the middle of the year.
Seniors need a choice of drugs. Forget it. The drug industry wants a restrictive formulary that pushes their brands.

Seniors need to keep their retirement benefits. Forget it. The private plans want to go bust so we are going to lose retiree health care.

Seniors want to stay in Medicare. Forget it because what is going to happen is that Medicare is going to get increasingly the health care plan for the sickest and the oldest of our seniors, which will make it more expensive. In this bill we are going to even see a contraction on the nondrug benefits for Medicare.

So we have to really watch what goes on around here. They have to follow it. Medicare.

This bill we are going to even see a contraction which will make it more expensive. In future generations of American taxpayers the taxpayers funding the purchase of prescription drugs under Medicare, we have an obligation to ensure some amount of cost containment against the skyrocketing costs of prescription drugs. Unfortunately, however, this package explicitly prohibits Medicare from using its power to negotiate lower prices with manufacturers.

How is that possible? The Veterans' Administration, the VA, and State Medicaid Programs use market share to negotiate substantial discounts. It is prohibited in this bill. The taxpayers should be able to expect Medicare, as a large purchaser of prescription drugs, to be able to derive some discount from its new market share. Instead, taxpayers will provide an estimated $9 billion a year in increased profits to the pharmaceutical industry.

Prescription drug importation is another lost opportunity for cost containment. American consumers pay some of the highest prices in the developed world for prescription drugs and, as a result, millions of our citizens travel across our borders each year to purchase these prescriptions. In all, Americans spend hundreds of millions of dollars on imported pharmaceuticals, not because they do not want to buy American but because they cannot afford to.

This conference report contains language on drug importation. However, it has been successfully weakened to the point of guaranteeing that implementation will never take place.

There is a good provision as far as generic drugs are concerned, but this package is not only a bad deal for American taxpayers, I believe seniors will also find it not worth the price.

Although the conference report allocates close to $80 billion in subsidies to corporations to encourage them not to drop or reduce benefits, the CBO estimates that approximately 20 percent of seniors will lose their current employer-sponsored coverage.

I am concerned we are about to repeat an enormous mistake. I was here when we enacted Medicare catastrophic in 1988, and I was here 1 year later fighting to repeal it. We cannot let political shortsightedness blind us from the fiscal implications of this package.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. MCCAIN. I yield 5 minutes to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. THOMAS. I yield 5 minutes to the Senator from Arizona.

Mr. THOMAS. I yield 5 minutes to the Senator from Arizona.

Mr. MCCAIN. Mr. President, we have before us a conference report that represents one of the biggest expansions of the Medicare entitlement program and offers enormous profits and protections for all of the country's most powerful interest groups, paid for with the borrowed money of American taxpayers for generations and generations to come.

This legislation reminds me of the ancient medieval practice of leeching. Every special interest in Washington is attaching itself to this legislation and sucking Medicare dry.

We do not need leeching. What we need is reform. On top of the existing $7 trillion accumulated deficit, which translates into $24,000 for every man, woman, and child in the United States, this year's current deficit is quickly approaching a half trillion dollars. Adding to this already funded entitlement to a system that is already financially insolvent is so grossly irresponsible that it ought to outrage every fiscal conservative.

According to the Congressional Budget Office, this package is estimated to cost just over $4 billion over 10 years. If one believes that is the maximum we will spend over 10 years, I have some beach front property in Gila Bend to sell you. Four hundred billion dollars is merely the payment.

One important number not frequently mentioned is the estimated increase this new package will add to existing liabilities. The Office of Management and Budget estimated that current unfunded liabilities of Medicare and Social Security are $10 trillion. That is the current unfunded liabilities. What is absolutely astounding is that this new benefit will add an estimated $7 trillion in additional unfunded liabilities. By the year 2020 Social Security and Medicare, with a prescription drug benefit, will consume an estimated 21 percent of income taxes for every working American.

I think we ought to be honest with the American people. Passing this package without implementing the necessary reforms to ensure that the Medicare system is solvent over the long term is rearranging the deck chairs on the Titanic. There is no one in America who will not say that the Medicare system is going to go broke. The question is not if. The question is when, not what.

To solve this system we should enact true free market reforms and bring Medicare into the 21st century. Unfortunately, the minor reforms in this bill do not even begin to offset the burden added by the new drug benefit. With future generations of American taxpayers funding the purchase of prescription drugs under Medicare, we have an obligation to ensure some amount of cost containment against the skyrocketing costs of prescription drugs. Unfortunately, however, this package explicitly prohibits Medicare from using its power to negotiate lower prices with manufacturers.

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The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. I yield 5 minutes to the Senator from Texas.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that I be told when 3 minutes have elapsed.

The PRESIDING OFFICER. Three minutes remaining or use 3 minutes?

Mrs. HUTCHISON. After I use 3 minutes. Thank you.

Mr. President, while the medical community has ridden the technological wave of the future, pushing the envelope in research into new pharmaceuticals, treatments and life-saving measures, Medicare has been stuck floundering in the 20th century. The venerable program, designed to provide healthcare for the elderly and the disabled, has failed to meet all of the needs of those it set out to serve.

After years of talk, Congress is poised to enact the most sweeping change for America's seniors in nearly 40 years. We have the opportunity to bring Medicare up-to-date and take advantage of the incredible advances in prescription drugs.

Pharmaceuticals are one of the miracles of modern medicine. Estimates that traditionally reimbursed an expensive in-patient hospital stay and invasion surgery can now be treated with medication. But most Medicare recipients wouldn't know it. While the government pays for costly heart surgery, its seniors lose the ability to purchase the preventative drugs that may have precluded the need for an operate in the first place.

An estimated 9.9 million Medicare beneficiaries do not have private prescription drug coverage, almost 600,000 in Texas alone. Some seniors who could lower their cholesterol by ingesting a simple pill like Lipitor have to pay out their pockets for the drug which retails at $108 per bottle, placing this simple solution out of their reach.

The bill before Congress would give America's seniors access to a prescription drug benefit for the first time. Beneficiaries would pay a $35 monthly premium and a $25 deductible, after which they would pay 25 percent of drug costs between $275 and $2,250 and 100 percent between $2,250 and $3,600. Costs over that threshold would require an average copay of $2 for generic drugs and $5 for brand name drugs, or 5 percent of the total drug cost depending on the plan.

Until these reforms are in place, a prescription drug discount card offering savings of up to 25 percent will be available in 2004, providing some relief immediately.

This measure also offers additional and unprecedented assistance to those with low incomes. Medicare beneficiaries at the poverty level and below will pay no premiums or deductibles and will have nominal cost sharing responsibility, with copays of $1 for generic drugs and $3 for other pharmaceuticals. Those at 135 percent of the poverty level, or $12,123 annually for
Every State has at least one teaching hospital, with 1100 of the facilities nationwide. Teaching hospitals train nearly 100,000 physicians, and the Federal Government has traditionally recognized the higher costs inherent in training and educating those health care providers. They utilize newer technologies and more expensive, more indigent care. This increase will provide some much-needed assistance to our financially strapped rural and teaching hospitals.

Let me be clear: this bill is not perfect, but as AARP President James Parkel said this week, “Millions of Americans cannot wait for perfect. They need help now.”

After years of talk, we are taking the first step to bring this vital program up-to-date. For the first time, we can provide a voluntary prescription drug benefit that offers additional assistance for those who need it most and strengthen Medicare for future generations.

I know my 3 minutes are up. I would like to add 2 minutes to Senator HATCH’S 5 minutes with that added 2 minutes. I urge my colleagues to support this major first step.

The PRESIDING OFFICER. Who yields to the gentleman from Michigan?

Mr. THOMAS. Under our agreement, we will slip over to that side and then Senator HATCH will be next.

The PRESIDING OFFICER. The Senator from Michigan, Ms. STABENOW.

Mr. President, without objection, I yield myself 5 minutes from the time of those in opposition.

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

Ms. STABENOW. Mr. President, we have a very important vote coming up shortly on whether or not to proceed with the bill or to continue working, whether or not to stop our efforts to continue to try to improve this bill or to bring up the veteran vote. Many of my colleagues have pointed out that this is the bill—this is the bill. The bottom line of all of this paperwork is that it does not take effect, in terms of prescription drug coverage for seniors, until 2006. So this is the bill we are asking for time to thoroughly go through, line by line, and to be able to fix what does not work for our seniors.

We are being told we have to rush this; this is the last time we are going to have a chance to have any more time to be able to put this together. Yet the bottom line of all this, for seniors’ prescription drug help, if there is any in here—and there is a little—doesn’t even start until 2006. I am going to be voting against the effort to stop debate and move to a final vote because I believe we need to take the time to get it right. I believe there are critical issues we need to fix. Let me first say a positive aspect in all of this is in order to help our rural providers, our doctors and hospitals, home health agencies, and nursing homes. On Saturday I put forward a bill that would actually pull out those positive provisions that are critical for our providers, to vote separately on that. I believe we would have, if not unanimous, overwhelming bipartisan support for those efforts that help our providers.

We do not believe this bill, on balance, is good at all for our seniors, it is a bad deal for seniors, there are good provisions in it. I hope if this bill does not go forward, we can pull those provider pieces out and support them.

I don’t support this bill written? In this bill as written, 2.7 million retirees lose their coverage. One out of four folks who worked hard during their lives, maybe have taken a pay cut here or there to get good health coverage, would actually lose coverage as a result of the provisions, the way this bill is written for private employers.

Mr. President, 6.4 million low-income seniors, the folks we all talk about, the folks we are desperately concerned who really are down today at the table and saying, Do I eat today or do I take my medicine, they will end up paying more because of the way this is changed between Medicaid and Medicare. That doesn’t make any sense. It is a bad deal for too many of our seniors who have private insurance and will lose it. My fear is they will not just lose the prescription drug coverage; they will lose their entire health care coverage.

To add insult to injury, this bill locks in the highest possible prices in the world. It keeps drug prices high, which is why the pharmaceutical industry is so strongly supporting it.

They changed their strategy a few years ago. They have been trying to stop prescription drug coverage because they didn’t want Medicare to use its clout as a group purchaser to be able to get a good discount, as we do every time we go to clean our teeth.

They fought it, but then they decided they couldn’t fight it anymore because seniors are desperate and we do need to do something. We are long past doing something real for our seniors. So they changed the strategy. They said: Let’s write a bill that gets a whole bunch more customers, 40 million more customers potentially, and let’s make sure we lock in the highest prices so they can’t compete; they can’t go to Canada or other countries where there are safe, FDA-approved processes right now to be able to bring drugs back across the border.

That is a big deal for us in Michigan. It is 5 minutes across a bridge or 5 minutes through a tunnel to be able to get lower prices—in half the price. So they made sure we are not going to be able to do that and they made sure we are not going to be able to negotiate for lower prices.

I don’t support this in the end? We have a whole new group of customers for the pharmaceutical industry who will be forced to pay the highest possible prices.
This is not a good deal for our seniors. We can do better than this. People don’t have to lose coverage. People don’t have to pay more. People don’t have to be locked into the highest possible prices in the world. We have time. This bill won’t take effect until 2006 for our seniors. Let’s urge us to take the time to get it right.

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

Mr. THOMAS. Mr. President, I think we have an agreement we would yield 7 minutes to the Senator from Utah and then 5 minutes to the majority whip.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. It is my understanding I have 7 minutes.

The PRESIDING OFFICER. That is correct.

Mr. HATCH. Mr. President, I have listened carefully to the debate on H.R. 1 during the last few days.

I regret to say I have heard many half-truths and misrepresentations about our bill from the opponents of the legislation. This simply won’t stand.

We’re reaching the point where twisted facts and wrong-headed reasoning have been repeated so often that even those who know better are no longer jarred to hear it.

As one of the conference committee members who actually wrote this bill, I find this untenable, because the opposition is just scaring and confusing Medicare beneficiaries.

The last thing any of us want is for critical decisions to be made in a climate of fear or in a fog of uncertainty.

Yes, this legislation is not perfect. But it is good.

I’ll tell you why.

First, and most important, this bill provides all beneficiaries—seniors and the disabled—with voluntary prescription drug coverage for the first time in almost 40 years.

Coverage for their medications is something Utah beneficiaries have sought for decades.

Not a day goes by that I do not receive a letter from some part of Utah beseeching Congress to pass this bill.

Second, that coverage will be immediate. Seniors wherever they may live, from St. George to Logan, from Tooele to Vernal and down to Blanding and Monticello, will be able to use a new drug card to get an immediate discount from the pharmacy closest to home.

Third, the program is voluntary. We all know—as do the bill’s opponents—that beneficiaries will not be forced to join this new drug program. If they are happy with the status quo, then things can stay as they are. If they want to partake of the program, it will be there for them.

Fourth, H.R. 1 provides choice in coverage. Beneficiaries may stay in traditional Medicare and elect to take a stand-alone drug plan if they want one. Or they may receive their coverage through a local health plan or the new regional PPO plans offered through the new Medicare Advantage program.

How often does a Federal program offer people the range of choices that this bill creates?

Fifth, this bill preserves retiree health coverage. Close to one-quarter of the spending in this bill, approximately $220 billion, is dedicated to protecting retiree health benefits.

For the first time—and none too soon—Medicare will provide funding as an incentive for employers to continue offering health coverage. Under this bill, no beneficiary will be forced to drop retiree health coverage and participate in the new prescription drug program.

Sixth, the conference agreement is good for rural America, which has gotten the short shift under Medicare for some time.

We want to ensure that Medicare beneficiaries will have access to quality health care, no matter where they live. We also want rural providers, providers in Moab and Panguitch, providers in Price and Manti, providers who dispense vital health services to beneficiaries, to be properly reimbursed for their services. This legislation accomplishes those important goals.

Seventh—as I intend to amplify later—this legislation improves the Drug Price Competition and Patent Term Restoration Act of 1984, better known as Hatch-Waxman. This conference agreement strengthens the 1984 law so it is easier for everyone, including seniors and the disabled, to have timely access to less expensive, generic drugs.

Eighth, the Medicare agreement includes an appropriate response to the question of reimporting prescription drugs into the United States.

While we include the provisions contained in the legislation approved by the Senate, this agreement also requires the HHS Secretary to conduct an extensive study that identifies the barriers to implementing a drug reimportation program.

Many opponents have written, asking why they cannot use the lower cost medications from Canada. The answer is easy: it is just irresponsible for Congress to jeopardize public safety by allowing the unchecked reimportation of drugs. That is why I adamantly opposed the House policy.

If we truly care about our seniors and other patients who depend upon prescription drugs, we should not expose them to what amounts to pharmaceutical roulette.

And, finally, we have done all we can to craft a bill that is as cost-conscious as possible, a bill that the Congressional Budget Office has certified stays as close as possible to the spending in this bill.

We have worked hard to write a measure that remains possible to manage, not on the scale of big, Washington government.

Before I conclude, I would like to take a minute to refute some of the points that have been raised by the opponents of this legislation.

Yesterday, I heard my good friend from Massachusetts talking about how he feels that the Senate is being stumped with a bad bill.

It is hard to argue we are being stumped, when we have worked on this issue for almost 35 months.

I also have heard our colleague say this legislation dismantles the Medicare program and that the HMOs are going to make out like bandits. Again, that is simply not true. Guess who was the main group of people who helped to bring about HMOs. None other than the senior Senator from Massachusetts.

This agreement improves the Medicare program by providing beneficiaries voluntary prescription drug coverage for the first time in 40 years—that is a reaffirmation of Medicare, not a weakening of it.

We also give beneficiaries expanded choices in their health care coverage; they may remain in traditional Medicare or in their retiree health care plan. Or they may receive their coverage through local or regional plans offered to them through the new Medicare Advantage program.

Contrary to what my friend from Massachusetts says, no one will be forced into an HMO. And that is simply not true. The American people are not buying that kind of scare tactic.

The other fallacy that I heard during this debate was that the premium support demonstration project, which would be conducted in metropolitan areas, is going to disadvantage beneficiaries who remain in traditional Medicare. I have heard it said that those premiums could go up by 10, 15 or 20 percent, even though we who wrote the bill know that the Part B premiums for traditional Medicare could not rise by any more than 5 percent over the regular premium.

This rhetoric is absolutely outrageous. If you look on page 254 of the conference report, you will see that it is not true. The legislative language speaks for itself:

‘‘The amount of the adjustment under this subsection for months in a year shall not exceed 5 percent of the amount of the monthly premium.’’

In addition, if a beneficiary is under 150% of poverty, there is no impact on premiums at all.

And I am really getting tired of Speaker Newt Gingrich’s words being continuously misconstrued.

He never said, as my colleagues on the other side of the aisle like to assert, that he wanted Medicare to wither on the vine. What he did say is that the agency that controlled Medicare, HCSA, should wither on the vine because it was filled with bureaucrats that were strangling the program. That is a far cry from what they have been representing—person after person after person.

He was arguing against large bureaucracies and for seniors to have more control over their health care.

I have saved the best for last: the accusations and allegations made against
the AARP, which are truly amazing to me. It is truly amazing how last year they were considered to be the greatest organization on Earth by folks on the other side of the aisle, but this year they are dirtier than dirt. That is just not the way it is.

It is ironic that some in this Chamber are criticizing the AARP for supporting a bill that will provide drug coverage to Medicare beneficiaries. What a difference a year makes! Last year, the AARP could do nothing wrong in the eyes of today’s opponents. Yet, suddenly the AARP is either greedy or being taken in like a bunch of half-wits. So much for honest disagreement among friends.

What has changed? What does AARP know that the opponents of S. 1 do not? AARP knows that this may very well be our last chance to enact a program adding prescription drug coverage to Medicare.

AARP knows, as we all do, that this is not a perfect bill. But AARP also knows that this bill lays a solid foundation which we can refine in the future.

In the eyes of this Senator, AARP has made a courageous decision by endorsing our proposal, and I greatly appreciate their support.

In conclusion, I want to commend the chairman of the Senate Finance Committee, Chuck Grassley and the ranking minority member, Max Baucus on a job well done. I also want to compliment the Majority Leader, Dr. Bill Frist, on his leadership in shepherding this bill through the Senate.

Today we will make history. We will break gridlock. We will act decisively to help the people of this great country.

The citizens of this great country are counting on us to get the job done. So, let us clear away all the parliamentary hurdles and pass H.R. 1. It is the right thing to do.

One last thing. I have heard some of my colleagues who are opposed to this bill raise the issue that Government can do nothing to help restrain the growth of drug costs or bring drug costs down. Again, this is a misrepresentation of what the conference agreement actually does.

The conference bill specifies the Government “may not interfere with the negotiation or determination by drug manufacturer and pharmacies and PPO sponsors and may not require a particular formulation or institute a price structure.”

Opponents claim that provision, which originated with Democratic proposals, by the way, is a concession to the pharmaceutical industry. That is why it is so phony to hear these arguments. They are plain wrong. The non-interference provision is at the heart of the bill’s structure for delivering prescription drug coverage. It is a good deal for consumers, rather than the private fixing by the CMS bureaucracy, which I believe is opening the door for universal health care. It is a misrepresenta-

tion of the language in this provision to argue otherwise.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, will the Senate turn its back today on 40 million of our fellow citizens who are going to find out in a few hours.

Will a prescription drug benefit that we have promised our seniors for 38 years become law or became victim to the political agenda of a partisan minority?

This bill provides a Medicare drug benefit to 40 million seniors. It has passed the House, and the President of the United States will sign it.

Only one hurdle—just one—stands in the way of seniors getting a Medicare drug benefit, and that is the Senate.

While a strong bipartisan majority in the Senate supports this drug benefit bill, that may not be enough. While the American Medical Association, AARP, and hundreds of other health provider organizations support this bill, that may not be enough.

While businesses, health plans, citizens, and taxpayer groups support this bill, it may not be enough.

All of us in the Senate may not be enough because this is the Senate. And the minority can, if it chooses to, obstruct.

Incredibly, some on the Democratic side plan to kill this Medicare drug benefit through a filibuster, or use any other way they can think of to defeat the will of the majority.

Points of order have been suggested. We know this bill is within the budget that we passed last year. So there may be some tricky point of order raised, but it should not be sustained because we know this bill is within the budget that we passed.

No matter how the minority tries to block the majority in the Senate, a filibuster by any other name is still a filibuster.

Somewhere in my home State of Kentucky, a senior is beginning a new week. She will have to choose whether to take half a pill of her medication, skimp on her food, or endure some other belt tightening. She doesn’t understand about filibusters or arcane Senate procedures. But she does know that the drug benefit she needs is one step away from her. She thinks because the majority rules in America she will get relieve some pain, that the majority rule is everywhere except here in the Senate, potentially. She may be wrong. Here in the Senate the will of the majority can be defeated by the minority. The will of the people can be thwarted by a handful—a handful.

This is as close as we have ever come to passing a drug benefit, and a minority in the Senate is determined to make sure this is as close as we ever get. They do not want us to ever get any closer than we are right now. Why? Why would they do that to citizens that which they absolutely deserve?

Despite the hyperbole, it cannot be policy. This bill is based on the 1997 Medicare Commission. It reflects bipartisan legislation, such as the Breaux-Frist and the Breaux-Thomas bills. It mirrors the Federal Employees Health Benefits Plan, which Senators on both sides of the aisle have endorsed. And it reflects the outcome of bipartisan negotiations between the ranking member and chairman of the Finance Committee.

Time and time again, demands have been made by the minority as to what it will accept and what must not pass this bill. Time and time again, this leader and this chairman have met them more than halfway.

The problem today is not this bipartisan policy but raw partisan politics. Because of partisan politics, some want to keep the Medicare drug benefit as the “Holy Grail” of American politics—something always sought but never found.

To keep their election year gimmick where the Medicare drug benefit is always promised but never delivered—always promised but never delivered—this partisan minority will deny seniors a drug benefit now.

This is crass politics of the worst kind. Our seniors deserve better. Our parents always put us first. Now is our chance to put them first.

But will our seniors come in second place to political games here in the Senate? In the fight for prescription drugs, second place gets seniors nothing. Today, we will vote to see if we put our seniors first or if the greatest generation ever will come in last.

I yield the floor.

Mr. THOMAS. Mr. President, I will react to some of the comments, particularly the fact there is emphasis in this bill for help for low income Medicare beneficiaries. They talk about people being less well off because of this. That is not the case. This bill guarantees all 6 million dual eligibles, the people eligible for both Medicare and Medicaid, access to prescription drugs.

Under the conference report, dual eligibles will have better access through Medicare, especially since State Medicaid Programs are increasingly imposing restrictions on patient access to drugs.

Further, States have the flexibility to provide coverage for classes of drugs, including over-the-counter medicines not covered by the Medicare Program. This bill ensures appeal rights for dual eligibles. Under this arrangement, duals will have better access through Medicare, especially since State Medicaid Programs are increasingly imposing restrictions on patient access to drugs.

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The conference report recognizes and provides
generous coverage for those 6 million beneficiaries.

It is time for the partisan rhetoric to be put aside and we approve this bill.

The PRESIDING OFFICER. Who yields time? If no one yields time, time is charged equally to both sides.

The Senator from Nevada.

Mr. REID. I yield the Senator from Massachusetts 1 minute additional.

Mr. KENNEDY. Would the Chair notify me when I have 1 minute remaining?

The PRESIDING OFFICER. The Chair will so note.

Mr. KENNEDY. Mr. President, in a very short period of time, the Senate will be making a judgment about whether we are going to effectively close off any further debate on this legislation I hold in my hands. It was made available last week, on Friday, to the Members of the Senate on an issue of enormous importance and significance to every person in America. That is the question of Medicare and its future and how our seniors are going to get their prescription drugs.

It seems to me that out of consideration for our senior population and the importance of the issue, the Members of this body ought to know what is in it, what is going to benefit our senior citizens, and what is going to benefit the special interests. We think we ought to take a few more days, come back next week in the Senate and debate that issue, spend a couple weeks discussing it.

But our friends on the other side say no, they had to stay in all weekend—which I was glad to do. We had debate on Saturday, we had debate on Sunday, and now on Monday they are asking Members to vote on this measure.

I was not in the Senate at the time they passed Social Security, but I was here at the time we passed Medicare. The privatization of the Medicare system was because private insurance companies were not paying attention to the elderly in this country. We debated the issue for 5 years—not 4 days; 5 years—from 1960, 1961, 1962, 1963, 1964 and finally we passed it in 1965. When we passed the Medicare system in 1965, it was opposed by many on the other side of the aisle. It only got 12 Republican votes.

This is the party that is committed to Medicare and Social Security. Over the period of time, we have been told by some of our friends on the other side that we have never supported the Medicare system. We have seen constant efforts to undermine Medicare. It was understood when we passed Medicare that there was not going to be a role for private industry to take over senior citizens in the Medicare system. Many of our elderly, who have worked a lifetime, brought the Nation out of the Depression, fought in the World Wars of this country, fought in Korea, and paid their dues to the Nation, are elderly and frail and have been ill for a time. We know the private sector cherry-picks, takes the healthiest senior citizens and the younger senior citizen, makes a profit, and leaves the others out so they can never get any kind of protection. We rejected that as a nation, passed Medicare, and said everyone is a part of it.

That is why it is a beloved program in the United States. Seniors today, this last year, knowing last night, know their doctor, know their health care delivery, have trust and confidence in Medicare. They do not want to risk that. This bill does. This bill does, make no mistake about it. It is the beginning of the unwinding of Medicare, the privatization of Medicare, with the private sector and privatizing the Medicare system, make no mistake about it.

They are using—our friends on the other side—the words “prescription drug program” in order to carry this through. I have just listened to some of these statements. They say: “Don’t you want your parents tonight in different parts of the country to be able to get their prescription drugs in order to meet our responsibility?”

We have been trying to do that. And we did it pretty well—not as well as I would have liked—several months ago, in a bipartisan bill we created a prescription drug program. But the bill we have now has hijacked the prescription drug program and used it as an excuse to undermine the Medicare system, to require, effectively, or coerce our senior citizens to leave Medicare and to go into HMOs in order to be able to get the prescription drugs.

The subsidies that are provided for the HMOs are scandalous—scandalous. We hear about “free competition.” There is no more free competition than the man in the Moon in this with the kind of subsidies that are given. And who is paying for those subsidies? The elderly people.

It is undermining the Medicare system in three different ways.

First of all, it undermines the Medicare system. We have the unsubsidized, unconscionable subsidies it gives to the HMOs, which will permit them to lower their premiums to draw and coerce seniors out of Medicare to go for HMOs.

Second, we have premium support. Premium support just means the costs of those seniors who remain in Medicare will be going up.

Is that what I say? Yes. But who else says it? The Medicare actuaries say there will be an explosion in the increase of the cost of premiums. Do we want to take that risk? Do we want to say, well, let’s try an experiment with our nation’s seniors? Why do we need an experiment when we know the premiums are going to go up?

The third is the undermining of employer-based systems through the HSAs. They tried it. They fought for it. It is an ideological commitment on the other side, and they have that included in the report.

All three measures were not in the Senate bill but in the House bill. That is why the bill passed with only one vote in the House of Representatives. Imagine that. If this is such a wonderful bill, why would they only be able to pass it by one vote? That is all they passed it by the first time it came up in the House of Representatives. Then, after twisting arms, cajoling, effectively bribing Members in the House of Representatives, keep the tab open for 3 hours, they were able to bring together and carry the vote on the report by just four or five votes—this overwhelming new program that is so good for everyone? It passed by such a slim margin. And now they are trying to jam it through the Senate.

We all know what is going on. It is the objective of our good friends on the other side; and that is the beginning of the dismantling of the Medicare system, make no mistake about it.

I was here when Medicare passed in 1965. I was here in 1964 when it failed. I remember the debate. I remember very clearly. And we are seeing, if this bill passes, the beginning of the unwinding of Medicare system.

Now, you can say: Well, Senator, you are really extending yourself on this and your interpretation of the motivation on the other side. I am saying they want to undermine the Medicare system. And the next is going to be Social Security, make no mistake about it.

Is that what I say? No. This is just reported in the Washington Post just this past week. Just read it. It does a lot better sometimes to read what the objective is in the White House and what their statements are rather than necessarily the speeches by some of our Members on the floor.

Here it is in the Washington Post, on page A-14: Presidential adviser said Bush is intent on being able to say that reworking Social Security is part of my mandate if he wins. This is it. President Bush aids reviving the long-shelved plan on Social Security. It is the privatization of Medicare. And next is Social Security. That has been their objective.

The PRESIDING OFFICER. The Senator has 1 minute.

Mr. KENNEDY. Now, Mr. President, we are strongly committed—when this bill fails or goes down, or a legitimate point of order is made—that we go back to the drawing boards. I am as strongly committed to get an effective prescription drug program as I was when I stood earlier this year when we passed a good program here in the Senate in a bipartisan way, and as I was when I stood with Senator Graham from Florida and the Senator from Georgia, Mr. GRAHAM and Mr. MILLER, when they fought for a good program here, and we got 52 votes for it.

But when we hear all this chatter over on the other side about, oh, my goodness, they are filibustering the bill, they filibustered that bill—Republicans filibustered that bill a year and a half ago. We got 52 votes. They would not let it pass. They refused to. It was a good bill.

So let’s go back to the drawing boards. Let’s go back to that conference. Sure, they will say: Well, we
Mr. HATCH. I am going to finish in just a minute. Again, I think my friend from Massachusetts, as great a Senator as he is, is trying to scare senior citizens. And, frankly, I think to say let's just pass this bill back to the drawing boards is just plain wrong. The Members of the Medicare conference have been meeting for hours and hours, days, weeks, months to figure out how to provide Medicare beneficiaries with the best drug coverage possible. There are Members of Congress who have been working on this issue, trying to get a bill signed into law, for close to 15 years. And we are almost at the finish line. Yet my good colleague wants to go back to another 15 years of floundering around on this issue.

Now, if beneficiaries did not have choice in drug coverage, maybe my friend from Massachusetts would have a point. But seniors will have choice in coverage. Why would we go back to the drawing boards after all the time and effort we have put in this legislation? We have before us a bill that really does so much for seniors. The AARP is coming out strongly behind this bill, because they know full well that after all the time and effort of the staters, it is the only way we can go. I urge my colleagues to support this legislation so Medicare beneficiaries can finally have what they have wanted for close to 40 years—comprehensive prescription drug coverage.

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

Mr. HATCH. I yield the floor.

Mr. THOMAS. Mr. President, I yield 2 minutes to the Senator from Vermont.

Mr. JEFFORDS. Mr. President, I have been listening closely to our colleagues and their many statements of support for the Medicare Prescription Drug and Modernization Act of 2003.

Some have said this is the culmination of the debate we began last year. But this debate is much older than just a year, or even 2 years.

The debate as to whether, and if so how, to provide prescription drugs for the elderly through the Medicare program has been with us since the very beginning of the program.

Thirty-eight years ago, when this body engaged in the historic debate on the original Medicare bill, Senator Jacob Javits from the state of New York offered an amendment to ensure that Medicare beneficiaries would have access to prescription drugs. Senator Javits was asked to modify his amendment to a study that would examine the assurance of paying for drugs, methods of avoiding unnecessary utilization of drugs and mechanisms for controlling their costs.

Now, almost 40 years later, they are still debating the very same issues that were part of the 1965 Javits debate. We should enact a prescription drug benefit today. The doom and gloom scenario painted by the bill's opponents is as exaggerated as the claims that this bill will solve all senior citizens' needs. It is time to put aside our differences for the good of all seniors. This is not a perfect bill, but it is a good bill.

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

Mr. JEFFORDS. May I have an additional 1 minute?

Mr. THOMAS. Without objection.

Mr. JEFFORDS. Forty million seniors and disabled Americans need help now. They cannot afford to wait for a perfect program because it may never come. The bill provides the foundations we need. In the final analysis, I find there are more reasons to support this bill than to oppose it. I fear that if we do not take this golden opportunity, we will have lost it forever.

We have on hand the opportunity to provide the largest benefit improvements to Medicare in nearly 40 years, including a comprehensive and universal prescription drug benefit.

As part of a waiver through the Medicaid program, Vermont expanded its "V-Script" state pharmacy assistance program and extended subsidized coverage to individuals at 250 percent of the poverty level. There are more reasons to support this bill than to oppose it. I think it is worth dwelling on why I think we should vote in support of this measure.

Vermont already has one of the most generous prescription drug programs for the elderly and disabled. Under the federal program, Vermonters who buy prescription drugs through the Medicare program have access to the Medicaid Program, which provides low-cost prescription drug benefits to Vermont's elderly and disabled. Vermonters receive these benefits on a sliding scale based on income, which makes them able to purchase prescription drugs at a reduced cost.

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Additionally, Medicare, instead of Medicaid, will now assume the prescription drug costs for 21,767 Vermont beneficiaries who are eligible for both Medicare and Medicaid.

According to the Centers for Medicare and Medicaid Services, this will save Vermont $76 million over 8 years on prescription drug coverage for its Medicaid population.

Finally, the bill includes provisions that will allow Vermont to establish its own prescription drug coverage for its Medicare beneficiaries. This will save Vermont $76 million over 8 years and Medicaid services, this will allow Vermont to begin a major demonstration on improving quality and patient outcomes for Medicare beneficiaries.

This is the result of several years of working in concert with Dr. Jack Wennberg at Dartmouth College to bring greater attention to the regional disparities in the consumer of health services without the improvement in health outcomes to show for it.

I acknowledge the sentiments of many of my colleagues here today. I too agree that this is not the bill I would have written if I had infinite resources to do it.

This bill is not perfect. However, after all of the time that has been spent on trying to develop a Medicare plan for prescription drugs—38 years—it would be a missed opportunity if we reject this good beginning to comprehensive coverage.

By passing this bill, we are laying the foundation. A foundation that requires constant vigilance, as has the original Medicare program.

So in closing, I would like to urge my colleagues from both sides of the aisle to support this bill as we move forward.

This bill will establish a drug benefit that is universal, comprehensive, affordable, and sustainable.

This bill restores necessary and long-neglected essential services to all Vermont patients.

And, the drug bill will improve the quality of care offered under Medicare.

I hope my colleagues will join me in voting for the measure.

I ask unanimous consent to have the following article printed in the Record.

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

AARP CALLS ON VERMONT CONGRESSIONAL DELEGATION TO VOTE FOR MEDICARE RX BILL (MONTPELIER, VERMONT) Earlier this week AARP, the leading advocate for older Americans with 35 million members nationwide and more than 116,000 in Vermont, endorsed the conference Committee's Medicare Rx bill. Their bill represents a first step in the nation's commitment to strengthen and expand health security for its citizens.

For the first time in the history of the Medicare program, more than 90,000 Vermont Medicare beneficiaries will have access to a prescription drug benefit. This is about getting vital help to those people who need it most—people whose high drug costs have become a heavy burden to them and their families.
payment cut scheduled for 2004, which would have reduced Medicare payments to Vermont physicians and hospitals by $5.7 million, with two years of modest payment increases. The Vermont Medical Society estimates that if the bill passes, Vermont providers will see an increase in payments of more than $2 million a year. The improved reimbursement will encourage Vermont hospitals and for Vermonters with commercial health insurance coverage. This bill will increase Medicare payments to Vermont hospitals by $41 million over ten years. This will help to reduce the cost shift to Vermonters with commercial health insurance coverage and will move us toward a fairer reimbursement system for our rural hospitals with a high percentage of Medicare recipients in their case mix.

The provisions improving access for Vermont Medicare beneficiaries and reducing disparities in payment for rural providers and for Vermonters with commercial health insurance coverage. "This bill will increase Medicare payments to Vermont hospitals by $41 million over ten years. This will help to reduce the cost shift to Vermonters with commercial health insurance coverage and will move us toward a fairer reimbursement system for our rural hospitals with a high percentage of Medicare recipients in their case mix."

Mr. THOMAS. Mr. President, could the Chair tell us how much time remains on each side?

Mr. BREAUX. Mr. President, I think the Chair, I yield 3 minutes. Mr. THOMAS. I yield 3 minutes to the Chair. I yield the remainder of my time to the chairman from Iowa.

Mr. GRASSLEY. Mr. President, I should not take more than 5 minutes, so please tell me when 5 minutes are up.

This is the opportunity, a time of destiny, whether or not this Congress will deliver on the promises of the last three elections, the promises the other party made, but did not deliver. Thank God there are people in the Democratic Party who are working in a bipartisan way to deliver on the promises of that party as there are Republicans willing to deliver on the promises of the Republican Party.

Nothing gets done in this body without bipartisanship. This is bipartisan. We are putting aside partisanship. It is time the other side put aside rhetoric and complete our work on this bill for which the AARP says seniors have waited far too long.

This bill offers an affordable, universal prescription drug benefit. This bipartisan bill offers better coverage than today's Medigap policies plus Medicare. It also offers much more generous coverage for 14 million lower income seniors. And just to emphasize this point, this bill does not harm 6 million seniors, as the opponents of this legislation claim. That is political poppycock.

In fact, this bill protects the benefits for these 6 million and then adds generous prescription drug coverage for an additional 8 million. It expands coverage for all seniors, far more than anything offered today. This means that for about two in five seniors, this bill offers drug coverage with lower or no premiums, no coverage gap, and coverage of 65 to 95 percent of the cost of prescription drugs. And it is voluntary.

The opponents of this legislation happen to believe—and they sincerely believe—that Government should always force people into doing something that they do not want to do. That is what is happening to our seniors. Seniors can stay in traditional Medicare if they like what they have today and have full access to prescription drugs. There is also a guaranteed Government fallback if private plans might not cover all of a plan's enrollees in America. This bill protects retiree benefits in the corporation from which they retired. Overall, we put $99 billion in this bill to protect retiree health care.

This bill also creates new choices similar to what Federal employees have for beneficiaries in a new revitalized Medicare Advantage Program. With respect to drug costs, the bill speeds the delivery of new generic drugs to the marketplace, lowering drug costs to Americans and not just those on Medicare.

Finally, the bill includes long overdue improvements in Medicare's complex regulations. It also revitalizes the rural health care safety net with the biggest package of rural payment improvements that Congress has ever seen. I urge my colleagues to put the interests of our seniors first and give them the choices and better benefits by supporting this bill.

Most importantly, we have brought this bill as far as we have over the last 4 or 5 years because of bipartisanship. I hope this body will not let the narrow partisanship of a few on the other side of the aisle destroy our efforts.

Mr. BREAUX. Mr. President, I yield the floor to the chairman from Iowa.

Mr. THOMAS. I yield 3 minutes to the Chair. Mr. BREAUX. Mr. President, I yield 7 minutes to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I didn't hear a word from the chairman of the Finance Committee on what he believes will happen to the Medicare benefits by supporting this bill. What major actions—illegal under this bill. I will fight for the widowed grandmother on Medicare and the 7 million poor Americans like her who count every penny yet will pay more for their prescription drugs under this bill. I will fight for the 36 million Medicare seniors who want to stay in the program they love with the doctors and the hospitals they choose. I will fight to keep billions and billions of dollars from going to drug companies, to the pocketbooks of the big drug companies and the HMOs. I will fight for our honor as a nation that keeps its commitment to our seniors, the ones who fought our wars, raised our families, and built our economy.

The more the American people learn about this legislation, the less they like it. The more senior citizens learn, the more they oppose it. Let us not reverse the historic decision our country made in 1965. Let us not turn our backs to our senior citizens so that insurance companies and pharmaceutical companies can earn even higher profits. Let us reject this bill and come back and do the job right.

Mr. BREAUX. Mr. President, I yield 3 minutes to the Senator from Louisiana.

Mr. BREAUX. Mr. President, I think we have made the subject. I think both Republicans and Democrats was the question about dual eligibles. There was a large number of seniors being treated as second-class citizens
of this country because, if they were poor, they were not in the Medicare Program. If they were poor, they were not allowed to get through the Medicare door, and for no other reason than they were poor.

Under a scenario, low-income seniors, maybe 80 years old, who worked all of their lives, but ended up in a very low-income status, were relegated to the Medicaid Program, where there was not a consistent amount of benefits for their healthcare programs. Some were subject to the will and whims of the various State legislatures. Some treated them better, some treated them worse, and some didn't treat them hardly at all.

What we were able to do, which I thought was a priority for many Republicans because it was in the House bill—but it also was a priority for many Democrats in this body—was to say that we are going to bring those low-income seniors, for the first time, into the Federal Medicare Program. We did that. That is part of this bill. Those low-income seniors now are going to have the opportunity to be in the Federal Medicare Program. The carriers will know what their benefits are. They will know, for the first time, they have access to prescription drugs, which is what I think the bill is all about. In addition, we were able to find an extra amount of money to help them with any type of copayments they might have.

Some States have high copayments; some States have no copayments on drugs. But what we were able to do was to say: Here is extra money for the purpose of helping States to reduce the copayments down to $1, if they are buying a generic drug and only $3 if they are buying a prescription drug. In addition to that, the assistance and assistance programs for low-income seniors in general is extremely important.

Starting in April of this coming year, they will get a drug discount card. If they are low-income, they will start off with a $600 credit on that card, be able to immediately have the benefit of something, where they have nothing at all today.

On balance, when you have a 150 percent of poverty and below special assistance program, when you have a discount card that starts in April, and all of the seniors, for the first time, will be in the same Federal program, I think that is significant. For the first time, we will say to seniors who are low-income that you will no longer be treated as a second-class citizen and be different from all of the other seniors you know. You will be part of the Federal program and you will have access to prescription drugs.

Again, I think the question is, Have we designed a perfect bill? The answer is no. But I think when you look to associations such as AARP and the National Council on the Aging, we have a bill that merits their support.

Mr. REID. Mr. President, my understanding is that we have 12 minutes left.

The PRESIDING OFFICER. That is correct.

Mr. REID. We have allocated time to Senator Edwards, 3 minutes; is that right?

The PRESIDING OFFICER. That is correct.

Mr. REID. I yield 8 minutes to the Senator from Massachusetts, Mr. Kennedy. We want to make sure we will use all of our time now. If Senator Edwards isn't here, that time will run because Senator Frist gets the last 5 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I will just take a few moments to review for our colleagues what the implications of this bill will be for my State of Massachusetts. I can say that this is very typical of what is going to happen just about to every State. We have three MSA potentially eligible for premium support—the program that will raise premiums and effectively drive our seniors out of Medicare into the hands of the HMOs. We have three potentially eligible. We have 62,000 retirees who will lose their drug coverage. They are a part of the senior community, of those figures are the figures that have been found by the Center for Budget and Policy Priorities. So we have 62,000 retirees who will lose their drug coverage. And 185,500 low-income elderly and disabled who will fail the assets test, and income test in Massachusetts.

This conference reimposed the asset test, which we had eliminated here by 67 votes in the Senate. They reimposed it. So there are 2.8 million across the country, and 60,000 in my State, who will fail the asset test, and 34,920 seniors will pay more for Part B premium coverage.

In the few hours of this debate, the proponents of this legislation have described their proposal in the most benign and misleading terms. They say it gives seniors the freedom to choose among competing plans and gives protection to the poor seniors. They say this bill will lower drug prices through competition. They say at least it helps low-income seniors. They are absolutely wrong on all those counts.

Here is the truth: This is a partisan plan. I removed from Iowa. You saw the vote over in the House of Representatives, what the Republican leadership had to do to coerce Members to pass it. That answers the question as to whether or not this is a partisan plan. This partisan program is out of the mainstream. The proposal damages Medicare and leaves the millions of senior citizens who rely on it without a lifeline. It is the first step toward a total dismantling of Medicare. In exchange for destroying Medicare, it offers premiums and inadequate drug benefit. The moment it is implemented, it will make 9 million senior citizens—almost a quarter of all senior citizens—worse off than they are today.

Senior citizens already have the most important choice they want—the choice of doctors and hospitals they trust. That is the choice they want, not higher premiums and premium support. Those are their choices if we pass this. They lose if they are forced to join HMOs and PPOs, or other programs that say an insurance company bureaucrat can choose their doctor for them.

Senior citizens already have the choice to join a private insurance plan competing with Medicare if they choose. But 9 out of 10 prefer to stay in Medicare. So they already have a choice. Right now, they have to make that choice. But under this bill, you are providing so much in terms of effectively bribing them, and overpayments that they will eventually coerce those seniors. The bipartisan bill that passed the Senate provided additional choice, a program for regional PPOs. The conference adopted a right-wing House approach of ending Medicare as we know it and establishes a massive demonstration program that would subject 7 million senior citizens—1 out of 6—to a so-called premium support program.

Mr. HATCH. Mr. President, I would like to take a few minutes to rebut some of the points raised by the Senator from Massachusetts.

First, he mentioned he is concerned about the cost of this bill. Let me remind my friend from Massachusetts that the year, he supported a bill that would have not only cost $800 billion, it would have sunsetted the Medicare prescription drug benefit. How would that have helped senior citizens and other Medicare beneficiaries, especially the disabled?

Our bill costs $400 billion over 10 years and it is a permanent benefit. He also mentioned retiree health benefits and how individuals are going to lose their coverage and the bill. Let me correct that statement for the record. First, $89 billion—yes, I said $89 billion—is devoted to employer subsidies in order to preserve retiree health benefits, so individuals will not lose their retiree health coverage. We have gone from a drop-out rate of 37 percent in H.R. 1, to a drop-out rate of under 20 percent. Again, my colleague is simply using scare tactics.

Mr. KENNEDY. Mr. President, I see the Senator from North Carolina here. He wanted some time.

The PRESIDING OFFICER. The Senator has 7 minutes 10 seconds.

Mr. KENNEDY. Mr. President, I am glad to yield...
of the tax burden in America from wealth and the wealthy to work and the middle class.

It is not shocking that there is a $12 billion stabilization fund in this bill—$12 billion of taxpayer money that is going to go to HMOs to go to seniors to compete? I thought the whole purpose of this bill was so that HMOs could provide competition. We are going to give $12 billion of taxpayer money—money that, in fact, could go to providing a better prescription drug benefit to seniors who desperately need it, instead of using that money to cover seniors, to give them help in getting the medicine they desperately need when they go to the pharmacy. No, instead we are going to give $12 billion to the HMOs. That is a great idea. That is just a terrific idea.

On top of all that, we are not going to do anything meaningful to bring down the cost of prescription drugs. We have been through this fight before and over. We fight to try to allow reimportation of prescription medication from Canada, to bring down costs for people in America. Does it pass? No. Can we get it into this bill? No. Why? Because the drug companies are against it.

We try to do something about mis-leading company advertising on television. Billions and billions of dollars are being spent every year by drug companies on television advertising. Much of the advertising is misleading. We know who is paying for this advertising: consumers, seniors, every time they go to the pharmacy, are paying for these ads. When we try to do something about that advertising, try to put some kind of reasonable controls on it, are we able to do it? Are we successful? No. Why? Because the drug companies are against it.

We cannot even allow the Government to use its bargaining power to bring down the cost of prescription drugs for all seniors.

This bill is a giveaway—a giveaway to HMOs, a giveaway to drug companies. It is not surprising that as a result of looking as if this bill is about to pass, the drug companies’ stock and HMO stock is rising.

One thing I can tell you for sure, if this bill passes, it will pass over the dead bodies of a lot of us standing here fighting against it. If this bill passes, the lobbyists will be celebrating all over this town, lobbyists who worked this bill and who spent the entire day on behalf of the HMOs and the drug companies.

I grew up in a small town in North Carolina in a rural area. There are more lobbyists for those industries around Washington, DC, than people who live in my hometown. How can we in the Senate stand up for the kind of people I grew up with in that small town? How about if we actually stand up to big drug companies and big HMOs?

Speaking for this Senator, I intend to stand up to those people. I will vote no and fight with everything I have to stop this legislation.

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

Mr. EDWARDS. I thank the Chair. The PRESIDING OFFICER. Who yields time?

Mr. THOMAS. Mr. President, I yield 1 minute to the Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana has 1 minute.

Mr. BAUCUS. Mr. President, there is not a lot to say in 1 minute. I will do the best I can.

Essentially, we have $400 billion in prescription drugs for seniors. I do not see how in the world we can let that moment pass by.

It was said before that there are not enough low-income benefits for seniors. The previous speakers said that. They are wrong. One-third of our seniors will get such benefits under this bill that 95 percent of their benefits will be paid for. One-third of American seniors will find that 95 percent of their benefits are paid for. The allegation is there is no help for low-income seniors. That is just flat wrong.

There were a lot of other statements made by those opposed to this legislation that are flat wrong. There are 10 million will be affected by premium support. Flat wrong. We asked CBO what the number is. They said 600 to 700 million.

Some people say 6 million were going to be hurt by Medicare. Flat wrong. It is much less than that.

I strongly urge Senators to look at the facts. Vote for the bill and particularly vote against the points of order because those are mere technicalities. They don’t matter. The substance of the bill. It is important to pass this legislation now for seniors.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, the Senator from Montana just admitted the case. He said it is much less than that. He is arguing over fewer people being hurt, not whether any are going to be hurt.

The question is, Why are people going to be hurt? How many people know there is going to be $25 billion raised in new revenue directly out of the pocket of senior citizens because we are going to increase the cost for the traditional Medicare coverage for doctor and hospital visits?

This is following right in the wake of the Energy bill. Same deal. You pick up the newspapers and you see a headline: Drug companies win in battle over prescription drugs. Who do you think lost if the drug companies won? The senior citizens.

There will be $139 billion or $125 billion, depending on which you read, of windfall profits to the drug companies. Why are the drug stocks going up the way they are? The difference between Medicare administrative costs, which are 2 percent, and drug company administrative costs, which are 15 to 20 percent. If you think that makes sense, you are really naive about the shod over seniors who are going to be paying the additional administrative costs, and they are not going to get the benefit of lower cost drugs.

There is nothing in this legislation that lowers the cost of prescription drugs. Indeed, it is the opposite. By pushing seniors off Medicare into HMOs and giving them the tough choice that if they were to stay where they have the ability to, they are going to pay more, they are going to be picking up the additional cost. This is going to be like catastrophic insurance in the 1990s when they pass legislation they think is good and seniors find out how complicated it is and how much more they are paying, which is exactly what has been seen in implementation. It took us 11 months to put the entire Medicare Program in place. Why can’t we put a prescription drug benefit in place 2 months from now or 3 months from now? Why does it have to be 2006 after the 2004 election?

This is part of the greatest giveaways that I have seen in this city in a long time. We are not even going to allow Medicare to negotiate lower bulk prices. The State of Maine is allowed to do that. We have veterans who are allowed to do that. We have veterans in this country for whom the VA, in an almost unanimously adopted amendment in this body, can go out and do bulk purchasing. And we are not going to allow Medicare to bulk purchase and lower the prices.

We should vote no. This is wrong. It is a giveaway. It is a special interest bonanza.

The PRESIDING OFFICER. The Senator’s time has expired. The majority leader.

Mr. Frist. Mr. President, we bring debate to a close prior to a very historic vote in which we are making a decision whether to give 40 million seniors the opportunity, for the first time through Medicare—the program that has been constructed and been used to give them health care security—whether for the first time these 40 million seniors will have access through that program to prescription drugs, to the treatment which is the element of health care security today.

Seniors don’t have it. What we are voting on today is to give them that true health care security.

America’s seniors have waited 38 years for this prescription drug benefit to be added to the Medicare Program, and today they are just moments away from prescription drug coverage that they desperately need and deserve.

I am aware that this body has a bipartisan majority—and I would say an overwhelming bipartisan majority—in favor of this Medicare Prescription Drug, Improvement, and Modernization
Act of 2003. Yet we have before us an attempt to block this body from expressing, through an up-or-down vote, their will to give seniors and individuals with disabilities access to affordable prescription drug coverage and, thus, the right of health care security for those seniors.

We are about to vote on a cloture motion in an attempt to overcome this filibuster. Later today, we are likely to face additional procedural hurdles that the minority has threatened to prevent passage of this bill. Make no mistake, these are not one and the same. The result of this filibuster and of the procedural points of order will be to force us to deny these 40 million seniors access to modern prescription drug coverage, something they need and something they deserve.

In my own State of Tennessee, there are nearly one-quarter of a million seniors who right now have no prescription drug coverage. There are millions more all across the Nation for whom this legislation literally means life or death. Think hypertension, heart disease, osteoarthritis, pulmonary disease, asthma, or emphysema, all for which we have effective prescription drugs which are not made available through our Medicare Program today. Our seniors cannot afford to wait any longer. If they need it now, they cannot wait. It is a matter of their health.

This generation of seniors did survive the Depression, did fight World War II, did lay the groundwork for a prosperous and thriving Nation we have today. Again and again, they answered the call. Now is the time for us to fulfill our duty to that generation. Many of them are poor and many of them are sick. It is time to answer their call.

When he signed Medicare into law in 1965, President Johnson said:

No longer will this Nation refuse the hand of justice to those who have given a lifetime of service and wisdom and labor to the progress of this . . . country.

Let us not stay this hand of justice now. Let us not turn our back on America’s seniors and individuals with disabilities. Our seniors deserve better than to be held hostage to Washington politics.

There is a life-or-death issue in many ways in this legislation for millions of Americans and they cannot wait. Opponents wish to deny coverage to essential medicines.

Mr. President, I will go on leader time for my remaining 2 minutes, if necessary.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. What will people tell millions of Americans or millions of low-income seniors if we go home and say, no, you are not going to have access to prescription drugs that this bill would have made available or tell individuals with disabilities, no, you are not going to have access to the preventive care that is actually in this bill?

The elderly, the sick, and the disabled are now being told to wait for action in the future. Now is the time to act.

We will do it next year, some say, but our seniors tell us time is running out. People are waiting for help.

I just 2 days ago in my office was Dorthea Yancy of Lakewood, CO, a retired African-American woman who worked for years but lost her pension when her company went bankrupt. She needs our help now. Dorthea Yancy needs our help now.

We are an eyelash away from fulfilling our promise to seniors. I ask my colleagues not to thwart the overwhelmingly bipartisan majority in this body because of acting the tactics of some sort of parliamentary maneuver. Do not hold America’s seniors hostage to Washington politics. Our seniors deserve better.

I want to close by just reading a statement issued today by the AARP on behalf of 35 million seniors that fine organization represents. This is from the AARP today, and I will close with this:

The fate of the landmark Medicare prescription drug benefit bill now hangs in the hands of the U.S. Senate. More than a vote is at stake. With the final passage in the Senate, the Congress will honor a longstanding promise to 41 million older and disabled Americans and their families by finally adding a prescription drug benefit to Medicare. This bill will help millions of people, especially those with low incomes and high drug costs. It will strengthen Medicare by adding this long overdue benefit and preserving the basic structure of the Medicare program. We urge Congress to seize this historic opportunity and vote to pass this bill now.

America’s seniors are watching. America is watching. I urge my colleagues to do the right thing, to seize this historic opportunity, to vote up or down on this bipartisan legislation, and to pass this historic bill.

The PRESIDING OFFICER. The PRESIDING OFFICER. All time has expired. Under the previous order, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

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, do hereby move to bring to a close debate on the conference report to accompany H.R. 1, the Medicare Prescription Drug and Modernization Act, an act to amend Title XVIII of the Social Security Act to provide for a voluntary prescription drug benefit under the Medicare Program and to strengthen and improve the Medicare Program, and for other purposes.

Bill Frist, Charles Grassley, J. John E. Ensign, Ted Stevens, Susan Collins, Lisa Murkowski, Jon Kyl, John Cornyn, Orrin Hatch, Larry Craig, Craig Thomson, Robert Bennett, Olympia J. Snowe, Jim Bunning, Christopher Bond, John Warner

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 the conference report to accompany H.R. 1 shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The bill clerk called the roll.

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

The yeas and nays resulted—yeas 70, nays 29, as follows:

[Rollcall Vote No. 457 Leg.]

YEAS—70


NAYS—29

Akaka         Bayh         Bingaman         Boxer         Byrd         Byrd         Cantwell         Chafee         Chafee         Clinton         Dodd         Durbin         Feingold         Feingold         Feingold         Feingold         Feingold         Feingold         Feingold         Feingold

The PRESIDING OFFICER. On this vote, the yeas are 70, the nays are 29. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The Democratic Whip, Mr. DASCHLE. Mr. President, for purposes of time management under cloture, I designate Senator Reid, the Democratic whip, as the opposition manager.

Mr. President, I make a point of order that H.R. 1, the pending conference report, violates section 311(a)(2) and section 302(f) of the Congressional Budget Act of 1974, among other reasons, because of the provisions related to premium support and health savings accounts.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, on behalf of myself and Senators Grassley, Baucus, and Breaux, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of that act and the budget resolution for the consideration of the conference report.
The PRESIDING OFFICER. The motion is debatable.

Mr. FRIST. Mr. President, I ask unanimous consent that there now be 2 hours of debate on the pending motion to waive, with that debate time equally divided between the two leaders or their designees; further, I ask consent that following that debate time, the Senate proceed to a vote on the motion to waive, with no amendments in order to the motion.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. FRIST. Mr. President, we will shortly begin debate for 2 hours, as we just agreed to, after which we will have the vote—approximately 2 hours from now.

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

The PRESIDING OFFICER. The clerk will call the roll.

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

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

Mr. DASCHLE. Mr. President, obviously the pending motion is now the matter before the Senate and the clock is ticking. I want to use some of the time at this point and reserve the remainder of those two hours to speak. I will, hopefully, reserve some time for myself at the end of the debate.

I make this motion recognizing there are a lot of concerns involving budgetary considerations on the legislation now pending. Those on the other side have expressed their understandable concern about the overall commitment in the budget to a new entitlement program, and I respect their position. It may be that on that basis alone, many of our Republican colleagues will wish to vote against the motion to waive a budget point of order.

They will make the case that this is an entitlement that goes way beyond the $400 billion, that it is very likely this legislation could grow to $600, $800, $900 billion in the very near future, as other entitlements have on occasion. That is their right.

They will argue that this, as a new entitlement, provides very little cost control. On that I would agree, and I will come back to that point in a moment. So without a doubt, there are very important budgetary points of order to be made.

Technically, this budget point of order challenges the bill because it exceeds the 2004 budget authorization. It also challenges the allocation of resources within the jurisdiction of the Finance Committee. So those are the technical reasons.

I want to give my reasons for expressing the concern I have throughout the debate, and how it relates to this budget point of order. I don’t challenge the $400 billion. Frankly, I don’t think that it is adequate to provide a meaningful drug benefit. We have to do better than that. But that is another issue. What I challenge is why it is we are misallocating so many of the resources within that $400 billion budget pie. That is my concern, and not just that. The health care industry can spend $6 billion on HSAs, health savings accounts, and at the same time tell our seniors they are going to have to pay $35 a month, 100 percent of the cost for drugs up to $250, 25 percent up to $2,250, 100 percent up to $5,100. Why are we doing this? Why is it that when we have all this money for these special interests is something I can’t understand.

I can’t go to my senior citizens and tell them: You are going to have to suck it up and understand that sacrifice is something we are going to ask of you for the opportunity of the Government to pay 75 percent of your drug costs for a limited period of time throughout the year.

That is what we are saying. We have money for all these other accounts, but we don’t have adequate resources dedicated to providing meaningful help to seniors. That is my first concern. We are simply not allocating the resources within that $400 billion to their maximum advantage.

But there is another concern as well. We all ought to be concerned, Republicans and Democrats, about this. We have taken virtually all the cost containment mechanisms out of this bill so those who are concerned about an exploding entitlement have a right to be concerned about what this is going to cost 10 years from now.

Ten years ago, we passed a bill by unanimous consent. I wish my colleagues all could have heard an eloquent speech made by the distinguished Senator from Florida about this in our caucus this morning. Ten years ago, on a bipartisan basis, we passed a bill that provided not only a drug benefit to veterans but a cost containment mechanism for that benefit.

We passed it unanimously. When we passed it, we basically said, we are going to allow the Government to negotiate the price for the VA, passing on the savings to veterans.

We have done that. And by most accounts, we have now cut the cost of veterans drugs in half. Senator GRAHAM talked about being at a VA hospital in Florida on Veterans Day. He said: How much are you spending on drugs right now?

They said: $39 million, at that facility.

He said: If you couldn’t negotiate, if you had no ability to negotiate one-half of your budget, one-half of your estimated drug costs, do you think the veterans would be spending that much? They said: $71 million, almost twice as much.

How is it we can argue on behalf of veterans, lower their costs down but at the very same time, argue that senior citizens ought to bear the full cost of those drugs? You tell senior citizens sitting next to another one at a public meeting a year from now that we somehow just believed there was a distinction, that it was OK for seniors to spend twice as much as veterans.

I will fight every single day for the right of veterans to get the lowest cost American-made drugs but I cannot accept the opportunity should be provided to every senior citizen as well.

So you are going to see an exploding cost. And you are going to see the misallocation of resources within that $400 billion, away from seniors and to some other one at a public meeting.

Isn’t there a better way that we can allocate these resources to maximize the drug benefit for every citizen in the country today? The answer is, of course, yes. Why is it that we saw the need to exclude the single demand ability on the part of a Federal program today, in the Veterans’ Administration, to control the cost of drugs when it came to protecting drug prices for senior citizens? Why did we do that?

Unfortunately, that wasn’t the only cost containment mechanism excluded. For all intents and purposes, we also took out reimportation. We don’t have any real authority now to reimport lower cost American-made drugs into this country. I am told the reason we didn’t is because the drug companies were overwhelmingly opposed. Keep in mind that a lot of these drugs are manufactured inside the United States, exported to be reimported outside the United States. So the irony is that drugs made inside the U.S. could be sold and brought back into the U.S. under this bill. I think it is a folly.

So the bottom line for those who are concerned about the exploding cost of an entitlement is this: I have news for you. You have a right to be concerned because we have not done anything to control costs in this legislation. We are going to see the day we passed this without providing the same mechanism VA has to do just that. We are going to see the day we passed this day when we draw distinctions between seniors for absolutely no good reason.

If it is good enough for veterans, it ought to be good enough for senior citizens across the board. But the drug companies don’t like that either, because their ability to do what it was excluded. So I make these points of order on four very specific points.

No. 1, we are not using that $400 billion we have allocated very well. We could do a whole lot better.

No. 2, there are specific programs in health care that don’t work in the first place, have nothing to do with offering drugs to seniors; that are handouts to special interests and have no business in this bill.
No. 3, we do very little with cost containment. We exclude the most consequential leverage the Government has had in the past with a program as important as the VA. It passed unanimously on the Senate floor 10 years ago. What is it? Because there was special interest opposition.

No. 4, we are going to woe the day when we put special interests ahead of the senior citizens in making these source allocations in this legislation the way we have.

Mr. President, we can do better than this. We have to do better than this. I hope, on a bipartisan basis, we simply do better than this. We have to do otherwise.

Mr. President, I say to fellow Senators, the truth is the Budget Act point of order should not be used for a frivolous matter—$4 billion off in 1 year with a $400 billion bill. It should not be used to cure technical matters—$4 billion in a 10-year bill of $400 billion. I am sure my friend, the chairman of the Budget Committee, will talk about some of the other technical issues regarding programs. But the biggest issue is fiscal soundness.

We have from time to time in a Budget Act authorized $300 billion for a program over 10 years, and I can tell you, many times a committee came back with a bill that was $300 billion, but for each of the 10 years it didn’t fit the number.

This Senator, as chairman of the Senate Finance Committee, wouldn’t have dared to get up and say the bill should fall on its point of order because it violates the budget and, thus, the Budget Act should be used to kill it because they had done a great job and had met the total, but you can’t, in estimating, make every year hit it right, right on the head.

I submit that a point of order should not be used. The leader’s waiver of that provision should be sustained because we are using the Budget Act to try to kill a Medicare bill that is fiscally as sound as you can get; if you are using points about fiscal soundness, not substance—the points of order are not substance; they have to do with dollars—if you are just off 1 year out of 10 but not on the total of 10, you should not invoke the point of order. It should be waived as requested by the majority leader.

I thank the Senate for the 7 minutes. I yield the floor.

Mr. President, I say to fellow Senators, the truth is the Budget Act point of order should not be used for a frivolous matter—$4 billion off in 1 year with a $400 billion bill. It should not be used to cure technical matters—$4 billion in a 10-year bill of $400 billion. I am sure my friend, the chairman of the Budget Committee, will talk about some of the other technical issues regarding programs. But the biggest issue is fiscal soundness.

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I thank the Senate for the 7 minutes. I yield the floor.

Note the presence of the chairman of the Budget Committee.

Mr. REID. Mr. President, will the Senator withhold? Mr. DOMENICI. I will be happy to yield.

Mr. REID. Mr. President, on our side, Senator Graham will speak for 10 minutes, Senator Boxer for 5 minutes, Senator Dodd for 5 minutes, and Senator Corzine for 5 minutes.

Mr. NICKLES. Mr. President, I yield myself as much time as I might consume.
I urge my colleagues to vote to waive the budget point of order. I think I am correct—I haven’t looked at numbers—probably voted to make more points of order than almost anybody, maybe with the exception of my very good friend from the past chairmanship of the Finance Committee. We have always tried to maintain the integrity of the budget, but I think what we have here is a way of people saying: Let’s vote for cloture, but maybe we can kill this bill indirectly; we will do it with a budget point of order and not to save money. I wish the people were really concerned about the fiscal integrity of Medicare, but I don’t think that is what is behind the proponents of these budget points of order. 

As a matter of fact, in looking at past records, Senator Daschle, who made the budget point of order, has moved to waive a budget point of order 56 out of 60 times. Senator Kennedy has moved to waive a budget point of order 20 times that he favors. In other words, some 97 percent of the time they always moved to waive the budget rules. I have always been on the opposite side. I am going to be on the opposite side of them this time because I think they are trying to kill the bill so the bill will come back later with more costs and be a lot more irresponsible.

If my memory serves me correctly, when we debated the budget this year on the floor of the Senate, there was an amendment to increase the $400 billion authorization or the reserve fund we put in the budget for prescription drugs and to improve Medicare. I believe Senator Kennedy and Senator Daschle supported an amendment to increase that figure to $500 billion. They were not successful.

My point is I think their effort today is not because they are concerned about this bill costing too much money. They are trying to figure out a way to bring this bill down so it can come back and cost more money. I just mention that.

What about the point of order? The budget said we would have up to $400 billion to spend for improving and strengthening Medicare, including providing prescription drugs. The bill that was reported out, according to CBO, meets that target. It scores at $395 billion. I happen to think it is going to cost more. But it is very apparent with the rules set by the Budget Committee on its total spending and scored by the Congressional Budget Office.

There is a violation or budget point of order in 2004. What do I mean by that? It scores $3 billion more in 2004. What that relates to is when we pass a budget, we allocate so much money to each committee each year, and the Finance Committee has already spent all of its money. It spent all of its money because there was no provision for lump sum or other spending—a total of $4.7 billion in unemployment compensation in 2004 not assumed in the Budget Resolution. We spent an additional $10 billion in aid to the States that was not assumed in the budget resolution. There are some other things that we didn’t do, so the Finance Committee is out of compliance now by about $3 billion with this bill.

What does this bill do in 2004 that costs money? The prescription drug proposal doesn’t really get started in 2004 with the exception of the prescription discount drug card. The card, which costs $150 million or 25 percent of immediate savings in January of 2004 and provides a $600 benefit for low-income seniors. Seniors who have incomes less than 135 percent of poverty will get a card. I believe that card will be authorized in January of 2004 for $600. The beneficiary would have to make a copayment of 10 percent. So that costs money in 2004. I don’t hear the opponents seeking to delay immediate relief for seniors and low-income seniors.

Further, there are other items that cost money in 2004. Providers receive assistance. Providers, who do I mean? I mean doctors, hospitals, rural hospitals—provisions that are supported very strongly by Members of both parties. They are all part of the bulk of this money, $3.8 billion. So if people don’t want to spend that money, that is of interest, but my guess is that is not really the case.

My guess is people want to spend the money for rural health care areas. I then heard the Democratic leader indicate his concern was also on the revenue side of the budget. There is a point of order because of health savings accounts. That is a $160 million revenue loss in 2004.

I understand some people do not like that particular provision of the bill. I happen to think it is a very good provision of the bill. If the supporters of this point of order prevail then the entire plan will be pulled down. Am I right to assume that their goal is to ensure that there will be no prescription drug coverage for low-income seniors because of that provision? I do not think so.

Now folks are stating that the bill has no cost containment. Well, I believe we have very different meanings of those words. The proponents of the point of order consider government price controls to be effective cost containment. In fact I agree that the legislation lacks real cost containment—I heard Senator Daschle say we did not have cost containment. This Senator worked very hard to get real cost containment. I wanted to put cost containment in that for rural health care areas. I do agree that the legislation lacks real cost containment—I heard Senator Daschle say we did not have cost containment. This Senator worked very hard to get real cost containment. I wanted to put cost containment in that.

In fact, my primary opponent in creating real cost containment was Senator Baucus. He kept saying: I cannot pass that in my caucus. That will never pass. That is a nonstarter. You cannot get a supermajority on this entitlement. It will pull Medicare and the growth of this entitlement. That is not done for other entitlements. I heard it over and over. We debated it for a long time. Well, the facts are that it is done for other entitlements. We have this rule in place today for Social Security. So why then is this entitlement never in question as a result of a supermajority requirement.

I was not successful in getting stronger cost containment than what we have in this bill. I regret that. I wish that we would. I would be happy to pursue that in subsequent budget resolutions with the Democrat leader, but we were not successful in getting it in this package. I think the proponents of this point of order are not serious in their effort to control costs. In fact I heard as to why the proponents of this point of order voted for cloture. Instead of opposing cloture they are trying to get around it the other way and say, we will just use a 60-vote budget point of order.

Seriously, I do not think their efforts are about budgets. I think it is a way to try and kill this bill. I may not support final passage of the bill because I am concerned about the total cost of the bill. But I do not think it should be because we are spending some money for rural hospitals and for doctors. I think doctors are getting like $600 million in 2004; rural hospitals and other providers are receiving money in 2004; and health savings accounts reduce revenues by $160 million in 2004.

The real reason the Finance Committee has exceeded its allocation in 2004 is because we spent $4.3 billion for unemployment compensation and because we spent $10 billion for aid to the States in 2004, neither of which were in the original budget resolution.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Democratic leader, Mr. Daschle, I will yield time in just a moment to my colleagues. First, I will respond briefly to a point made by the distinguished Senator from New Mexico, Mr. Domenech. I am sorry he is not in the Senate floor today to respond to a comment he made. He said this was a frivolous point of order.

I remind my colleagues, this is precisely the point of order made by Senator Grassley and Senator Frist on two different motions last year. So I argue if it was appropriate last year, it would be appropriate this year. If it is frivolous this year, it would have been frivolous last year. Yet the distinguished Senator from New Mexico, and I might add, from the campaign fund of the distinguished Senator from Oklahoma, both voted in favor of the points of order last year when that precise point of order was made.
I ask unanimous consent that the rollcall involving both points of order be printed in the Record at this time. 

There being no objection, the matter was ordered to be printed in the Record, as follows:

U.S. SENATE ROLL CALL VOTES 107TH CONGRESS—2ND SESSION

As compiled through Senate LIs by the Senate Bill Clerk under the direction of the Secretary of the Senate

VOTE SUMMARY

Question: On the Motion (Motion to Waive CBA re: Graham Amdt. No. 4309).

Vote Date: July 23, 2002, 02:54 PM.

Required For Majority: 3/5.

Vote Result: Motion Rejected.

Amendment No. S. Amdt. 4309 to S. 812 (Greater Access to Affordable Pharmaceuticals Act of 2002).

Statement of Purpose: To amend the XVIII Amendment of the Social Security Act to provide coverage of outpatient prescription drugs under the Medicare program.

VOTE COUNTS

YEAS: 52
NAYS: 47
Not Voting: 1

ALPHABETICAL BY SENATOR NAME

Akaka (D-HI), Yea
Allard (R-CO), Nay
Allen (R-VA), Nay
Baucus (D-ID), Yea
Bayh (D-IN), Yea
Bennett (R-UT), Nay
Biden (D-DE), Yea
Bingaman (D-NM), Yea
Bond (R-MO), Nay
Boxer (D-CA), Yea
Breaux (D-LA), Yea
Brownback (R-KS), Nay
Burns (R-MT), Nay
Byrd (D-WV), Yea
Campbell (R-CO), Nay
Nay
Cantwell (D-WA), Yea
Carnahan (D-MO), Yea
Carper (R-DE), Yea
Chafee (R-RI), Nay
Cleland (D-GA), Yea
Clinton (D-NY), Yea
Cochran (R-MS), Nay
Collins (R-ME), Nay
Conrad (R-ND), Yea
Corzine (D-NJ), Yea
Craig (R-ID), Nay
Crapo (R-ID), Nay
Daskal (D-SD), Yea
Dayton (D-MN), Yea
DeWine (R-OH), Yea
Nay
Dodd (D-CT), Yea
Domenici (R-NM), Nay
Dorgan (D-ND), Nay
Durbin (D-IL), Nay
Edwards (D-NC), Nay
Ensign (R-NV), Nay
Enzi (R-WY), Nay
Feingold (D-WI), Yea
Feinstein (D-CA), Yea
Fitzgerald (R-LI), Yea
Frist (R-TN), Nay
Florida (D-FL), Yea
Gramm (R-TX), Nay
Grassley (R-IA), Nay
Gregg (R-NH), Nay
Snowe (R-ME), Nay
Spector (R-PA), Nay
Stabenow (D-MI), Yea
Stevens (R-AK), Nay
Thomas (R-WY), Nay
Thompson (R-TN), Nay
Thurmond (R-SC), Nay
Torricelli (D-NJ), Nay
Voinovich (R-OH), Nay
Warner (R-VA), Nay
Wellstone (D-MN), Yea
Wyden (D-OR), Yea

GROUPED BY VOTE POSITION

EYAS—52

Akaka (D-HI), Nay
Baucus (D-MT), Nay
Bayh (D-IN), Nay
Biden (D-DE), Nay
Bingaman (D-NM), Nay
Boxer (D-CA), Nay
Breaux (D-LA), Nay
Byrd (D-WV), Nay
Cantwell (D-WA), Nay
Carahen (D-MO), Nay
Carper (D-DE), Nay
Chafee (R-RI), Nay
Cleland (D-GA), Nay
Clinton (D-NY), Nay
Cochran (R-MS), Nay
Collins (R-ME), Nay
Conrad (R-ND), Yea
Corzine (D-NJ), Yea
Craig (R-ID), Nay
Crapo (R-ID), Nay
Daskal (D-SD), Yea
Dayton (D-MN), Yea
DeWine (R-OH), Yea
Dodd (D-CT), Yea
Domenici (R-NM), Nay
Dorgan (D-ND), Nay
Durbin (D-IL), Nay
Edwards (D-NC), Nay
Ensign (R-NV), Nay
Enzi (R-WY), Nay
Feingold (D-WI), Yea
Feinstein (D-CA), Yea
Fitzgerald (R-LI), Yea
Frist (R-TN), Nay
Florida (D-FL), Yea
Gramm (R-TX), Nay
Grassley (R-IA), Nay
Gregg (R-NH), Nay
Hagel (R-NE), Nay
Bayh (D-IN), Yea
Harkin (D-IA), Yea
Hatch (R-UT), Nay
Hollings (D-SC), Yea
Hutchinson (R-AR), Nay
Hutchison (R-TX), Nay
Inhofe (R-OK), Yea
Kiy (R-AZ), Yea
Koch (R-MD), Yea
Kohl (D-WI), Yea
Kyl (R-AZ), Nay
Landrieu (D-LA), Yea
Leahy (D-CT), Yea
Lincoln (D-NE), Nay
Martin (D-NV), Nay
McCain (R-AZ), Nay
McConnell (R-KY), Nay
McCollum (D-MN), Nay
McCain (R-AZ), Nay
McConnell (R-KY), Nay
McCormack (R-MA), Yea
McCaul (R-TX), Nay
McCollum (D-MN), Nay
McGovern (D-SC), Nay
Mikulski (D-MD), Nay
Miller (R-GA), Yea
Murkowski (R-AK), Nay
Murray (D-WA), Yea
Nelson (D-FL), Yea
Nickles (R-OK), Nay
Reid (D-RN), Yea
Reid (D-NV), Yea
Roberts (R-KS), Nay
Rockefeller (D-WV), Yea
Santorum (R-PA), Nay
Sarbanes (D-MD), Yea
Schumer (D-NY), Yea
Sessions (R-AL), Nay
Smith (R-NH), Nay
Smith (R-OR), Nay
Alabama: Sessions (R-AL), Nay
Shelby (R-AL), Nay
Alaska: Murkowski (R-AK), Nay
Arizona: Kyl (R-AZ), Nay
Arkansas: Hutchinson (R-AR), Nay
California: Boxer (D-CA), Yea
Florida: Graham (D-FL), Yea
Georgia: Miller (D-GA), Yea
Hawaii: Akaka (D-HI), Nay
Idaho: Craig (R-ID), Nay
Illinois: Durbin (D-IL), Yea
Indiana: Bayh (D-IN), Yea
Iowa: Grassley (R-IA), Yea
Kansas: Brownback (R-KS), Nay
Kentucky: Burns (R-KY), Nay
Louisiana: Breaux (D-LA), Yea
Maine: Collins (R-ME), Nay
Maryland: Mikulski (D-MD), Yea
Massachusetts: Kennedy (D-MA), Yea
Michigan: Levin (R-MI), Yea
Minnesota: Dayton (D-MN), Yea
Mississippi: Cochran (R-MS), Nay
Missouri: Bond (R-MO), Nay
Montana: Baucus (D-MT), Yea
Nebraska: Hagel (R-NE), Yea
Nevada: Ensign (R-NV), Nay
New Hampshire: Gregg (R-NH), Nay
New Jersey: Corzine (D-NJ), Yea
New Mexico: Bingaman (D-NM), Yea
New York: Clinton (D-NY), Yea
North Carolina: Edwards (D-NC), Nay
North Dakota: Conrad (D-ND), Yea
Ohio: DeWine (R-OH), Yea
Oklahoma: Norman (D-OK), Yea
Pennsylvania: Specter (R-PA), Nay
South Carolina: Sessions (R-SC), Nay
South Dakota: Thune (R-SD), Nay
Tennessee: Kennedy (D-TN), Yea
Texas: Edwards (D-SC), Nay
Utah: Bennett (R-UT), Nay
Vermont: Leahy (D-VT), Yea
Washington: Murray (D-WA), Yea
West Virginia: Rockefeller (D-WV), Yea
Wisconsin: Feingold (D-WI), Yea
Wyoming: Enzi (R-WY), Nay

GROUPED BY HOME STATE

Alabama: Sessions (R-AL), Nay
Shelby (R-AL), Nay
Alaska: Murkowski (R-AK), Nay
Arizona: Kyl (R-AZ), Nay
Arkansas: Hutchinson (R-AR), Nay
California: Boxer (D-CA), Yea
Colorado: Allard (R-CO), Nay
Connecticut: Dodd (D-CT), Yea
Delaware: Biden (D-DE), Yea
Florida: Graham (D-FL), Yea
Georgia: Cleland (D-GA), Yea
Hawaii: Akaka (D-HI), Nay
Idaho: Craig (R-ID), Nay
Illinois: Durbin (D-IL), Yea
Indiana: Bayh (D-IN), Yea
Iowa: Grassley (R-IA), Yea
Kansas: Brownback (R-KS), Nay
Kentucky: Burns (R-KY), Nay
Louisiana: Breaux (D-LA), Yea
Maine: Collins (R-ME), Nay
Maryland: Mikulski (D-MD), Yea
Massachusetts: Kennedy (D-MA), Yea
Michigan: Levin (R-MI), Yea
Minnesota: Dayton (D-MN), Yea
Mississippi: Cochran (R-MS), Nay
Missouri: Bond (R-MO), Nay
Montana: Baucus (D-MT), Yea
Nebraska: Hagel (R-NE), Yea
Nevada: Ensign (R-NV), Nay
New Hampshire: Gregg (R-NH), Nay
New Jersey: Corzine (D-NJ), Yea
New Mexico: Bingaman (D-NM), Yea
New York: Clinton (D-NY), Yea
North Carolina: Edwards (D-NC), Nay
North Dakota: Conrad (D-ND), Yea
Ohio: DeWine (R-OH), Yea
Oklahoma: Norman (D-OK), Yea
we have before us today, it denied us the opportunity because we could not get the 60 votes in order to override the point of order.

What I really want to talk about, however, is the last point that my friend and fellow-departing Member of the Senate, Mr. NICKLES, just said, and that was about the issue of cost containment. Senator NICKLES has a definition of cost containment. That definition is that we will impose limits on the amount of funds which can be spent on the Medicare Program, the most prominently suggested approach being to say that if more than 45 percent of the nontrust fund monies of the Federal Government are going to be spent on Medicare, then there will be a complex Rubie Goldberg of votes and countervotes to determine if that can occur.

If those limits are imposed, then the only way that 45-percent excess can be replaced are through things which are clearly going to be very onerous upon the Medicare beneficiaries, such as increasing the payroll tax or increasing the amount of premiums that seniors would pay.

Therefore, what we might go to general revenue as the means of meeting that excess is not allowable. It has to come out of the Medicare Program itself.

I have a different definition of what a cost control ought to be, and it is not a bureaucratic maze. It is a straightforward, capitalist, free enterprise, marketplace approach. It also is not a new idea. In the early 1990s, this Senate passed legislation which authorized the administrator of the Veterans Administration to negotiate with pharmaceutical companies on behalf of the VA. That bill was sponsored by Senator Alan Simpson, retired Republican from Wyoming; Senator and now-Governor Frank Murkowski of Alaska; retired Senator Alan Cranston, a wonderful colleague today, Senator JAY ROCKEFELLER. Those were the four sponsors.

When the bill came before the Senate, there was not a request for a recorded vote. It passed unanimously. So that does not sound like it was a very radical bill, given who its sponsors were, or that it raised any great cries of protest. It is now before the Senate, Mr. NICKLES, just said, and the point of order.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM of Florida. Mr. President, given my expanded amount of time, I would like to talk about two aspects of this. In 2001, first with Senator BILL MILLER and TED KENNEDY and then with Senator GORDON SMITH, I offered variations of a prescription drug bill to this Senate. In the case of the first legislation, there was, in fact, a point of order, precisely the one that is now before the Senate, offered against both of those provisions.

In the first instance, the vote to waive the point of order was 52, so the bill had a majority of the Members of the Senate prepared to support it, which would have meant we would not be having this debate today because senior citizens and disabled Americans would be going to the drugstore and getting their prescription drugs today.

The second bill which Senator SMITH and I offered was very similar in structure to the one that is in this current legislation; I would say somewhat better and more public spirited but similar.

On that bill, there were 50 votes exactly not to waive the point of order. So this is not a unique, unusual, or inappropriate motion to make. It was made twice in 2001. In the one case, it denied passage of legislation. In the other case, on virtually the same bill
pharmaceutical industry to its knees, that 10 to 12 million Medicare beneficiaries are going to cause that to occur.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator for 3 minutes.

Mr. GRAHAM of Florida. I ask for an additional 5 minutes.

Mrs. BOXER. Reserving the right to object—of course, I will not object—I would like to be the next Democrat on the list to speak because Senator DASCHLE had committed that to me but he is not in the Chamber at this time. I ask unanimous consent that I be the next Democrat to speak, up to 7 minutes, after Senator GRAHAM, and of course yielding to the other side.

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

Mr. GRAHAM of Florida. There is a question more serious than the question I just asked, and that is, How do we answer the question? This is Ms. Kitterage. She is 75 years old. She lives in Tamarac, FL. She has about $4,900 a year expenses over a range of prescription drugs. That is her annual expense. Here you see some of the vials of her prescription drugs.

This is not the case—at least I don't know it to be the case—but let's assume that Ms. Kitterage either is married or a widow and that her husband was about her age, which would have meant that he quite possibly could have been one of our brave soldiers in the Korean war. As such, he would be eligible, as one of the veterans, to get the VA discounts. She is not eligible today. Because of this provision we are proposing to put into law, she will not be eligible in the future to get the benefit of Medicare's tremendous purchasing power.

I want to just leave this question. When we stand up before an audience of elderly Americans and Ms. Kitterage comes and asks this question: My husband is the same age I am; why is he able to buy prescription drugs at half the price that I have to pay because he can do it at the VA, that is the question we are going to be required to answer. I would like to offer that to my colleagues for a response. Would somebody please tell me what is the public policy that justifies utilizing the purchasing power of the VA to get these kinds of discounts?

Yet to the wives of the veterans we say: You have to pay the full amount. So apparently a discount card available to all seniors in less than 5 months, and also with a direct $600 subsidy to those with the lowest incomes, is something that opponents of this bill—crying in their beer all the time about this not doing enough for seniors taking effect soon enough—is a reason to block this bill.

They are talking out of both sides of their mouth when they say that. On the one hand, they say it is not going into effect soon enough, and then with the next vote we have left, they are going to guarantee no drug benefit for years, and just with some little budget technicality on a procedure vote.

It's pretty ironic, that they would take that stand over the course of 4 days—argue that this bill is not going into effect soon enough, ignoring the discount card that starts immediately, and saying we are not doing enough—and then they are willing to block it on a technicality.

It seems to me that anybody who says we are not providing drug benefits quickly enough for our seniors and our disabled would vote to override this point of order so we can get to the next veto family passage vote.

Also, I just heard some of my colleagues from the other side of the aisle say this bill, in some instances, does not do enough for rural health care delivery providers. We provide $25 billion in this bill for rural providers to deal with the inequitable situation of the 30 States below the national average. That is because the formulas for doctors and hospitals in urban areas treat them less well, less equitably than the formulas for urban areas, because the assumption in rural areas you can deliver health care for less costs.

But they are crying in their beer about maybe that is not doing well enough. And if they vote as 1 of the 41 who might keep us from overriding that point of order, then how can they talk out of both sides of their mouth—one time saying, “We are not doing enough,” and then, on the other hand, “Kill this bill on this budget technicality”? Because just as soon as this bill passes, rural providers are going to get a great deal of help from this legislation.

Now, that help is not just for our providers because we feel sorry for doctors or hospitals. We are not being able to recruit doctors and maintain our hospitals in rural America. This $25 billion in this bill will strengthen our hospitals. It will give us an opportunity to recruit doctors.

So if you are 1 of the 41 who does not help us override this point of order, you are saying no to the recruitment of doctors in rural America. You are saying it is OK to close rural hospitals. Because you know what is going to happen. We might keep us from overriding that point of order, then how can they talk out of both sides of their mouth—one time saying, “We are not doing enough,” and then, on the other hand, “Kill this bill on this budget technicality”? Because just as soon as this legislation, all the doctors of America are going to take a 4.5-percent cut in their reimbursement because of the way our formulas work. I do not
know how formulas such as that were written, but those formulas have an egregious impact upon the doctors.

I strongly disagree that that ought to happen and that we ought to have situations where medical doctors are fed up with Medicare and they just get out of the program. Then our seniors have fewer doctors to take care of their needs.

But if this bill passes, it is going to give relief to our doctors, not only stopping 4.5 percent, but it will give them a 1.5 percent increase in reimbursement.

It seems to me a vote against overriding the point of order is a vote against our rural hospitals every day because every day our hospitals are doing more with less. They serve our elderly. They serve the uninsured, those who live in some of the remotest parts of our country, and those who live in our cities as well because city hospitals have been hit by this $1,500 cap and will not be able to provide the care that our seniors need.

So this is going to be a vote against some of our neediest seniors. And the neediest of all our seniors are those in nursing facilities who need physical therapy. They need occupational therapy, speech therapy. This bill, out of this $25 billion, provides a 2-year moratorium from the therapy cap that is in law today, which, basically, at $1,500 is saying, if you have a stroke, if you have some sort of major operation, you are only going to get physical therapy up to $1,500; and too bad after that.

Well, we take care of that in this legislation. But the people who vote against overriding this point of order are saying no to those neediest of seniors in the nursing homes who will be hit by this $1,500 cap and will not be able to get the physical therapy services they need.

We are at a point where all this effort about rural hospitals has been supported by an overwhelming majority in both the House and the Senate.

We heard our colleague, Senator Bennett of Utah, speak passionately about his daughter, who is a speech therapist and knows all too well how nursing home residents benefit from therapies after they have suffered a stroke, heart attack, or maybe just a fall. Are we going to say to Senator Bennett’s daughter that we don’t need to delay these caps? Are we going to say to our seniors that access to physical therapy doesn’t matter? I certainly hope not.

You will hear a lot about this vote being a vote to delay premiums for everybody else, taking money. What that does is, it raises the count, and to be able to deduct that premium or have to pay more to stay in this bill because, look at the size of it. It is hard to lift it. If you look at this, hidden in there it says the Secretary of HHS can demand from the IRS your premium tax return or mine or any of our constituents to just make sure they are not cheating on a lot of the rules that go along with this.

In California, the minute this bill goes into effect, I have a lot of problems: 867,000 sick low-income seniors will have worse coverage; 250,000 retirees will lose their more generous prescription drug benefits; 1.4 million seniors will be forced into demonstration projects. That means they will either have been forced into an HMO to get a better break on their monthly premium or have to pay more to stay where they are. We are asking our seniors to choose a HMO where they have the choice of a doctor.

It increases Medicare premiums for middle and upper class people. Some people may say that is a great thing. Let me tell you a couple of bad things that happened. What will happen is, these people may well leave Medicare, which means the pool shrinks and the premiums go up for everybody else. The other problem is, these premiums are not indexed. If this had been in place in 1980, I think we would believe it would be people with $33,000 a year who would have to pay higher premiums. We know that is a low number.

There will be confusion and fear. I will talk about that. And there will be large benefit shutdowns which are daunting and penalize innocent seniors.

I say to the occupant of the Chair, something maybe he has not yet found in this bill because, look at the size of this thing. This is the size of it. It is hidden in there. Again, in 1980, you will find in there the Secretary of HHS can demand from the IRS your tax return or mine or any of our constituents to just make sure they are not cheating on a lot of the rules that go along with this.

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I made up, sort of wrote it myself. A demonstration projects with HMOs. Those fewer, or low-income seniors will qualify for low-income protections than under the Senate bill that I was pleased to vote for; 230,000 Medicare beneficiaries will pay higher Part B premiums; and 1.4 million seniors will be forced or could well be forced into one of those demonstration projects with HMOs.

I don’t have a lot of time left so I want to leave you with this chart that I made up, sort of wrote it myself. A lot of it is mine. I want to tell you, I used this chart on Saturday. My phones have been ringing off the hook. This is what the senior citizens now have to understand.
I would urge my colleagues to look at every expression on this chart and you tell me if you understand what these things are: Transitional assistance, there is one thing seniors better learn because they are transitioning into something different; MSAs, medical savings accounts; risk adjustment, you are going to hear about that; benefit shutdown, that is when you know are going to hear about that; benefit something different; MSAs, medical because they are transitioning into there is one thing seniors better learn things are: Transitional assistance, every expression on this chart and you there are going to be a lot more of things. You better know it well because corridors. You all know what HMOs explain. There are copayments, risk mandatory with this so-called great benefit that chart down here. Talk about all—

You have $5,000 worth of prescription—

There is a huge benefit shutdown. That cease is a prescription drug benefit. The Senator from Connecticut is recognizing. Mr. SANTORUM. Mr. President, I yield myself such time as I may consume. Will the Chair please notify me when I have used 10 minutes?

The PRESIDING OFFICER. The Chair will do so.

Mr. SANTORUM. Mr. President, I find this to be a little bit of a surreal experience, being here on the Senate floor and listening to all of the problems in this legislation, all about how it doesn't provide enough benefits and how we need to spend more money, and what is being offered is the budget point of order by the very people who want to spend more than what this bill does.

Someone is saying we are spending too much money—I think $4 billion or $5 billion—in 2004. We are not even spending the $400 billion allotted. It is a $395 billion bill. We are within the budget window over 10 years and also over 5 years. But in the first year we are not in the budget window. Why? Let's figure it out. If you are in for 5 and 10, what is the problem for the first year? The problem the first year is that the budget sets up a category for mandatory spending, and included in that was the money for Medicare.

I am pointing out the things we have in this bill exceeding the money that we anticipated in the budget for Medicare? No. Well, wait a minute. If the money that we have in this bill doesn't exceed

There is incredible language here that even the most determined person to learn about this bill would be hard pressed. There it is. I thank the Senator from California because she has laid out here a lexicon for every one of these—

I was a local pharmacist, I would just say: Come on in, Medicare patients. I will give you a discount. Don't bother filling out all the forms that will be necessary with this so-called great benefit that the other side says they have given. There is a huge benefit shutdown. Coverage gap is another expression to explain. There are copayments, risk corridors. You all know what HMOs are. You better know it well because there are going to be a lot more of them. There is MA-PD plans, plan retention funding; MA regions; donut holes. I don't eat those donut holes; those are gaps in coverage—premums, you all know what that means. Let me tell you, it is going to be confusing. You won't know what group you fall in and what your premium is. I’m not talking health, HSAs, wraparounds, national bonus payments, stabilization funds—that is a nice name for the slush funds that are going to the HMOs, and one reason that budget point of order ought to be sustained—Medicare advantage competition, annual out-of-pocket threshold. Seniors, you better learn what that is. You are going to have to keep notes on every little penny you spend.

By the way, if you happen to be on a prescription drug that is not in the Medicare formulary, it was in your Medicaid formulary—I don't even have the time to go through all this. One of my favorites is “clawback.” Half of my colleagues probably don’t know what that means. States are prohibited from helping their seniors who are very poor pay their copayments. The States are prohibited and they must pay back the Federal Government. So seniors, pick up the phone, call your Senator. Tell them to bring this bill back to the drawing board. It is a huge bill. Only a tiny portion of it is a prescription drug benefit.

Mr. President, let's get rid of this turkey in time for Thanksgiving. I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I commend my colleague from California. But that chart down here. Talk about all—alphabet soup, this is very instructive, it seems to me, in terms of why people are so confused about what is in this bill. There is incredible language here that even the most determined person to learn about this bill would be hard pressed. There it is.

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I am pointing out the things we have in this bill exceeding the money that we anticipated in the budget for Medicare? No. Well, wait a minute. If the money that we have in this bill doesn't exceed
what we had budgeted for Medicare, then why is it subject to a budget point of order? Well, because the money that we had budgeted for Medicare was eaten up by two Democrat initiatives that have swallowed up that money—unemployment extension, and FMAP, money to the States for their medical program. Because of those two expenditures—which I agree was done in a bipartisan way, and I tip my hat to the other side; it was clearly motivated by the other side of the aisle to spend this additional $2 billion. We have run through what we were going to spend on Medicare. Guess what. There is no money left in fiscal year 2004 for Medicare—any kind of spending in this bill. So if we would have done anything in this year to spend money on Medicare, we would have exceeded the budget caps. So we have this thing tantamount to a gimmick, if you will, where we have exceeded the budget because of other spending having nothing to do with Medicare, that leaves us liable to a budget point of order.

Now, I understand if you want to kill the bill—and I understand you do want to kill the bill—we had a vote on cloture. We had 70 votes, and it would have taken Senator Stevens, sitting here and his plane was able to get off the ground. But we had 70 votes not to block it on a procedural vote, to give the people of this country, through the Senate, an opportunity for an up-or-down vote, whether this thing is worthy. Seventy Members voted today that we were not going to use a procedural filibuster.

What is the next step? The next step is to use another procedural gimmick. In this case, as the Senator from New Mexico has pointed out, it truly is a gimmick because we are within what was contemplated when we passed the budget earlier this year for Medicare next year, but we have a technical problem. Another spending that has nothing to do with Medicare.

I say to my colleagues who are going to be casting their votes momentarily on this issue: If you want to block this vote procedurally, you had your chance. It was a vote on cloture. We are now postcloture. To put up another procedural gimmick—and this is truly a gimmick—being offered by someone who for 57 of the last 60 waivers of the Budget Act voted to waive the Budget Act—unless these 3 times you say, "I don’t, they were not here to vote as a way to obstruct the Medicare bill at the 11th hour and the 59th minute, when they had voted for every single waiver that was available to be voted on, to use this to try to block this bill. I think every senator in this country said the right thing. I think the right thing that we would have to tell the original vote which was not to filibuster this bill.

This is tantamount to another filibuster only it doesn’t have the word attached to it. Would you say you can go home and say: We didn’t filibuster this bill; I voted to allow this bill to be considered. But, you know, there was this budget problem. Now by the way, I have never seen a budget problem that I didn’t have a problem with waiving. I have waived it 57 times or 60 times this year on things a heck of a lot less important than prescription drugs for Medicare, and we routinely did it, but we did it when it came to Medicare, when it comes to $3 billion or $4 billion or $5 billion out of a $400 billion bill in the first year, because of a problem having nothing to do with Medicare, then I am going to find a problem, then I am going to be concerned about the budget when I testify before the Budget Act 60 times prior to that.

That dog doesn’t hunt. That is just a procedural obstruction. I hope my colleagues who voted for the cloture motion will vote consistently. This is another other vote on cloture. That is what this is. This is a procedural hurdle that has no substance or basis to it.

When the people who offer this procedural motion, concerned about the impact on the budget, and in all of their speeches talk about how much more money we should be spending, one wonders how sincere the budget concerns really are. Every person who has gotten up to support this budget point of order has said this bill fails short because it is not good enough. Yet they are making a point of order on the budget which says we are spending too much.

This is the kind of shenanigans that goes on in the Senate, that goes on in the public, Washington. Frankly, just doesn’t understand. You are either for this bill or against this bill. If you want to block this bill, vote against cloture, but don’t put up these gimmicks, rules that are in place to stop something from happening because you want to accomplish the opposite effect of the rule. The rule was put in place to save money. They are using the rule so they can spend money.

It shouldn’t be any surprise that on another issue relating to this, we have a situation where many on the other side of the aisle have been critical of this noninterference issue. That is the provision that says the Federal Government is not going to negotiate a price for prescription drugs for everybody on Medicare. Why do we have this in place? Let me give you the policy. We have this in place from a policy point of view because roughly 50 percent of the people in this country are going to be bought through Medicare—to have that kind of "market power" where the Federal Government will basically go in and dictate a price fix, price set to every pharmaceutical—most pharmaceutical, not every pharmaceutical product in this country.

Most Members of Congress are not for a command-and-control, one-size-fits-all drug price in America. Some are and it comes, like to adopt the Canadian-style system, and some would like to adopt the German-style system, but we have made a decision that we believe it is better for the private sector to negotiate prices, not the Federal Government. And if you don’t think that is a bargain, you can’t get lower costs out of the
pharmaceuticals, and there are incentives on the pharmaceuticals point to give volume discounts. Let that mechanism work. Don’t have the head of CMS, the Medicare Director in Washington, DC, dictate prices for everybody.

Let us not set those prices in the Senate. Let us let the marketplace work to squeeze cost and get efficiency out of the system. It is their idea. So, again, I suggest on two issues that have come of talk. No. 1, the budget point of order, which is made to save money, is actually being used by the other side so they can spend more money. The major provision that has gotten the ire of so many, which is this noninterference with negotiating drug prices, is their proposal.

I suggest, as I had a conversation with one of my colleagues on the other side of the aisle a few moments ago, I understand the left hates this bill. As we saw from the House and we saw from the other side of our colleagues, a lot of the right hates this bill. Usually, things that come straight down the middle are usually where most Americans are and where most Americans would like us to go. That is what this bill does. I hope we have very strong support for it as a result.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. Mr. President, I want to spend a few minutes about encouraging my colleagues to sustain this point of order. I want to use some of the comments I heard about gimmickry because I am concerned about the budget issues, and this is absolutely relevant. It was gimmickry to say we are spending $400 billion on a prescription drug benefit for seniors and then hide it in HSAs, $12 billion support for the insurance industry, lots of support, some of which I actually might even have agreed to with regard to encouraging corporations to maintain their insurance policies so Medicare does not have to pick it up, all of that is true. But we have a major league problem. There is no cost containment in this program of any serious effect.

I come from a State where there are a lot of pharmaceutical industries and we were talking about importing price controls from Canada. We had that debate around here. I am not for that. I think we are going to deal with a market structure that is fair and respectful of the buyers actually competing for the price.

Last time I checked, the Federal Government, when it buys a tank, actually goes out and negotiates the price. When it is buying airplanes, we talk about negotiating the price. I think it is absolutely essential that if Medicare is the provider of the resources, the taxpayer, that they be able to negotiate their price.

One clause with this bill—which I will remind people is 1,200 pages long and not many of us have read it—is that it has a lot of unintended consequences. It has one very real intended consequence which is to dampen competition which might lower prices. We are increasing the demand curve and we are keeping the supply curve the same, and that raises prices. That is exactly what happens.

By the way, the VA is a perfect example of it, and I thank Senator GRAHAM for pointing this out. When the VA is negotiating prices, it is not 24 percent across the board. It is on individual drugs. The talk about half of what would be paid if they went to a pharmacy.

This is not my chart but it is actually doggone good. I take this Lopressor for high blood pressure. No wonder I have high blood pressure being in the Senate. It costs 1 cent per pill. At the drugstore it is 87 cents.

Here is another one. This is Zantac. I guess if one has an ulcer—some people get ulcers when they are up around here. The VA, if costs $1.83 at the drugstore. That is price control, price containment at the VA, while the drugstore is charging what the market will bear. That is what our seniors are doing. That is going back into the market and then paying the higher costs with regard to this bill, about which a lot of conservatives are concerned. I am concerned about it.

We say this is $400 billion, it is out of tilt with the budget resolution in the first year. I think we know whether this bill is going to produce $400 billion worth of expenditures over the next 10 years, I think we are kidding ourselves.

Nobody knows what is inside this bill on each individual page. There is going to be a lot of difference by the time we get there. The one thing we do know when we go from 40 million seniors to 70 million seniors is this thing is going to explode in the second 10 years. The estimate is it will cost $1.3 trillion to $2 trillion.

Frankly, it is going to increase the unfunded mandate for Social Security and from about $18 trillion to $25 trillion. I cannot even think of those numbers, but that is a huge problem if we are not willing to deal with the reality of what we have to do.

That is why it is important on the budget to take into consideration whether VA and the Medicare system are equal, but I think we know whether this bill is going to produce $400 billion worth of expenditures over the next 10 years. I think we know what is going to happen.

What is important is we are putting ourselves on a track where we will not be able to afford Medicare A, B, prescription drugs, or any of these things. I think we are putting ourselves on a track because we have been unwilling to deal with cost containment in a serious way. We are promoting a notion that is not command and control. It is 15 percent of the market. People negotiate for the Federal Government in every other purchase they do. They ought to be doing that here. It would make a big difference on cost containment.

I urge my colleagues to sustain the point of order.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I yield whatever time he might consume, up to 5 minutes, to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I wish to speak for a couple of comments to my earlier statement. I noticed the Democrat leader, Senator DASCHLE, alluded to similar points of order being raised in July of 2002. That was raised and supported for a couple of reasons. One, the budget resolutions in 2002, that was the resolution that passed in 2001 for fiscal year 2002, said there is up to $300 billion in a bill that was reported out of Finance Committee that would strengthen and enhance Medicare.

In 2002, the Democrats were running the place. They did not report a Medicare bill out of the Finance Committee. They bypassed the Finance Committee. I was a member of that committee. I was incensed that we would just ignore the committee. Therefore, it violated the budget. One, I know it was not reported by committee. Also, it was just, here is the bill. I believe the bill was quite a lot larger than $300 billion. I am not sure if it was $500 billion or $600 billion. It was a lot more than $300 billion.

So there was a very legitimate reason. One, it was not reported out of committee. It did not have work done on it by the committee. It did not meet the overall structure or the framework. This bill that we have before us is within the $400 billion as reported by CBO. It did go through committee, both the Finance Committee and the Ways and Means Committee. It has been scored by CBO. At that time, I believe, we said we would file a protest to this because the Senate had not even been scored, or at least the details had not been scored, by CBO.

There was a legitimate reason to make a budget point of order. This, in my opinion, is not. By my fact, as evidenced by most of the people who are promoting this budget point of order, they have almost all the time, 90-some percent of the time, opposed budget points of order when they have been in the majority. I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?
Mr. DURBIN. Under the unanimous consent, I believe I have been allocated 5 minutes. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. DURBIN. I ask for 4 and ask if the Chair will notify me when I have 1 minute left.

A few minutes ago, the Secretary of Health and Human Services, Tommy Thompson, was on the floor. It is his right to visit with us. It is an opportune moment for him to come as the Senator from Pennsylvania reminds us that we are not going into socialism, socialized medicine, command and control; we are not going to have the Government bargaining on the prices of medicine.

Yet I guess the Senator from Pennsylvania has forgotten that during the anthrax crisis when Cipro, which was going to be used as an antidote, was $4,670 a bottle, Golden Rule Thompson negotiated for America to reduce the price of that drug in the midst of the crisis to 75 cents. He was quoted as saying: Everyone said I wouldn't be able to reduce the price of Cipro. I'm a tough negotiator.

Sounds a lot like command and control for Americans.

For Americans, they are taking a look at this bill and saying: Who is going to pay for us? This 1,100-page bill prohibits reimportation of drugs from Canada. So our friends, the seniors, the family and others who are looking for relief, they will not be getting it out of this bill. Even worse, as has been noted, in this one page that I take out of 1,100, page 53, lines 18 through 26, we prohibit Medicare from negotiating lower drug prices.

The Senator from Pennsylvania says that is because we believe in the free market. Let the market set the price.

I might say to my friend from Pennsylvania, how do you explain the $6 billion subsidy for your friends with health savings accounts in this bill? Frankly, you can't, under free market principles.

Let me say, when you take a look at this bill you understand that we are squandering $6 billion for retiree coverage. That is one of the key elements. We create these new health savings accounts and exclude them from the long and laudable history, but when Mr. Newt Gingrich of Georgia took control of the House, he brought with him one of his best pals, the Golden Rule Insurance Companies from Lawrenceville, IL. In fact, the Speaker was so smitten with this company he cut a television ad for them with their medical savings accounts. Frankly, they returned the favor, contributing over $3.6 million to Republican congressional candidates.

It was such a sweet arrangement. They would pay back so generously as long as he held us hostage to Golden Rule, Golden Rule would send millions of dollars to Republican candidates.

Frankly, that meant nothing compared to this bill. This bill gives $6 billion for health savings accounts that have nothing to do with Medicare and nothing to do with prescription drugs for seniors. This is the largest single giveaway I have ever seen in 21 years. It is in this bill.

Now, let me connect the dots. Turns out Golden Rule Insurance Company was recently purchased. Who bought Golden Rule Insurance Company? A group called UnitedHealthcare, down here whose CEO, Channing Wheeler, was paid $95 million, a sweet salary; compared to other HMO execs—not that great.

Now connect the dots. Golden Rule, a friend of the Republican Party, purchased by UnitedHealthcare; UnitedHealthcare is the largest insurance group working with AARP. It all comes together.

AARP is selling this product for UnitedHealthcare. They bought a $3 billion subsidy in this bill, and now they have discovered this is the best bill in the world.

I suggest to all my colleagues and all those watching this debate, call AARP. Here is the telephone number, 1-800-432-0343. We are腆standing up for seniors for a change, tell them to fight for Medicare, tell them to stop the sweetheart deals with Golden Rule and UnitedHealthcare. We need to make sure the people who wrote this bill get back to work and eliminate these giveaways, the multibillion-dollar giveaways, the subsidizing for these great free market disciples that are included in this bill. And we need to do it now. Sustain the point of order. Vote no on the waiver of the point of order.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, we reserve the last 4 minutes for the Democratic leader.

The PRESIDING OFFICER. There is 3 minutes remaining. The Senator from Iowa.

Mr. GRASSLEY. I want to take 30 seconds and then yield 5 minutes to the Senator from Louisiana and then the Senator from Montana.

Before I do that, how many times have we heard from the other side of the aisle about this being a 1,000-page bill? I want them to read, if they know how to read: There are 678 pages here. I know how you folks can raise this point of order when you can't even count the number of pages in a bill? I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Mr. President, we have reached that point where the debate is on the size of the bill and not the merits of the bill.

Let me just say, 38 years ago this Congress passed this document that I love in hand. It was the first time. It was in 1965 that we enacted Medicare, which was a noble experiment. It was led by Democrats and signed into law by President Lyndon Johnson. It was, indeed, a change and a challenge. No one knew whether it was going to work. People could not be guaranteed it was going to serve the needs of America's seniors. But it was a chance worth taking. It was a change. I suggest today Democrats in particular should not do anything and that the political pundits of both parties suggest we cannot vote for this bill because somehow it may give credibility to the other party. I have actually heard that from both sides of the aisle. I think that would be a tragic mistake.

The issue today is not which political party wins. The issue today is whether we can craft legislation that allows America's 40 million seniors to come to Congress today and say: We are going to do better. This bill does that because it combines the best of what government can do with the best of what the private sector can do.

Many on my side of the aisle think the Federal Government should do everything all the time. We can't do that. We can't do it very effectively. So I think it is important to note that on the other side of the aisle, many of them think the Federal Government should not do anything and that the political pundits of both parties suggest we cannot vote for this bill because somehow it may give credibility to the other party. I have actually heard that from both sides of the aisle. I think that would be a tragic mistake.

The truth lies, as most truthful matters lie, somewhere in between. The fact is, we ought to combine the best of...
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my colleagues to support it. It is not sufficient for people on my side of the aisle strongly supported, it is not sufficient for people to go back to our States and tell seniors that we somehow prevented this bill from being adopted because of a point of order that was very technical in its essence. I think people want to know where we stand on the merits of the bill. Are we for prescription drugs for the first time, for seniors, since 1965? Are we for giving them a program where the Federal Government pays 75 percent of their costs? Are they for or against a program that is going to give particular help and assistance to our Nation's low-income seniors, which is so terribly important? Are we for bringing low-income seniors into one standard national Medicare Program or are we not?

I would not want to go back and somehow argue the technical merits of the point of order and say this is why I could not vote for a prescription drug benefit for seniors, a $400 billion package. There are going to be some on the more liberal wing and more conservative wing who will find reasons to be against this bill, but on balance it represents a coalition, and I urge my colleagues to support it.

The PRESIDING OFFICER (Mr. Sununu). The time of the Senator has expired.

Mr. DASCHLE. Mr. President, my time remains on either side.

The PRESIDING OFFICER. The minority side controls 6½ minutes.

The Senator from Montana.

Mr. BAUCUS. Mr. President, make no mistake about it, the issue before us—that is, whether a point of order is sustained or not it is "OK" to spend roughly $4 billion more than the Budget Act previously allocated for the year 2004. It is important to remember that this bill is totally within the Budget Committee's allocation for the 10-year period of $400 billion. So the narrow question is, is it within the allocation for the year 2004?

Now, a couple points here. In 2004, dollars will be totaled upon various pieces of legislation. There is already legislation passed which allocates dollars for 2004. So the conference report itself does not break the 2004 cap, but, rather, it is the accumulation of the dollars in this bill plus previous bills which total to the cap allowable for 2004 under the Budget Act by about $4 billion.

So the real question we are asking ourselves is, Are we going kill this bill—a bill for which the full $400 billion allocation does not violate the Budget Act—are we going to kill this bill on a mere technicality, a technical trap that any spending in 2004 has the effect of bringing this bill down? Now, it makes no sense to do that because, clearly, we want, in this bill, to spend some money in 2004. What about the doctors in 2004? What about the hospitals in 2004? Are we to tell doctors and hospitals, because of a mere technicality, they do not get reimbursed in 2004? We will pay doctors for a year, but then, beginning in 2005, we could pick them up again? I do not think so.

I don't know what Senators are going to say to their seniors back home who vote to sustain the budget point of order to kill the bill because of some spending in 2004 for doctors and hospitals, denying them a prescription drug benefit because they killed the bill. I do not think many people in this body would do that. This is a good bill. It is unfortunate that at this stage of the debate, where we are past the listening stage, an awful lot of Senators are not listening to each other. Rather, they are being rhetorical, they are making their rhetorical points, and they are trying to persuade I don't know who, but some people to certain points of view. But if you look at the mere language of the bill, it is a good bill. It provides prescription drug benefits for seniors, a huge benefit for low-income seniors. One-third of all seniors, under this legislation, are categorized as low-income, and they get the benefits of this bill.

We also added in more money for what is called the Medicaid wrap to help lower income folks even more than earlier was the case. We also added in money to help keep retiree coverage. But if you look at the mere language of the bill, it is a good bill. Companies generally are reducing retiree coverage in America, irrespective of this bill. We have put in $88 billion to companies for retiree coverage, which means, clearly, that those companies are more likely to keep and retain coverage. This legislation intends to encourage the retaining of coverage, not discouraging it.

So if this bill goes down, there are going to be more retirees who will lose their coverage. Senior citizens will not get the benefit, and we will be doing our seniors a terrific disservice.

So tomorrow is another day. We can improve upon this bill. If the bill is killed as it will be if this point of order is sustained, those who hope, "Well, maybe we can do better next year," I think should remember the ad- monition that a bird in the hand is worth two in the bush.

It is a very political year. It is 2004. It is a Presidential election year. It is almost impossible to predict the dynamics of next year. It depends on the economy. It depends upon foreign policy. It depends upon the President's election. There are all known that usually in a Presidential election year no much legislation of consequence passes. Usually, there is a lot of talking but not a lot of action.

I do not think we can afford passing up giving seniors a chance to get prescription drug benefits. So I urge Senators, on the technical matter before us, to vote to waive the point of order because it does not make much sense, in my opinion, to let a technicality kill this bill.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself such time as I might consume, and probably all of it.

Keeping the point of order means keeping the status quo. So I am asking my friends on the other side of the aisle, what is there about the status quo on Medicare that is good and acceptable? The limitation on drugs? The slowness in getting cheaper generic drugs out into the market? Arbitrary caps on physical therapists? Insufficient funding for rural hospitals and long waiting lines for seeing the doctors, if Medicare can get in the way of a doctor in rural America?

I ask my colleagues, is this status quo acceptable? Apparently it is, at least to the Senators who are refusing to waive the point of order.
mine. And most of all, seniors’ lack of access to prescription drugs for all these years is what I find to be most unacceptable about the reality of the status quo.

For those of you happy with the status quo, try telling that to your doctors, your hospitals, and, most of all, to your seniors. You try telling these people that a technical point of order is more important than changing Medicare’s status quo. I will not try, and I hope my colleagues will not try either.

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

The minority leader.

Mr. DASCHLE. Mr. President, this is our last chance to do something to control the exploding costs that are absolutely guaranteed to occur for seniors and for the Government unless we do something else. This is the last chance. There are those who have just said this will kill the bill. I just to make sure everybody understands, this has nothing to do with killing the bill. What happens under Senate rules is that we will go back to S. 1 as an amendment to H.R. 1. That is the pending business. That was voted on, by the way. So we go back, if we sustain this point of order, to the Senate-passed bill, which passed 76 to 21. We can send it to the House and ask for bipartisan support.

The distinguished Senator from Pennsylvania was saying that one of the concerns I raised was our ability to contain costs. And yes, he is right, we had an early bill that had the provision, this egregious provision in it prohibiting the Government from getting the best deal, just as Secretary Thompson has done with Cipro, just as we do with the Veterans Administration.

What he did not tell our colleagues is that every subsequent bill—the last two bills we have introduced—did not have this provision in it. Why? Because we understand what an incredibly valuable tool it has been for the Veterans Administration.

So, Mr. President, if you want to control costs, if you want to make sure the senior citizens of this country have the ability to get the lowest price. If you are absolutely as concerned, as you say you are, about controlling the costs of this program, then you are going to vote to sustain this point of order.

This is our last chance. I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota has 1 minute remaining.

Mr. DASCHLE. I yield the remainder of my time.

Mr. GRASSLEY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been requested. 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 legislative clerk called the roll.

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

The yeas and nays resulted—yeas 61, nays 39, as follows:

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by a vote of 93 to 3, was stripped out of the conference report as, evidently, some Members were promised it would be. That should tell the American people everything they need to know about this bill. It is not good enough for the American people.

Some Members of Congress are trying to sell this legislation as good for seniors and other Medicare beneficiaries of America, but it is not good enough for them to live under. That is the height of hypocrisy. It is not good enough for the senior citizens of this country, it is the best we will vote to provide for them, but, sorry, we will pass on it for ourselves. Why is Congress opting out of this coverage if it is so good? Why is it only half as good as what Members voted to provide themselves and their families and their employees?

First, the program does not begin for 2 years—not until January of 2006. Until then, the senior citizens of America are going to have their opportunity to get another drug discount card. There is a novel idea. There are only how many dozens available already to seniors? If one plays some simple mental arithmetic. A senior with an income above 150 percent of poverty, approximately $13,000 per year of income and approximately $16,000 a year for a couple—they get a drug discount card and nothing more. A single senior with an income just under that amount, by even a couple dollars, or a married couple with an income similar, just a few dollars under that cut off level, gets a drug discount card and nothing more. It is all or nothing. Either $600 or nothing.

I am strongly in favor of helping low-income retirees but certainly on a more equitable basis than $600 or nothing. That is all that is available for seniors for the first 2 years.

I would think the administration and others who decry the bureaucratic ineptitude and want to dismantle whole structures of Government would say something about this ridiculous delay. Two years from passage to inception, for what? To give insurance companies time to write insurance policies? Or to shortchange seniors for 2 years to get the 10-year costs of the bill down? What is the reason for this ridiculous delay?

Whatever it is, if a program such as this cannot be initiated for 2 years, that is a compelling reason to junk this program and find one better. Senator Baucus of Minnesota has had it too long already to get good comprehensive prescription drug coverage. They should not be told they have to wait another 2 years before the program can even begin. That should be on itself to fail in other way.

When it does begin, what does the average senior get? He or she pays an annual premium of about $420 with an annual deductible of $250 and a 25 percent copay for the next $2,000 in expenditures in that 1 year. In other words, $500 of the $2,000 of costs. So if you add those up—$420 premium, the $250 annual deductible, the copay of $500, the
senior is paying $1,170 of the first $2,250 annual costs for prescription drugs. In other words, just over half.

But the next $2,850 of the costs for that senior citizen in that single year have to be paid entirely by the senior, everything out of their own pockets. That means for the first $5,100 of annual expenses for prescription drugs—which is not, unfortunately, beyond the pale for many seniors—the senior citizen pays $4,020. The Senior pays for 80 percent of the first $5,100 of annual prescription expenses. As a result, catastrophic coverage kicks in and the program pays 95 percent of the balance for that year but then the next year it starts all over.

Something is better than nothing, but to delegate $400 billion over 10 years for coverage that seniors have to wait 2 years to begin and then they have to pay $4,000 of the first $5,100—all of that to save a little over $1,080 is something but it sure is not much.

If the bill were just that, I still would support it reluctantly because something is better than nothing. Unfortunately, the bill does worse than that: 2.7 million seniors estimated by the Budget Office now covered under private plans that provide catastrophic coverage and will be relegated to this coverage which is far inferior to what they have now. That would include an estimated 40,000 Minnesotans. People who worked all their lives for a private employer and are now covered under that plan would lose it and be shifted to something much worse for them and what they have now.

For over 7 million low-income elderly, the poorest of our poor senior citizens, they will pay more as they get older. The worst result in this bill is a provision that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power. I can assure my colleagues that purchasing power.
higher prices, and everyone else paying higher prices, and a captive market, where they are not even able to go someplace else and take advantage of lower prices elsewhere. The drug companies want everything.

Their lobbyists, they are the other winners. This bill is supposed to be about providing the best possible prescription drug coverage for senior citizens. Now we find out all these ambiguities of various aspects of Medicare are tossed in that were not considered by the people who were drafting the hearing. And there were not votes on these matters. They were either put in the House bill or stuck in the conference committee behind closed doors where no one else could see what was going on.

The program reform in Congress has become like a drive-by shooting. With no forewarning, somebody picks a target, shoots a bunch of holes in it, and takes off. That is our version of reform. That is what we are doing here with no forethought.

Another example is special education. We have waited 3 years for so-called reform of special education, which is always used as the reason we cannot spend the money that is necessary to fulfill a 27-year-old commitment. And then suddenly, last week, lo and behold, there was unanimous consent for 2 hours of debate, evenly divided, on IDEA reform, and, boom, we are done. It is done. Boom, in time to go home and eat turkey.

Unfortunately, we produce enough turkeys right here with this legislation. Unfortunately, this bill we have before us is one of those turkeys. And I say that with no pleasure at all, given the importance of it. But this is a $400 billion turkey that gives first pickings and all the gravy to the corporate drug dealers and the big insurance companies and the big plan providers. Some seniors, what the leftovers, and the American taxpayers get the neck and higher drug prices for themselves and higher payments through this program and others, subsidizing prices that are higher payments through this program and others, subsidizing prices that are exorbitant and that I would be ashamed to support.

There is a better bill that could be written. There is a better bill that could be passed. There is a better bill that could benefit the people of Minnesota and the people of this country. With a 2-year delay, we could come back next year and pass that bill and still enact it and get it implemented sooner than this one. That is the course of action we should take.

We should reject this conference report, not for nothing, but for something better because the American people deserve something much better than what is being foisted on them here.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH. Mr. President, I ask unanimous consent to speak for 5 minutes.

The PRESIDING OFFICER. The Senator has that right.

Mr. LAUTENBERG. I have a question. Mr. President, about the process. Is the time available under the cloture rule divided between two sides in equal parts?

The PRESIDING OFFICER. No, there is no provision for equal division of time.

Mr. LAUTENBERG. So that any speeches now are made under cloture.

The PRESIDING OFFICER. The Senator is correct.

The Senator from Oregon is recognized.

Mr. LAUTENBERG. I thank the Chair.

Mr. SMITH. Mr. President, for the information of my colleagues, Senator CLINTON and I are going to speak briefly and make a unanimous consent request with which I think he would agree.

Having listened to my colleague from Minnesota, I think many of us come to this historic day on this vote on Medicare with some trepidation but, frankly, with a lot of hope. Everyone knows that Mr. Lautenberg, at the time he was substituted, does many good things for our senior citizens. We also know they need a prescription drug benefit. And we also know we are just about to add $400 billion for that purpose. There are reforms in this in the hope will work, but reforms that will make us enlightened as to how best to preserve Medicare in the future. I believe that is the bipartisan motive behind all of this.

Mr. SMITH. Mr. President, I sought recognition to talk about our economy and, frankly, the need to extend unemployment benefits. It is a fact that long-term unemployment reached a 20-year high and the job outlook for the future, though improving, still leaves an awful lot of people wanting and underemployed. This holiday season approaches. For example, in my State of Oregon, we are down from 8 percent now to 7.6 percent. This is simply too high. Despite this economic reality, the Federal program that provides federal unemployment benefits is set to run out next month unless we provide an extension.

We have extended these benefits several times since it was created in March 2002. I believe we need to do so again. Millions of unemployed workers have reached the end of their benefits without finding work, and thousands more continue to run out of their State unemployment benefits at the highest rate on record.

My concern is that Congress is going to recess and go home without providing the assistance jobless Americans need and deserve. This month, Senator CLINTON and I introduced the Temporary Extended Unemployment Compensation. This program provides an additional 6 months of unemployment benefits. And I have introduced this bill because the current unemployment insurance program will run out in June, unless we do this. It would then run out in June and phase out by September 30. This is a modest extension for Congress to pass, but it is vital to many unemployed Americans, particularly those who have lost not only their jobs but their health care, and more. We simply cannot leave families out on a limb while they are looking for jobs. This is a bill that will help them provide for their basic needs while making their job searches a little easier.

I urge my colleagues not to leave Washington for the Thanksgiving and Christmas holidays without passing legislation to lend a helping hand to those Americans most in need.

Before I propose a unanimous consent request, I yield time to my colleague, Senator CLINTON of New York, for her comments, and then would make my request.

The PRESIDING OFFICER. Without objection, the Senator from New York is recognized.

Mrs. CLINTON. Mr. President, I am very pleased that my colleague Senator SMITH has taken the lead in asking for an extension of the Temporary Extended Unemployment Compensation Program. One might wonder why we are having to do this, but the simple explanation is that once again we have run out of time. People will run out of their benefits by the end of this year. If we do not act now, the House, which is coming back in early December, will be able to similarly act and the benefits will flow.

It is significant, too, that Senator SMITH and I are in the Chamber asking our colleagues to join us because the State of Oregon and New York City have the highest unemployment rates in the entire country. New York City has an unemployment rate of 8.2 percent. We have never recovered from the recession of September 11. Oregon has an unemployment rate of 7.6 percent. So both the Senator and I are very concerned about the good people we represent on opposite ends of our country who have been out of work for a long time.

We know that unemployment is at the highest level it has been in 20 years. We need to give them some additional time.

This extension would provide another 12 weeks of unemployment benefits. We urge support of Senator SMITH's proposal. If I am not already listed as an original cosponsor, I ask unanimous consent that I be so.
The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. CLINTON. I yield back to the Senator from Oregon.

The PRESIDING OFFICER. Without objection, the Senator from Oregon is recognized.

Mr. SMITH. Mr. President, I ask unanimous consent to proceed to the immediate consideration of S. 1839, to provide additional Federal benefits for the unemployed.

The PRESIDING OFFICER. Is there objection?

The Senator from Nevada.

Mr. ENSIGN. Mr. President, reserving the right to object, I want to make a couple of points. Point one is that we have seen that the economy is recovering. We are at about a 6 percent unemployment rate nationwide. Back in 1993, the Democrats controlled the House of Representatives, they controlled the Senate and they controlled the White House. The extensions and unemployment benefits had been going on for a period of time because of the recession. And with the Democrats in control of both Houses and the Presidency, they terminated the program when the national unemployment rate was at 6.4 percent. The national unemployment rate was 4 of a percent higher than it is today.

The current extension of unemployment benefits does not end until the end of December. In December, individuals currently receiving extended benefits will still maintain those benefits. And based on all the projections, the national unemployment rate should be lower at the end of December than it is today.

There are a couple other points that need to be made in this debate. First, when the unemployed are about to exhaust their unemployment benefits, over half of those unemployed individuals get a job in those last 2 weeks. And I have seen that a lot of people lately have been exhausting the full time on their unemployment. Why is that? Well, for one reason: The States have been reducing the amount of job searching required by each individual. Basically, they are making it easier to stay on unemployment insurance and taking away the incentives to go out there and get a job.

The welfare reform bill, signed into law by President Clinton, characterized Republicans as throwing women and children out into the streets, that we were cruel, heartless, hard-hearted people. But we knew something about human behavior. We knew that if we gave some assistance, some temporary assistance, and gave individuals an incentive to be employed, in other words that it was better to get a job than it was to be on welfare—we knew that a lot of people would go out and get jobs. What we didn't know was the staggering number of them who did.

Unemployment insurance is the same way. The more generous the benefit, the easier you make it to stay on unemployment insurance, and the less incentive there is for people to actually go out and do what it takes to get a job. So this is not about being cruel and heartless. It is recognizing the fact that our unemployment rate is less today than it was in 1993, when the previous extension of unemployment benefits was being held up. Every single Democratic Senator and House Member voted to end the program when the unemployment rate was higher than it is today.

Every single Democratic voted to end the program with that, I appreciate the work they are trying to do. I know I know their friends in the right place. But on policy grounds, I object.

The PRESIDING OFFICER. Objection is heard. The Senator from New York is recognized.

Mrs. CLINTON. Mr. President, I believe we are to go back on the schedule for the postcloture Medicare debate; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mrs. CLINTON. Mr. President, I will say a few words and then yield to my good friend from New Jersey. Before I get into these, I wish to say some concluding remarks in response to my colleague from Nevada.

At the rate that job creation is going under this current administration, we have one job opening for every three applicants, and it will take the next 19 months to get to the level of jobs we had before the March 2001 recession started. So I think we are mixing apples and oranges here.

This has been a jobless period. One can argue about whether or not there has been any kind of recovery. I would take issue with people suggesting it, but if they do, then they need to use that oxymoron “it is a jobless recovery,” because the economy sure is not creating jobs. In addition, we have places such as the one my friend, the Senator from Oregon, represents, and my State, where the unemployment rate is far above the national average. And if it is, in fact, the right thing to do but the smart thing to do, because every time we extend unemployment benefits to the people truly need them, you pump more money into the economy, which may create a job or two and obviate the need for unemployment benefits in the future.

We will be back, as we were last year. We are not going away, obviously. This is something about which we care deeply. It is the right thing to do. If I thought we were having the kind of economy in the future that we had starting in 1993, I might have a different idea, but that is not what is going to happen. All the happy talk notwithstanding, that is not going to happen.

Mr. President, I will now move to the Medicare conference report. I have to tell you that the more I learn about this proposal, the less I like it, the less fair I think it is, the less useful for our seniors.

Just recently, because we got this 1,200 page bill 4 days ago, including a weekend, when people were combing the bill, our experts were trying to read it. I can guarantee you that if you put two Senators up in the well of the Senate on opposite sides of the bill, or even on the same side of this bill, they would not agree on every provision because there is not anybody who fully understands what is in this bill.

But what I just learned is that three important items from the Senate bill were changed in conference, in addition to everything else we know that was changed. All the big things, including the reimportation of drugs, the limitation on premium support, the lack of any kind of support for HSAs, all of those things which changed. Here are...
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some additional changes which are now coming to light as people comb through the fine print of the bill.

First, we thought seniors would know at the time of their enrollment in these private plans what drugs would be on the list. But until a formal list is put together, it is kind of a fancy term. There are lots of fancy, confusing terms in this bill. My colleague, Senator BOXER from California, has a mind-boggling chart, where she and her good staff have pulled out all kinds of words that no normal human being understands. Heaven forbid, I don’t think abnormal people understand them. They are made-up words that describe these processes and events, and nobody understands what they really mean.

So we now found out that these formularies—the list of drugs that would be offered by a plan—are not necessarily going to be available to a senior. It is a secret until you sign up.

Now, imagine that. Think about my 84-year-old mother, who takes a number of prescription drugs that are very specific and assigned to her by her physician to meet her needs. Her doctor says: This is what you need, and here is your prescription. So in 2006 or 2007, when she signs up for one of these plans, she is not going to know whether the plan includes a particular drug that she needs. I find that a big problem, because how do you buy something when you don’t know what it is you are buying?

This is supposed to be a prescription drug plan. Therefore, prescription drugs are the heart of it. If you don’t even know which drugs you are supposed to get on your plan, that is not much of a plan. This is another typical example of the old bait and switch—maybe it is better to call it buying a pig in a poke. Seniors don’t know really what they are buying but you have to go out and buy it.

Second, when the Senate sent the bill to conference, the Senate required that the 10 regions determined by the Secretary of Health and Human Services would be larger than a State. Now, that was supposed to assure that we avoid the problem we now have with Medicare+Choice, where HMOs serve some counties but withdraw from or refuse to serve other counties.

I have that problem all over my State. The most intensely organized seniors in my State are seniors who have had a bad experience with HMOs. HMOs did not do what they said they would do. They left seniors high and dry and raised the costs right in the middle of the year. Or at the end of the year, when you tried to change. And if they were the only game in town, they really increased costs to our seniors.

But the conference report, instead of taking the Senate requirements, eliminates it—eliminates the requirement that the insurers must serve an entire State or a large region.

I also know that as a Senator from New York, I have a special obligation toward the people of Puerto Rico. We have a lot of Puerto Ricans in New York. We are very proud and I am very honored to represent a large Puerto Rican population in New York. But the conference report has less money than the Senate bill for prescription drugs for Puerto Ricans. It always comes as a surprise to some people to learn that Puerto Ricans are American citizens. They are not some alien group over here. They are American citizens.

They don’t live in a State, but neither do they live in Washington, D.C., or the District of Columbia, but they are American citizens, too. For some reason, we are not providing adequate funding for the people of Puerto Rico to get the prescription drugs to which American citizens under this bill are entitled.

Those are three hidden provisions in the fine print that we just discovered today. Now we are going to have to vote on this bill today or tomorrow, and we are going to be setting ourselves on a course that will radically change Medicare.

Why should people care? If you are not 65 or older, if you are not my mother’s age, if you are not even close in on Medicare, as I am, why should you care? If you are under age 65 or one of these young people working in the Senate in their thirties or forties? Why should you care?

I would argue you should care because, if you or someone you care about is not on Medicare, you are going to be in the emergency room, Mrs. Smith came in after a terrible car accident or maybe some kind of acute asthmatic attack or other kind of serious problem, and she didn’t have any insurance. The hospital takes care of her, but then they have to charge you, your employer and your insurance company more to pay their bills. Anytime you transfer money away from direct care, you are forcing more people to pay more for the same care. Some of them may be unable to afford it, and the cost to the providers of that uncompensated care will, in turn, raise the price which, in turn, has employers dropping people which, in turn, creates more uninsured individuals. It is a closed system, it is a circuit. The circle should not be stressed. It should be broken.

This takes the security of Medicare and pulls it right out, causing all sorts of effects throughout the circle.

The reason we created Medicare in the first place was to help older people which, in the past, might be more sick and more frail is not a profitable enterprise. There are people who retire and go to some beautiful place and play
golf all the time. They are physically fit and they look great when they are 75, but now they may live to be 100, 25 more years. At some point, the body starts breaking down no matter how well you take care of yourself.

Medicare is one of the things we needed to provide a product because the market place would not provide it, and this bill proves the wisdom of that because the only way you are going to provide these benefits is basically by sub sidizing or, some might say inele gantly, bribing insurance companies with billions and billions of taxpayer dollars to provide this benefit that they would not ordinarily provide because it is not cost-effective; it is not profitable.

There are many other reasons this Medicare bill is not in the best interests of either Medicare recipients or our general population.

It is a sad day when we essentially devise a way to try to transfer money from the Medicare system and the taxpayers' pocket to those who are already doing very well, indeed. Probably the saddest thing to me is not what might happen to the average of either Medicare recipients or the taxpayers but what somebody else figured out how to make some money off of.

It is a sad day, but I have a lot of confidence in the intelligence of Americans and particularly for the generation that lived through the Great Depression and World War II. I am about to yield the floor to one of them. He is someone I admire and think so highly of, who had a lot of blessings in his life and never forgot where he came from. He never turned his back on people who were less fortunate than he was because he knew the basic lesson that I think some of people forget—there but for the grace of God go I.

If that were our hallmark, we would not be passing this bill, which puts so many of our seniors at risk, but even more than that puts at risk what we all talked about, which was America.

I yield to the Senator from New Jer sey.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from New Jer sey.

Mr. LAUTENBERG. I thank my colleague from New York for her eloquent statement and her perception about what is really taking place in front of us. We both have the good fortune to share one of the most interesting areas of this country, the center for finance, industry, and trade, and people, yes, who have to work hard to maintain their living in this high cost area that we share.

One of the problems we see in both of our States is that unemployment is unreasonably high; that people who used to work in manufacturing in the New York City region, in New Jersey, have lost jobs that are not available to be regained. It is a pity, but what has happened is that they were sold out to cheaper prices. We are looking for things cheaper while many of us revel in the fact we can live by such luxurious standards.

What does it all mean? It tells us there is a significant imbalance out there in the way people earn their livings, live their lives. That is one of the things that is so much in our view today when we talk about the outcome of the vote thus far on this purported Medicare bill. It does not have the “care” and I am not sure it even has the interest.

One of the things we are looking at is whether or not people who have had the good fortune, as I have—as said by my friend Jake, I have had the very good fortune. My father died when he was 43. His father died when he was in his middle fifties. His brother died when he was in his early fifties. I think the cause of death was probably occupational. They all worked in the same factories in the city of Patterson, N.J., where I was born. My father’s death left a permanent imprint on me because of the circumstances of how and when it occurred.

My father was 43 in the year 1943. He lived his life by the healthiest of standards, including the food that he ate. He disavowed smoking in a very vigorous way. He was not someone who drank a single word. In fact, he did not drink any coffee. He enjoyed his nonworking time by being in a gymnasium. They did not call it “workout” then. They called it exercise. They called it the “gym.”

So he would spend time down there. He used to like to lift weights, wrestle, and play basketball. One day, he was not feeling well and he went to a doctor. The doctor informed our family that my father had colon cancer, a condition that gets ever rarer with the passage of time. My father could be afforded. No matter what we did, without the advances that we have today and medical technology and medicines, he suffered for 13 months. From a well built, muscular man, who was a picture of health, became bedridden before our very eyes until he died 13 months later.

My mother was 36 when my father died. She was a very young widow. I was 18, had already served in the Army. Why this story? Because it is seared so deeply in my memory. Not only were we grieving, we were poor, and my mother strained to make a living as my father was in his illness. I had a job loading trucks. That was my skill. That was my experience. We just about kept ends together.

When my father died, imagine a family of four—I had a little sister who was 12—grieving over the loss of a father at age 43, so young, and also at the same time worrying about bills that we had to be paid, about obligations that occurred as a result of hospital treat ment, bills that occurred because of doctors’ visits, bills that we had to pay because we owed pharmacists money. That is what I remember. I thought, oh, my goodness, if only we could find the money to pay the bills so my mother and I didn’t have to worry so much about our existence and at the same time honor our obligations. We were that kind of a family. He disused.

Then, as time passed, we saw develop ments in America that made us all proud and that, frankly, I think should have caused us in this body to be more tender to be more understanding, to be more sensitive to the people who have been able to live long enough to be eligible for Medicare and Social Security and all of that that is intended to re ward people for their work to build this country. Many of these people come to the very best work, who have been able to live long enough to be eligible for Medicare and Social Security and all of that that is intended to reward people for their work to build this country. Many of these people come to the very best work, who have been able to live long enough to be eligible for Medicare and Social Security and all of that that is intended to reward people for their work to build this country. Many of these people come to the very best work, who have been able to live long enough to be eligible for Medicare and Social Security and all of that that is intended to reward people for their work to build this country.
to make this a stronghold of industry and business and technology and education. That is what these people did who are now concerned about how they continue their life.

Oh, of course, a lot of them can get jobs at minimum wage, at odd jobs, at $5.50 an hour, $30 a week—have a good time, go to a restaurant and have dinner. Not on your life.

That is what should have been thought about as we debated this issue. They could have controlled this, as they voted to give lots of money—$1.3 billion, $12 billion to a special interest here, special interest there, here a special interest, there a special interest. It reminds me of a nursery rhyme. But that was no game that was being played. They held open the vote in the House of Representatives way beyond the rules. They did anything they could to bypass the process as it was normally.

I wish to show those who can see what I am holding, if I have the strength to hold them—I do. Those who witness this stack, who see it, this pile of paper, may say: What is the Senator talking about? This describes what was in this Medicare proposal in which the Democrats were not invited to participate. That is against the rules. The participation was limited. This was a stealth affair: Sneak it out, get it out there. Why? Because they don’t want people to know what is in here.

Do you know what else? Here is a little smaller part of this whole package. This says: “Joint Explanatory Statement.” This tells the audience who might read this what is really in this stack here. It is all mysterious. It is all arcane—can’t really understand what is happening.

Why is this debate so acerbic? Why is it that those of us, along with the senior citizens of this country, look as if we are losing this debate? It looks as if we are losing this debate. It is true that, when we have suffered a day in infamy, to steal an expression, because what happens here is we are going to assess poor people more costs.

I come from the corporate sector. I was fortunate to be able to create one of America’s great companies with two other young fellows who lived in the same area as I did. Both of them, like me, had fathers who worked in the silk mills. I had been trained in the city in which we lived. They had no money. Their parents had no education. But it gave them the incentive to create something for themselves.

So we created a company. The company is called ADP. A lot of people know it. It is an international company with 40,000 employees. We started with nothing.

One of the things I learned as the CEO and chairman of that company, before I went to the Senate, was that the most important asset my company had was not its customers. The most important asset we had was its employees, because if the employees did their job, the customers were there for us. We could render a service that was an invaluable beginning to outsourcing, to giving specialists opportunities to do jobs that they could best do. But one of the things we had to do was to make sure the employees were being considered in everything. It brought down health insurance, including an early start with daycare, to make certain our employees were happy and thus productive.

The PRESIDING OFFICER. The Senator from New Jersey, Mr. REID. Mr. President, if I could interrupt the distinguished Senator from New Jersey, I have a unanimous consent I would like to propose.

Mr. LAUTENBERG. I am happy to yield, with the proviso that I regain the floor.

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

Mr. REID. Mr. President, pursuant to the rule, Senator DASCHLE has designated me the manager in opposition. Senator Levin is on the floor. Senator AKAKA is on the floor. Pursuant to the rules, they have asked that I be given their 1 hour post Mr. Levin is on the floor. Senator Levin.

The PRESIDING OFFICER. Senator Levin.

Mr. AKAKA. Mr. President, I yield my time to Senator REID.

The PRESIDING OFFICER. The Senator from New Jersey, Mr. REID.

The PRESIDING OFFICER. Mr. President, through the Chair to the distinguished Senator from New Jersey, thank you very much for allowing me to proceed.

Mr. LAUTENBERG. I assume the time that has been credited to me for my 1 hour, whatever time remains, is still available.

The PRESIDING OFFICER. That is correct.

Mr. LAUTENBERG. I thank the Chair.

What I got today was a request from one of America’s largest companies. I will not identify them because they are not unique. But they wanted us to pass this bill. They don’t make pharmaceuticals; they don’t do anything in the health care field; they are not an HMO. They are a manufacturing company, a gigantic company by any standards. They are hoping we are going to pass this bill.

The reason they are hoping we would pass it is because then those retirees who are dependent on their health care continuation could be kicked off the system. Then, because of what we are saying in this bill—this hocus-pocus language in the health care field; they are not an HMO. They are a manufacturing company, a gigantic company by any standards. They are hoping we are going to pass this bill.

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They want to say to their retired employees that they will be off their health care system.

We know from experience that allowing agencies to use bargaining power brings down prices. A good example of this is the health care system run by the Veterans Administration. The VA is encouraged to negotiate prices. In this bill, as it presently exists, they forbid Medicare to negotiate prices. From 2001 to 2002, drug prices rose 17 percent. The only way to lower drug prices is to give Medicare bargaining power—just the opposite of what this bill does. This bill says they want to prohibit giving what is normally called volume discounts. Instead of taking this step to lower prices, this bill explicitly forbids it.

The company I was talking about with a health plan has over 1 million employees. They want us to pass this bill. But what they would like to do is say to their retired employees that they will be off their health care system.

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At the drugstore for aspirin at 325 milligrams, the cost is 20 cents. If you buy it in the VA, it costs a penny.

Plavix to guard against heart attack and strokes, $3.63 per tablet; $2.01 if you go to the VA. The list goes on with even better known products. The price comparison is ugly at best when you consider what happens with people on Medicare.

Many of these medications make the top 50 list of drugs used by the elderly. We ought to learn from that and not prohibit the VA from negotiating volume prices.

Another troubling part in this bill is the effective date. When the Senate first voted on a prescription drug benefit for seniors back in July, I offered an amendment to make it effective within 1 year. But it was voted down with strong Republican assistance. Eleven votes made the difference. We passed that amendment with bipartisan effectiveness to make this benefit effective within 1 year.

Under this conference report, the drug coverage doesn’t start until January 2006, 23 months from now. We have to ask the question: Why is this taking so long? One clue is illustrated on this chart. Notice election day in the yellow box; the original Medicare Program was processed in 11 months. President Johnson signed the law on July 30, 1965, and 11 months later, July 30, 1966. All of the people who were eligible for the program were enrolled in the program. I know something about computer processing. I literally had my career grow in the computer development stage. They had to create the identification cards to be punched into cards. They weren’t read electronically in 1965 as they are now. It took 11 months and the whole deal was done. It was created from the beginning in 11 months.

Now we are asking for a toleration of 25 months to get it into place. But election day is here, and Heaven forbid that the public at large should find out about this bill. When they learn about it, they are going to be mad as could be.

If they can get safely past election day, the rhetoric is out there flowing the country. They even have the American Association of Retired Persons supporting this. This is a mystery that we are going to have to find out about one day. A lot of people we get calls from—Medicare recipients and beneficiaries—are ripping up their cards. We got one batch that was 75 to 2 against the bill. There were two who were doctors also who are convinced about whether they will be able to continue their practice as it was. It is a reasonable question. But 75 to 2—that is while this bill is being discussed. The bill is not yet in place.

One of these calls start coming into my office, I know what is going to happen. They are going to ask: When can we sign up? What are the benefits? We are going to say: Hold your horses. What is the rush? It costs you a lot of money later on. Right now, we have your temper down. Not so much your temperature but your temper is going to go up once you find out after election day that this bill is going to take place. It is their medical care and prescription drugs.

The Democrats created Medicare. We protected it for decades. The Republicans never really liked it. They resisted the creation of Medicare and have opposed it ever since.

It wasn’t too long ago that a very well known leader of the House, Newt Gingrich, expressed his desire to see “Medicare wither on the vine.” That is what he wanted to see happen. He represented a view that was generally accepted.

We may see it wither but not without a strong fight on our hands, even if we have lost step 1 here. The senior citizen population in this country has to raise the alarm and shout it out to those in this building and those who are in the House of Representatives. Tell them: We don’t like that bill. It is going to cost us more. You are not helping us, you are hurting us. We worked with certain promises in place, and the promise included a proposition that said as you get older and as we see things develop, we are going to help you get those things to keep your health going. Under this conference report, the drug coverage isn’t until January 2006, 23 months from now. This is the first major step toward disintegration of Medicare as we know it.

In reality, this bill is not as much a benefit for seniors as it is a big benefit for HMOs, the private health care organizations, and other private-sector special interests who want to tear the Medicare Program to pieces. Get them in corporate hands so we can charge more, make more. I wonder whether we could limit the incomes of some of the large companies in Medicare, in the interest of public service? We regulate lots of industry.

So what is it specifically the President is afraid seniors will find out before 2006? Is the President afraid the seniors will realize they will pay at least $810 before they break even and get any benefit from this plan? For many seniors, that is more money than they currently spend on prescription drugs. Up to 30 percent of the beneficiaries will be enrolled in the plan than they would receive in actual benefits. Is the White House worried seniors will learn there is a huge gap in coverage? Under this plan, a senior will pay a premium estimated at $25 a month, a $25 deductible, 25 percent bill before out payments until reaching $2,250 in drug expenses.

What happens then? Seniors then get no coverage. I have been heard correctly: Zero coverage. At that point, many seniors would pay their premiums but they will also pay 100 percent of their drug costs. That is a double whammy, as we say in New Jersey. Only until they have reached a catastrophic limit of $5,100 in drug costs does any benefit restart. By that time, seniors will have incurred $3,600 in out-of-pocket spending. This is the so-called hole in the donut. It does not sound like a good deal to me.

November 24, 2003

This bill represents an enormous opportunity squandered. We had a real chance to do something right. We had $4 billion to improve the lives of 34 million seniors, 14 million of whom do not have prescription drug coverage right now. Frankly, we missed the opportunity. We ought to scrap this plan and go back to the drawing board to give seniors a real prescription drug
benefit in the Medicare Program. Let’s not try to move seniors into HMOs. Let’s not leave that enormous gap in coverage. We should give seniors a plan that starts now, not in 2006. I yield the floor.

The PRESIDING OFFICER (Ms. Murkowski): The Senator from Connecticut.

Mr. DODD. Madam President, let me first of all commend my colleague from New Jersey for a very fine statement on the pending matter, the Medicare bill. I intend to take some time to speak on the same matter and then I plan to yield my remaining time to the Democratic leader for his purposes.

This is the third time I have spoken on this matter since last Friday. We are now in a situation, I am sure people are aware, where we have had a cloture motion which was approved earlier today. We then considered a point of order which was not sustained, and as a result our effort to try to take up a procedural move short of final passage have been, I gather, exhausted. So we are down now to the question of whether or not we ought to vote for this bill at this juncture or whether or not people will continue to the conclusion that there are enough flaws in the pending matter that we ought to take some additional time to review it before it becomes the law of the land.

Before I get into some discussion of the substance of this bill—will you yield me a minute or so and talk about the process of law. Putting aside the matter before the Senate, which has obviously been contentious, I am very worried about how we are doing our work in this institution—not just this body but the legislative branch in general.

I will have served, at the end of this term, some 30 years in the Congress, 6 years in the other body and 24 years in the Senate. I have enjoyed serving in this fine institution and watched it carefully through those years. In that time, I have noticed that there are ebbs and flows in how the institution functions and operates. There have been periods affectionately referred to as the golden age of the Senate and other times when they have been less than golden. I will not use language to describe the less than golden periods of the Senate.

I am very worried about how we are proceeding at this time with the underlying issues so important in these institutions that we not only just be concerned about what we accomplish but how we go about working toward these accomplishments.

The Founding Fathers of this country were very concerned about that, that if they were looking for efficiencies of systems, if they were looking for a process that would guarantee quick results overnight, this is certainly the last system they would have constructed. In this institution, the Senate, the rights of a minority are paramount. We have always said in the other body, the House Chamber, the rights of the majority should prevail. And the Founders, in their wisdom then, in the creation of the Senate, emphasized the rights of a minority. In so doing, they wanted to guarantee that matters would be thoughtfully deliberated.

I am very worried about how we are proceeding over these last number of months, including the bill presently before the Senate, that we are not devoting the time necessary for deliberate consideration of matters before this body. In fact, I was stunned to just a short while ago, just the other day, the bill was named on the Medicare bill before us and for those who are not students of this institution or follow the Congress on a regular basis, when the Senate passes a bill, and the House passes a bill, invariably, with some exceptions, there are differences.

So this body, the Senate, will appoint conferees, representatives of this body—usually from the committees of jurisdiction over the legislation—to meet with conferees of the other body, usually coming from their committees of jurisdiction. And those two smaller groups then meet to resolve the differences between the two bills.

Over the years, of course, many conferences have been lengthy, many have been contentious, particularly those involving difficult matters, but it is the nature of the institution, learned over our 220-year experience that it is in the tension of debate that some of the ideas emerge, when there is full expression of the American public in those meetings, when people of different persuasions and ideologies come together and work to resolve their differences.

What I find stunning is that it has become popular, in recent days, to have conferees named and then have conferees excluded from meeting in these conference committees. That is exactly what happened here with the measure presently before us. Whether you are a Republican, liberal, conservative, or moderate, you ought to be deeply concerned if this becomes the precedent, the operating standard procedure, that when bills are passed and conferees are named, then people are excluded from meeting to try to resolve their differences.

I can only suspect, Mr. President, that most Americans are not aware that this 675-page bill, the Medicare reform bill, was crafted by only Republican Members of the House of Representatives. There was not a single Democratic Member of the House of Representatives from the Ways and Means Committee included in the room to write this bill—not one—despite the fact that the House is controlled by Republicans by only a small majority. Yet, not one member of the minority party of the House of Representatives was brought into the room to sit down when the conferees met to resolve their differences. And out of this body, only two conferees from the minority side were included, despite the fact that only one Member separates us. Senator DASCHLE and Senator ROCKEFELLER, duly appointed as conferees, were excluded from meeting. In fact, Senator DASCHLE, the Democratic Leader of the Senate, was excluded from the conference on this important measure.

To say to the Democratic leader, the minority leader of the Senate, to Senator ROCKEFELLER, two senior members of the Senate Finance Committee: You are not allowed to come into the room to help draft a piece of legislation dealing with 41 million Americans, Medicare beneficiaries, to frame a prescription drug benefit. I am stunned, Mr. President, when 675-page bill, on as an important a matter as the healthcare of nearly 41 million elderly Americans, that not a single Democratic Member of the House, and only two members of the Senate Finance Committee were allowed to come in and work to resolve differences on matters as important as this.

Then, in the House of Representatives, when electronic balloting came into place, I heard that message over and over again: Members will have 15 minutes in which time they can record their votes by electronic device. And almost 3 hours later, that “15 minutes” elapsed, as every possible bit of arm twisting and every possible maneuver you could make to change the outcome of that vote transpired. I believe that this vote constitutes one of the worst moments I can think of in the conduct of the House of Representatives.

Then, when several other members of the minority, beyond those whose votes are determined by arm twisting and in light of the final outcome, the gavel came down within a nanosecond, and the traditional opportunity given to Members to change their votes before a final vote is recorded was denied them.

I am stunned, as I watch a process and a phenomenon that has come to this. And I say to my friends on the other side: Beware. The wheel does turn. The day will come when we will be in the majority. And in the House that will happen as well. Changes in leadership have occurred throughout our history and they will continue to occur. What sort of precedent are we setting if this is how we conduct our business?
Then, last Thursday, late in the afternoon, those of us who were excluded from having Members who represent our views work on this conference report, were delivered this 675-page document.

Suffice it to say, there is not a Member here who has read this in its entirety, nor could they possibly understand it even if they tried to, since last Thursday. Yet we have just voted on several procedural motions here to say that within a matter of hours, we are now attempting this historic legislation ofcole of legislation without fully, in my view, understanding the implications of what is actually contained in the bill.

Mr. President, a bill of 675 pages, delivered just last Thursday, and here it is, Monday at 6 p.m., and we find ourselves only a few hours away from deciding the fate of 41 million Medicare beneficiaries and coming generations of them as to whether or not they will have the incredible safety net that the Medicare Program has provided for 38 years.

These process questions cannot go unnoticed, Mr. President. And while we talk about the implications of what we are doing in this bill, I am deeply troubled that the shutting out entirely of Democratic Members of the House, the denial of the Democratic leader of the Senate, along with Senator Rockefeller, the ability to meet and discuss this bill and its full implications. Further troubling then to witness a 3 hour vote in the House of Representatives in the middle of the night, under the guise that we must get this done. As my colleagues know full well, this is the end of a session, not the end of a Congress, and to not take a few more weeks to analyze what we are doing with this bill, to see if there is not some compromise that can be reached, when you consider the great implications of this bill, I think is a sad comment on the condition of the Congress. I have been here for a quarter of a century, and I do not recall a time like this in my 24 years where we have come to this.

So beware. Beware. America, Beware. America, of what happens when this process breaks down, as it has here with this bill.

Beware, America, when you have a bill of this magnitude and size passed in the wee hours of morning in one Chamber, and rushed through the other in a matter of hours of debate and discussion—more a litany of speeches than any real debate.

Beware, when almost one-half of the entire Congress is excluded from sitting and working on a product as important as this. There is something wrong when that happens, Mr. President.

I don't care what your politics are; I do not care who you are; I do not care what you are, be it an American, when you find out other voices are denied being heard. It is the critical quotient, the critical element of what constitutes this democracy: the importance of debate and discussion, the tension the debate brings, and the ultimate improved product that occurs when that happens in America.

Where other voices are not heard, where other ideas are not brought to the table, then we all suffer. That is what has happened in the construct, if you will, of this legislative package. Let me take a few minutes, if I may, and try to convey what I believe is included in this bill. I have talked about it to some degree already, and I know, in a sense, why we are being called on to do this as rapidly as we are. Because based on the time I have spent going over this bill, and looking at it, and others who are more knowledgeable than I am about health care issues, who have dedicated almost their entire careers to examining these issues, I would say one of the reasons they have achieved that result is, is there a lot in this bill that the more you know about it, the less you would like it, and the more opposition would grow to its passage. The more people are aware of what is included in this bill, the greater concern they ought to have.

There are those who have never liked the Medicare program, who fought against its very creation 38 years ago, and since then have been seeking an opportunity to undo it. Congratulations to them. Congratulations to them because I think, in effect, they have achieved that result with what I think is going to happen in a few hours; with this bill, with this conference report, with the Senates of this particular package, the approval already in the House and the likelihood, of course, that the President is going to sign this into law.

Then I would tell America, as you get to know this bill, you will see it will come to have greater and greater concerns about it. Let me explain why I think that is the case.

We have all been talking about—certainly those in this arena—the great need for a prescription drug benefit for years. However, I have reservations about the prescription drug benefit contained in this bill. Under this bill, 27 million retirees are going to lose their existing drug benefit package—27 million of the 41 million Medicare beneficiaries. While some might say that doesn't amount to much, when combined with the other millions of seniors who are going to have their premiums go up and possibly their benefits reduced if this bill is to pass, you begin to realize how troubling this bill is. That is literally what is going to happen under this bill. 27 million retirees are going to lose their present prescription drug coverage.

Why? Because they presently are covered under plans offered by their previous employers. They have retired, and yet they carry with them those plans. The estimates are that 2.5 million retirees are going to lose coverage because their employers are going to drop those plans if the benefit under this bill is enacted.

In my State, just to put it in local terms, this will mean that 39,000 people in Connecticut who fall into that category will lose their present drug coverage. In Connecticut there are approximately 515,000 people who are of retirement age. And, if I am going to have 39,000 who are going to be dropped from their prescription drug coverage.

Further troubling, I am then going to have 74,000 Medicare beneficiaries in increased Connecticut, and 6.4 million nationwide, who are going to lose as well under this bill. What happens to these people? These are seniors with severely limited incomes, making them eligible for both Medicare and Medicaid. These senior citizens are going to face less access to and higher prices for the drugs they need due to this conference agreement requiring drug copayments and the creation of an assets test.

I have heard Members say that the price increases these low income seniors will face are not that significant. Well, it isn't much, if you make $158,000 a year as a Senator. A few bucks a month amounts to nothing. But if you are a person making $13,000 a year, as these people do, and you are on Medicaid and Medicare and you are working each month trying to pay a mortgage, to put food on the table, to pay for the other essential needs you have, then believe me, these increases are terribly hurtful.

We in this body do not have such worries because we have such a great health care program. Members of Congress enjoy a fabulous healthcare plan. We offer nothing like that to the rest of the American public so we don't quite understand what other people go through in many ways.

Taken together—those losing their present prescription drug coverage and those low-income beneficiaries facing increased costs—youth income Medicare beneficiaries negatively affected by this bill. Those are, to begin with, some of the concerns we have with what happens to close to 9 million of this nation's nearly 41 million retirees.

Now let me move to address some of the other issues of concern in this bill. While others have already talked about the prescription drug benefit portion of this bill at length, I want to point out that there are concerns about certain aspects of this portion of the bill which will present real problems for our seniors. Under the proposed prescription drug benefit, this bill before us contains a gap in coverage, the so-called donut hole. The donut hole is nearly $2,800, twice the size of the one we adopted when this bill was adopted by the Senate back a number of months ago. Under the conference report, Medicare beneficiaries with costs within the donut hole, will be forced to pay for the full cost of those prescribed medicines as well as a monthly premium of an estimated $35. This will mean that when your prescription drug
spending falls within this coverage gap that you will receive absolutely no assistance purchasing your prescribed medicines under this bill. To add insult to injury, you're still on the hook for the monthly premiums while receiving no assistance affording your needed medicines.

Also troubling, Mr. President, is the notion of the monthly premium of an estimated $35. Under this conference agreement, if you end up having only one insurance plan available to you in your area, these plans could charge whatever they want, because the lack of a another competing plan. The $35 figure often cited is not a cap; it is the estimate of what the average may be. There is nothing in this bill that prohibits one of those private plans from charging whatever they want in that area. You would end up being forced to charge whatever these plans determined it was worth, without having any drug coverage at all.

Despite all of the problems with the prescription drug benefit portion of this package, even with the concerns I have outlined, I would have supported this bill if it stood as I believe it offers a first—though not nearly complete—first step toward addressing a prescription drug plan under the Medicare program. I think the idea of doing something in this area makes some sense and should have, even with these bad features, supported this legislation in the hopes that in the coming years we could have modified it and changed it.

But the notion that few people want to talk about on the other side of the package before us are the structural reforms of Medicare contained in this bill. The conference report we are considering today is not just about prescription drug coverage but is much more troubling part. It is over this part that most of us are expressing our strong objections to this bill have found concern. It is this part of the bill that gives us all pause because it is no less, but rather an attempt to end Medicare, certainly as we have known it over these past 38 years.

I tell America to watch carefully. This is the part on which you want to focus. The more you read about it, the more you will draw the same conclusion that most of us who are expressing our passionate concern about that, he passed away at the age of 65, we are going to provide a safety net for you. The idea was that regardless of whether or not you were sick, poor, all are together under Medicare.

For the first time—and this is a major change—we are going to start to discriminate if this report is adopted. So the wealthiest and healthier people are going to join plans designed by the private companies, leaving in the traditional Medicare program only the sickest and the poorest beneficiaries. When this happens, the premium costs for them will go up, and when they do, they are going to face higher costs and reduced benefits. I don't know what other conclusion you can draw. You cannot accept the notion that we are creating a level playing field. It is not a balanced competition if I provide you a 9-percent higher reimbursement rate than Medicare gets and then give you an additional $12 billion to lure you into the market. It is just not.

I remember going to a meeting by the doctors they trust. This bill provides a $12 billion subsidy to the private companies and a 9-percent kicker, in effect, to make sure the money paid for by the whole bill is rigged in such a way that they cannot possibly lose in that competition. The supporters of the bill will tell you it is not forcing seniors out of traditional Medicare. They claim they are creating competition and, as a result, offering seniors a choice.

Let's talk about the so-called competition in this bill and what it would create. Private plans under this conference report will be reimbursed at a higher rate than traditional Medicare—9 percent higher to be exact. How does Medicare compete when you have a 9-percent higher reimbursement rate and claim to have a level playing field? Additionally, this conference agreement would be used to lure private plans into the marketplace. If it is going to be a competition, let it be a competition—but we are going to stick $12 billion into the pockets of the HMOs, offer a 9-percent higher reimbursement rate, and say to Medicare: Go out and compete. That is like tying both hands behind your back and then saying go run a race. A race in which there are going to be $12 billion to lure private plans into the market amounts to the inclusion of a corporate subsidy in this bill of major significance.

Under this conference agreement, private plans can design their benefits to attract certain beneficiaries, and that is a critical piece. These private plans can design them to attract wealthier, healthier Medicare beneficiaries. In the beginning, one of the significant features of Medicare was that we didn't discriminate based on wealth or illness. We said if you reach the age of 65, we are going to provide a safety net for you. The idea was that regardless of whether or not you were sick, not you, not they, poor, all are together under Medicare.

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I America, pay attention. It is gone. If this bill gets adopted in the next few hours, that is gone. That is not choice at all. Nothing would make me happier than to find out these predictions are wrong, but they are not. I truly hope seniors can retain the choice that they already have and that traditional Medicare survives.

Let me explain briefly why I get as passionate as I do about these issues, Mr. President. When the Medicare+Choice Program was created and these private plans first came to our communities, many offering zero premiums. People joined from traditional Medicare at the promise of reduced cost and increased benefits. Then, of course, once the plans looked around in certain areas and discovered there weren't quite as many wealthier, healthier people in certain areas but there were poor and sicker people, they decided—and they can do this at a moment's notice—they said: We are leaving, packing up and getting out. They did that in my State. They packed up and left.

I remember going to a meeting because the senior Medicare beneficiaries I represent were so upset and concerned about these decisions to leave. I convened a town meeting in Norwich, CT. About 350, 400 people showed up, and it was on a Saturday morning. They could not believe what happened to them. One individual was so upset about his wife losing her Medicare+Choice plan—a man who served in the U.S. Navy in World War II and worked at the Electric Boat Division in Groton, CT, for many years. As he spoke passionately about what happened to his wife, being dropped from her Medicare+Choice plan, I understand his concern about that, he passed away at this meeting. I will never forget it. It was, obviously, a stunning moment for...
the people there. He was so upset about what happened to him because his wife’s HMO left, and she was left with nothing in terms of the promised health care coverage. He was a man by the name of Frederick Kral from eastern Ohio. Kral had just received a call that tragic incident and the deeply personal stories shared at this town meeting.

I remember how people felt when these HMOs came running in and then walked away. I cannot say that will happen here. I don’t believe that tragic incident and the deeply personal stories shared at this town meeting.

I recall very well what happened when we had HMOs promise they were going to step in and provide choice and do all these wonderful things. Remember, these are companies that have to compete, they want their customer base, healthy people. They would like wealthier people because then they don’t have to pay out as deep a benefit. When these plans discover people are not quite as wealthy and healthy, then they design plans that exclude them. My fear is that will happen here.

Even more ironic is this highly unfair system being championed by the self-proclaimed champions of free enterprise.

The bill, as I mentioned, will provide $12 billion to help HMOs unfairly compete against traditional Medicare, along with a 9 percent higher reimbursement rate. It does nothing to control drug prices. If we really want to do something to promote competition under this plan, wouldn’t you think we might have allowed the purchasing power of nearly 41 million Americans to achieve lower prices for prescribed medication?

That is what we allow with veterans hospitals. The veterans hospitals collectively get together and negotiate with the drug companies for the best price. If you are a veteran in the country, you get a much reduced cost of prescription drugs because as a veteran the VA has negotiated these prices on your behalf.

As my friend from Florida, Senator Bob Graham, so eloquently described earlier today—what do you say to two people who walk in—a husband, who is a veteran of the Korean war, who is paying one price for drugs because as a veteran the VA has negotiated these prices on your behalf.

As my friend from Florida, Senator Bob Graham, so eloquently described earlier today—what do you say to two people who walk in—a husband, who is a veteran of the Korean war, who is paying one price for drugs because as a veteran the VA has negotiated these prices on your behalf.

Today, after nearly 40 years of Medicare reaches 45 percent of the program’s total cost. Let me read that again. Specifically, this conference report calls on the Congress and the administration to address Medicare’s costs when general revenue spending on Medicare reaches 45 percent of the program’s total cost. Yes, it is true. And, Speaker of the House, Newt Gingrich, speaking in front of a group of people here in Washington, a group of lobbyists from the health care industry, talked about Medicare withering on the vine. I heard the other day Mr. Gingrich, no longer a Member of Congress, showed up at the House Republican caucus and gave a strong pitch for this bill, according to the man who wanted to make Medicare wither on the vine. Either he had a great conversion on the road to Damascus, along the lines of St. Paul, or he still believes what he did a few years ago, and he is still playing a game to achieve what he talked about doing then.

I suspect it is more the latter than the former. I have seen no evidence that there has been a change of heart by Mr. Gingrich in his views about Medicare. So the individual who promised you we are going to let this tremendously-successful program wither on the vine is now applauding the fact we are going to finally achieve what he suggested a few years ago.

I predict we will be back, unfortunately, at great cost to the American taxpayers and at great cost to older Americans. We will be back in this Chamber rewriting this bill. That much I will guarantee will happen.

Unfortunately, we will squander billions of dollars unnecessarily. We will put a lot of people who shouldn’t have to go through this, given their age and the problems they face—older Americans shouldn’t have to go through the added frustrations and anxieties and wonder every day, as millions of them do, about how they are going to pay for their health care needs. They are going to have to go through this wrench because there are people around here who just never could stand Medicare and have been looking for ways to undo it since its inception.

As I mentioned at the outset of these remarks, the prescription drug benefit, while it is flawed, in my view, is worthy of support, despite the objections I have to certain parts of it. But it is not OK for Medicare. Yet to offer before this Chamber as a sole proposal, I don’t think would get 15 or 20 votes, but because they have been linked inexorably to the prescription drug benefit, the bill will pass.

Allow me to express my concerns about another provision of this conference agreement, before we today establishes the dangerous precedent of instituting so-called cost containment measures that could directly lead to service cuts in what Medicare covers and just-as-severe increases in costs to Medicare beneficiaries.

Specifically, the conference report calls on the Congress and the administration to address Medicare’s costs when general revenue spending on Medicare reaches 45 percent of the program’s total cost. Does anyone in this Chamber know of any other Federal program that has a similar provision in it, when we pay for anything else you can think of, when 45 percent of the cost comes out of general revenues, that we must take exact cost containment measures? Only Medicare; there is no other Federal program that has similar handcuffs on it that Medicare does under this bill. It states that when you reach 45 percent coming out of general revenues, then cost containment measures must be taken.

The adoption of this purely arbitrary cap will lead to almost certain erosion of this critical program’s scope of coverage and affordability. It is yet another attempt of opponents of Medicare to destroy this program that so many of our senior citizens rely on every day.

Today, after nearly 40 years of Medicare’s inception, we find ourselves at a crossroad. This opportunity is before us to move Medicare forward in the future without threatening its proven availability, to provide for the health and well-being of this Nation’s
seniors citizens. Sadly, the conference agreement represents an opportunity lost, an opportunity not only to add comprehensive coverage for prescribed medicines under the Medicare Program, but also an opportunity to strengthen the Medicare Program for future generations.

So it is with a great deal of sadness that I find myself faced with this 675-page document. The entire House minority was excluded in the room on this bill. There were secret meetings of the conference committee that crafted this agreement—I am not making this up—clandestine meetings so no one could find out where they were meeting. Not a single representative of the minority in the House was allowed to sit in and help craft this bill affecting 41 million Americans—and all but only two members of the minority on this side were excluded as well from these deliberations. The Democrat who was a member of the Finance Committee, was told he had no right to go to the meetings. In fact, the chairman of the committee said: If the Democratic leader shows up, then the meeting will be canceled. What kind of arrogance is that? The chosen leader of a minority of this body was told if he shows up as a member of the conference committee, the House chairman of this conference would close down the meeting and walk out.

This process is broken, Mr President. How much confidence can America have in a product that in the construct of this bill, the minority views were almost totally excluded. I warn my colleagues, a dangerous precedent is set when a bill of this significance is crafted in the manner of this conference report. After all of the reasons I have laid out, I will vote against this bill and urge my colleagues to do likewise.

I deeply regret we did not prevail on the significance is crafted in the manner of this conference report. After all of the reasons I have laid out, I will vote against this bill and urge my colleagues to do likewise.

I deeply regret we did not prevail on opposition to oppose cloture or on the point of order that was raised so that we might have been able to go back and work on this again and come back in January with a better product. This is not the end of this Congress, it is only the end of a session. Yet every effort is being made to see to it that we jam this flawed bill down the throat of America. We will be back; unfortunately, at great cost to the Treasury, and at great cost to the well-being of an awful lot of people who deserve better than they are getting to get through the adoption of this bill, in order to fix this bill. I truly wish this were not the case. I reserve the remainder of my time and designate the Democratic leader as the beneficiary of any time I may have remaining.

The PRESIDING OFFICER. The Senator has that right.

Mr DODD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr HARKIN. Madam President, I ask unanimous consent that the order for the quorum be waived.

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

Mr HARKIN. Mr. President, today by a 2-vote margin, I guess it was, the Senate, this greatest deliberative body in the world, relinquished the process of ending Medicare in America. After nearly 40 years in which the elderly in our country have been raised out of poverty, in which the elderly in our country have been given the assurances that they will not have to go to the poor farm to pay for medical care, after nearly 40 years of children being freed from the burden of caring for ail ing parents and grandparents, after the process of turning our back on all that we do to care for our elderly in terms of health care, the Senate today began the process of turning our back on all the progress we have made. Medicare was created, as I said, almost 40 years ago, with the purpose of providing our Nation's aged and disabled with that safety net, to protect them from death and destitution.

For years, seniors have counted on health security in their golden years thanks to Medicare. For nearly 40 years, this program has stood as a social contract between the American Government and the American people. After a lifetime of labor, when a person turns 65 they are promised health insurance covering hospitals, clinics, doctors, and many other health costs. There was one exception for all of those 40 years; that is, there was no coverage for prescription drugs. It is almost impossible to overstate what Medicare means to the elderly, a citizen of modest means who has worked hard for a lifetime, a person who does not want to be a burden on the rest of his or her family. Medicare has been a rock solid, reliable, guaranteed lifeline for America's senior citizens.

Today, with a two-vote margin, we are watching that social contract erode. We are taking huge risks with the health and security of seniors, all to satisfy ideological agendas, to satisfy big political donor's wishes and certain political strategies.

With this Medicare bill, we have seen grave abuses of power—such as the recent vote in the House of Representatives in which this bill before us today was lost in the House of Representatives, lost under the normal process, the democratic process, over there. But as you know, they kept the vote open for almost 3 hours, from about 3 a.m. to 6 a.m., to twist arms until they finally got the votes.

I was driving to work Saturday morning. I was listening to public radio. A caller had called in and she said President Bush says he wants to bring democracy to Iraq. After what happened last night in the House of Representatives, I hope Iraq wasn't watching. That is not the kind of democracy they need in Iraq.

I am disappointed in the process that we have had here. This has been a sham process.

We have this bill here; I have held it up many times. I can barely hold it up right now—1,200 pages. It is dated November 20. It was delivered on our desks when we arrived here Saturday morning, that big, Saturday morning amendment. It is, Mr President, and we are expected to vote on it.

How many seniors in this country have seen this bill? How many here in
to some private plan. That is what they are not telling, I will have more to say about that choice.

This bill totally violates the spirit and substance of the original Medicare Program. Again, to make it worse, we are debating a proposal that was originally supposed to accomplish one simple goal: to right the wrong in Medicare, that gap that was in there, by providing prescription drugs and to make medicine more affordable for seniors.

I regret that in writing this bill Congress has strayed from that objective. We have forgotten who we are supposed to be helping, what is the senior citizen's goal? To avoid the trap of Medicare, to stay with Medicare, to avoid the trap of Medicare. That is true.

But at what expense? What they don't tell you is, if a senior wants to stay with Medicare, they can stay with Medicare. That is true. That is why I argued against it repeatedly and that is why I voted against cloture today on the filibuster. It is not that I want to keep filibustering, but I believe we should have gone home and let this bill get out to the public, let the American people see it, talk about it, digest it. Then we can come back here in late January, as we are going to do, and February, and see what our constituents think about it. To me that seems to be the American way, the democratic process.

That is not the process we followed here. That is not the process. We are debating a proposal that was originally supposed to accomplish one simple goal: to right the wrong in Medicare, that gap that was in there, by providing prescription drugs and to make medicine more affordable for seniors.

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One of the bill’s main architects, Ways and Means Committee Chairman Bill Thomas (R-Calif.), has repeatedly said that expensive new drug benefits must be balanced against other provisions in the bill to keep Medicare spending. The most recent federal estimates predict that Medicare will become insolvent in 2026 because Americans are living longer and the baby boomer generation will start to retire in a few years.

Yet, as House and Senate members have worked out an agreement on the Medicare bill, “we’ve discussed the solvency goal,” said Stuart Butler, vice president of domestic and economic policy studies at the conservative Heritage Foundation, which opposes the bill. “That isn’t on the radar screen of more than a handful of members.”

The extra money to private health care companies is part of the reason many Democrats oppose the measure. Sen. Edward M. Kennedy (D-Mass.), his party’s leading voice in the Senate on health care and a vehement critic of the bill, said last week that provisions calling for increased payments to HMOs and other health plans were “obscene.”

Kennedy and other critics say that, for the first time in the many years that Medicare has encouraged private health plans to welcome Medicare patients, the government would be abandoning its original rationale that managed care is more economical. Instead, the bill would create new funding rules to ensure that the new plan is paid according to the rates that Medicare pays for patients in the traditional, fee-for-service part of the program. It also would establish a special $2 billion fund to try to persuade health plans to enter—or stay in—parts of the country where they have been scarce.

But the new plans counter that they cannot afford to take Medicare patients unless they are paid enough to make it worthwhile. But health economist Marilyn Moon said: “It is very ironic. To increase participation in private plans, we are going to overpay them for the foreseeable future.”

The extra payments in the bill have varying purposes. One is to send more Medicare money to doctors, hospitals and other care providers in rural areas, through a combination of programs that total about $25 billion over 10 years. Rural health care advocates—and the lawmakers who represent them—made that money a top priority.

They said the new elderly patient subsidies is connected to the new drug benefits. Once federal benefits became available, corporate executives told lawmakers and Bush administration officials, companies might accelerate a recent trend in which some have been dropping—or charging more for—health coverage for retired workers.

As a result, the House and Senate members who negotiated for four months over separate Medicare bills, that the two chambers had pretensions to sider companies from abandoning their retirees. The bill would give companies essentially the same amount of money per retiree that the government would provide in subsidies to individual Medicare patients who got the new federal coverage for prescription drugs. The employers would get $70 billion in direct payments and $35 billion more in new tax breaks over the next 10 years.

Thomas A. Scully, administrator of the federal agency that runs Medicare, said employees—by having a giant Medicare parade. “Scully recalled that he and Health and Human Services Secretary Tommy G. Thompson met in the spring with labor leaders—including the chairman of General Motors Corp., General Electric Co. and a major steel manufacturer.

Their joint plea was, retiree health costs are an unbelievable burden.” They requested what Scully called “a modest buyout,” equivalent to perhaps $500 per retiree. The new bill, however, sets the price at a lower amount, a sum “way beyond their wildest requests.”

Employers repaid with their support. Nine days ago, less than an hour after House and Senate leaders announced their compromise on the legislation, the Business Roundtable, an organization of chief executives of large corporations, issued a statement praising the agreement.

Similarly, the American Medical Association has mounted a grass-roots campaign in Congress. That is what Scully called “a planned decrease in Medicare payments.”

Once federal benefits became available, the government would make sure physicians can stay in the practice of medicine. “It will be of no value to have medical coverage or a prescription drug benefit, if you can’t find a doctor,” he said. Hospitals would get nearly $24 billion extra over the next decade, about two-thirds of it in rural areas. The rest would be used to help defray the costs of training doctors and to give all hospitals a bigger boost for inflation next year than the House originally wanted.

I really take issue with anyone who would question the need of those hospitals that are critical to Medicare beneficiaries,” said Charles N. Kahn III, president of the Federation of American Hospitals. But health policy analyst Gail Wilensky, a Republican who used to run Medicare, said hospitals rarely have received as much money as that.

Mr. HARKIN. Mr. President, the legislation before us seeks to privatize Medicare, plain and simple. It seeks to privatize it, despite the fact that 89 percent of seniors say they want to stay in traditional Medicare—and they have done so when they had a choice—despite the fact that traditional Medicare is less expensive to administer—2 to 3 percent compared to 15 percent in private plans.

Again, there is something the average person doesn’t understand. They don’t realize. You would think a Government plan such as Medicare would cost more than a private plan. Private plans are supposed to be cheaper because of competition. We have had Medicare for almost 40 years. We have had private plans that length of time. So we have a lot of data. We know the facts. We know what happened to them. What do you say? Administrative costs for Medicare, 2 to 3 percent. In other words, out of every dollar that goes to a beneficiary, it takes 2 to 3 cents to administer Medicare. For a private health care plan, for every dollar that goes out, 15 cents goes for administration.

You might ask, Why is that? Just think about it this way. With traditional Medicare, we don’t have to spend hundreds of millions of dollars in corporate CEO salaries. We don’t have to spend hundreds of millions of dollars at least for fancy full-page ads in the New York Times and USA Today and Newsweek magazine. We don’t have to spend all of that money to advertising agencies. We don’t have to get chewed up with these private plans.

Despite the fact that Medicare expenditures are growing at a slower rate than private plans, they say government costs are going up. The fact is—again, we have data for 40 years—Medicare has increased by 9.6 percent compared to private plans at 11.1 percent. Despite that, this Senate, this Congress, and this administration want to move us into private plans. Despite the choicest wishes of senior citizens in this country, they want to move us into private plans.

I guess for those who came up with Medicare+Choice, somehow their ideology said these seniors would move into HMOs, and that is what we have. By gosh, I guess the thinking is here, if they didn’t want to voluntarily move into HMOs, we will force them into HMOs. That is what this bill does.

The conferences chose to ignore all of the facts and all of data we have from the past. Instead, they concocted a grand experiment that encompasses all of their right-wing ideological fantasies and seniors are the guinea pigs.

What we have in this bill that no one here has read is nothing less than a witch’s brew of seemingly appealing benefits. But it is a witch’s brew, one that is going to come back to haunt us in the future.

This experiment is a result of what I call private sector worship. It is a faith-based notion among some of our colleagues that the private sector will take care of everything. It is a blind faith that free markets solve every problem. But this private sector worship flies in the face of past experience. The entire reason we have Medicare today is that there is no private sector market for health insurance for sick seniors—none. Why? Because there no money to be made in insuring sick, older people.

The free market works fine when you are talking about automobiles, airplanes, TVs, widgets, clothes, and that type of thing. But the free market is not stupid. The free market cares about profits—not people. By its very nature, the free market shuts out people with disabilities, shuts out people with mental illnesses, and shuts out people who are in the last years of their lives. In short, the free market shuts out people who are not profitable.

I have news for my colleagues who believe the free market is the answer to everything. The free market did not
break down barriers to people with disabilities in our country. It was the Government—we here in the Congress—that had to step in to ensure opportunity and openness in our country for people with disabilities. In the survival of the fittest free market, these folks were left behind.

Another example: We have been fighting this Congress for years to pass a bill ensuring mental health parity. But people with mental illnesses are not a profit group. So the free market, left to its own devices, will have nothing to do with mental health parity.

Think about it. We don’t have mental health parity. Why wouldn’t we? Why wouldn’t the free market jump in there and get it? Because there is no profit. That is why, as soon as we get back into session next year, I hope we pass the Paul Wellstone mental health parity bill. Again, if we leave it up to the free market, people with mental illness are left behind.

Another prime example of those left behind is the elderly. The elderly are not a profitable group of people to include in an insurance risk pool. They are sick. They have chronic illnesses. They are expensive to treat. The proof is all around us. It is impossible to imagine private insurers fighting and competing with one another for the privilege of covering the elderly. That is why we have to bribe the companies with billions of dollars of taxpayer money to get them to participate in this witch’s brew scheme we have come up with here.

I have seen this proof firsthand. The other day, I talked about my own situation. I want to repeat it again.

In 1958, I was a senior in high school. My father was 74 years old. My mother had passed away 8 years prior to that. My father had worked most of his life in the coal mines in Iowa. My father had an eighth grade education. My mother was by then deceased. She was an immigrant with no formal education. We lived at that time in a little house in a rural town of Cummings, IA, of 150 people. Because of my father’s years in the mines—we called it miner’s lung at that time; they call it black lung today—he would get sick every year. We would never see doctors. We didn’t have any money. My father’s total income was less than $1,200 a year. It was about $1,200 a year. That included bonuses for having kids under the age of 18.

Thank goodness he worked a while during World War II to pay into Social Security and he had some Social Security. That is all he had. My father had no stocks, no bonds, no property, no trusts, nothing. He had the small house we lived in and he had a Model A Ford, the only car he ever owned. That was 1958. For the family living through the 1950s, I remember, like clockwork, my father would get sick. He would get sicker; he would get pneumonia. We would rush him to the hospital in Des Moines. They would put him in an oxygen tent, give him antibiotics, fix him up, and send him back home again.

If we did not have any money, and our total family income was less than $1,200 a year, how did we afford that? I tell you how: It is called charity. The Sisters of Mercy at Mercy Hospital would take care of my father, and knowing that we were poor and could not afford it, they would not bill us. That was charity.

I was in the Navy some years later, in 1966. I was home on leave, I think for Christmas, and my father was quite beside himself because he showed me this new card he had, a Medicare card. Now he could go see a doctor. If he had to go to the hospital, he did not have to rely on charity any longer.

I often think of how much better my father’s later years would have been had he had Medicare. If he had seen a doctor and had preventive health care, his later years would have been much healthier and much better. But the only thing he had Medicare for 2 years before he passed away.

I tell that story because I wonder, as I stand here and as I listen to all this debate about choice, as I listen to the corporate deal finally announced in principle last night that would add a prescription drug benefit to the Medicare Program, why? Because my father was not prof-...
about choice all the time. No senior will be forced out of Medicare. How many times have we heard that? They will be able to stay with Medicare.

Listen to the words carefully because what we are not hearing is that if you want drug coverage, you have to get out of Medicare. If you do not care about not having drug coverage, you can stay in Medicare. That is what they are saying. They are saying no one will be forced out of Medicare. No. It is not something is not what it is. Fuse people, to make people think they are giving seniors more choice, that somehow we are giving seniors more choice, but they are probably getting a bigger drug? Well, they will not tell you why, because they do not exist. But it has been conjured up in this bill. We have conjured up something called PDPs. There are two private plans, an HMO, and a PDP, and if a senior who is in Medicare wants drug coverage, that senior is forced to take the PDP or the HMO. You cannot stay in Medicare. You have to move over and take one of the private plans.

Isn't that what we are all about, trying to get drug coverage for seniors? And seniors say they want it under Medicare; they do not want it under private plans. Seniors will actually end up with reduced choices under this legislation.

If there are two private plans, say, an HMO and a PDP, maybe you have never heard of a PDP. If you say you have never heard of it, I understand that because they do not exist. But it has been conjured up in this bill. We have conjured up something called PDPs. There are two plans, an HMO, and a PDP, and if a senior who is in Medicare wants drug coverage, that senior is forced to take the PDP or the HMO. You cannot stay in Medicare. You have to move over and take one of the private plans.

That is a choice? That is a choice? That is like you have a choice between getting shot and getting hung. Either way, you are dead. Not a very good choice. They will not be allowed to get their drugs through traditional Medicare.

Again, let's say they go and join one of these private plans, this PDP, or whatever it is, or an HMO. Well, then the private plan says, 'You can see your doctor. You have to see another doctor. Oh, you can't take that drug. It is not on our formulary. You have to take this other drug.'

What do you have to take this other drug? Why do you have to take this other drug? Why do you not tell me why, but they are probably getting a bigger kickback from the pharmaceutical companies for that certain drug. So seniors are forced to change drugs.

That is not choice.

It is not true around here sometimes it is almost to the point that if you hear someone say it is daytime, you might just think it is probably night. If someone says something is black, think it is white. Around here we have gotten to the point where we use these words to confuse people, to make people think something is not what it is.

This idea of choice, that somehow we are giving seniors more choice—just false. The rhetoric around this bill does not match reality. The President and this administration has said many times that seniors deserve choice, that the seniors deserve what Members of Congress have. I am all for that. But that is not what they are getting.

Right now, I pay about 25 percent of my drug costs. That is it, flat. But the prescription drug plan put before seniors in this bill will not even come close to that.

Instead, it is a confusing, convoluted maze that—mark my words—will leave the seniors feeling betrayed and bewildered. At this point, the people council, the leaguers who may have been here in the 1980s, is, do you remember when we passed the catastrophic health insurance plan? Well, if you like the seniors' reaction to that plan in the 1980s, you are going to love their reaction to this grossly inadequate prescription drug plan.

Now, look at what they are going to be faced with right here. Every year we, in our plan, the FEHBP, the Federal Employees Health Benefits Plan, have an open season, and we get to choose what plan we want to go into. So we get all these books. Here is one from Aetna. Here is another one from a different Aetna. Here is one from, of course, Blue Cross, and then a different Blue Cross. Here is Kaiser. Here is AWP. Here is PBP. Here is Mail Handlers. Here is NAIC. Here is GEHA. Here is MB, Individual Practices Association.

We are supposed to read this and go through them all and decide which plan we want to be in. I wonder how many Senators actually go through these. I can count them on less than one finger. Yet seniors every year are going to be asked: Make a choice. It is confusing. It is going to be bewildering to them every year—every single year.

That is what I mean, a senior could get out of Medicare and go into an HMO or one of these PDPs. They could jack up their prices—I will say more about that in a minute—because the premium is not set in law. It can go up. It can go up. They can get bounced around. So they may be in one plan 1 year, and that plan may not exist the next year.

Then what do they do? What do they choose? Well, that is why I say, wait. This is going to be a confusing, bewildering mess for our senior citizens.

The only ones making the money are pharmaceutical companies. I think it is instructive that in this bill—if I can find it here, I think on page 35 of this bill, if I am not mistaken. I wonder how many people read this. Page 35, line 18: "Noninterference—In order to promote competition"—I love this. I love the way they play with words—"In order to promote competition under this part and in carrying out this part, the Secretary of Health and Human Services—"(1) may not interfere with the negotiations between drug manufacturers and pharmacies and PDP sponsors; and (2) may not require a particular formulary or institute a price structure for the reimbursement that the Medicare drug plan will pay a drug company.

Now, what do you suppose that is all about? Well, what it says is that Medicare cannot negotiate with drug companies to get a better price on drugs for our seniors. That is what was written in the bill. We have said for a long time that we ought to use the power of Medicare to negotiate with the drug companies to get a better price. The President's VA in their legislation, going back to a law that we passed here, I think, in the 1960s, the VA sits down and negotiates with drug companies for the price of drugs for veterans hospitals and veterans throughout the country. That is why veterans' drug prices are 50 percent or more less than what you might normally pay or what an elderly person would pay because they use the purchasing power of the VA to bring it down.

But in this bill, we have said, no, you cannot do it any further than that. Medicare cannot negotiate. Think about it. It is written in here. Medicare is prohibited from negotiating with drug companies to get a better price on drugs.

People always ask: Why are drugs so much cheaper in Canada? I have been to Canada a lot. I am sure the occupant of the Chair has been to Canada. If you Visit the provinces' Administration, like that, there are drugstores all over, private drugstores owned by private citizens—free enterprise. You go in there, and the pharmacist is there, and you can get your drugs $50, 60, sometimes as much as 80 percent cheaper than what you get here.

It is the same drug, made by the same manufacturer, that is much cheaper in Canada. Why? Well, guess what. The Canadian Government buys the drugs. Then they negotiate with the drug companies to get a lower price because they buy in such huge volumes. Then the private pharmacist makes money on filling the prescriptions, watching your prescriptions.

But in this bill we are forbidding Medicare from negotiating with drug companies for a better price. What a sweethears deals that is.

Let's see what seniors are going to pay for this and why this is kind of confusing. Here is what seniors are going to find out. Right now, here is what seniors pay under Medicare: Part A premium $46.60 a month; Part B premium $65.60 a month; Part B deductible $100 per year, and a 20 percent cost share on each visit to the doctor's office.

Very simple, very straightforward; every person in Medicare understands that.

Now what? Well, let's see. Seniors who have an annual income above $13,470 per year will have to pay a year's deductible, which will then pay a $35-a-month premium, which can go up, by the way. That is not fixed in law. So that is $420 a year. That figure can change every year because if the private plan is not making the profit that they want, they can boost that figure up, and they will.

After seniors have put in at least $670 up front, they can start receiving some
benefits. You might say, well, 670 bucks, that isn't much. Remember what I said: This is someone who is above $13,470 a year. Six hundred seventy dollars is a lot of money to someone making $13,470 a year and worrying about being able to pay 25 percent of their drug costs up to about $5,000. That is the so-called donut hole. That is going to be outrageous.

One day you are going in, you are getting your drugs, and you are paying 25 percent. You are going to one day and your drugs are $2,200, and then all of a sudden your pharmacist says: You have to pay full price.

Why? Well, I am sorry. You reached the donut hole of $2,250. Think of it this way. If your drug costs are $5,000 a year, you will have to pay $4,000 out of pocket. And for that, we bribe HMOs, we give billions of dollars in subsidies to the pharmaceutical companies as a cost of HMOs and to PDPs and whatever else.

Another thing, a senior who has an annual drug cost of only $500 will pay more into the program than they receive out of pocket. If you have $500 in drug costs, you will pay $751.25 into this program every year. What a deal.

To make things even messier, the program would create several tiers of classification under the Medicare Program. Again, there are different low-income benefits available to those under 135 percent of the poverty level. That is $12,123 for a single person. There is another set of benefits for those under 150 percent of poverty level. That is $13,470 a person. And to receive the low-income benefits, a senior must undergo an asset test. We threw the asset test out of here in the Senate. Now it is back in this bill. But now let's look at this asset test. For one group, those who are at 135 percent of the poverty level or below—that is below 12,000 dollars a year—if you are below that, the asset test is $6,000 for a single person. You can have more than $6,000 in assets, it is $9,000 for a couple.

For the group at 150 percent of the poverty level—let's see, that is $13,470—the asset test there is $10,000 in assets, $20,000 for a couple. So mind you, for a difference of a little over $1,000 a year, maybe about $1,300 a year, you will go from $9,000 to $20,000 for a couple. $6,000 to $10,000 for a single person. If this sounds confusing, believe me, it is. How are you going to decide where you fall?

Let's take a group of senior citizens down to the local supermarket at minimum wage to try to make ends meet, pay her heating bills. But because she has a little extra income, even though she barely makes any money, she is being put into a different class. So, therefore, she is going to get a different drug benefit.

Margaret thought she was going to get some low-income benefits but she filled out her forms and she had too much life insurance, $10,000 in insurance. So she is out.

How in the world is the average elderly citizen supposed to know where they fit into this mess? You are going to have seniors, different people who make nearly the same amount of money each year and they are going to receive drastically different benefits. This is a formula for confusion and confrontation. You are going to be pitying yourself, and you are going to get money, but because you have made a little more, you are going to have friends wondering: Why is it that Bob over there gets all those benefits and I don't? We know that Bob owns something else. He is cheating maybe. And why did he get that and why didn't I? And what is it that George over there gets all these low-income benefits? And you know George. All his life he frittered his money away, gambled it, booed it up. Sure he doesn't have much now, but the government is coming in and giving him everything.

How about Bob? Bob over here worked hard all his life, raised a family, educated his kids. He is a man of meager means, different Social Security. He was frugal. He saved a little bit. He has a little life insurance policy. No, Bob, you don't get this. Your income may be just about the same as George's, a little bit more, but because he doesn't have more than $2,250 in assets, he is in a different class. So, therefore, he is going to get a different drug benefit.

Then there are those citizens who are going to lose retiree prescription drug benefits. Two to three million are going to lose prescription drug benefits. It is outrageous. This bill would spend roughly $88 billion to try to bribe employers not to drop retiree health coverage yet, even with that, 2 to 3 million seniors will lose their retiree benefits.

Yes, the drug and health industries are spending millions to ram this bill through Congress, though senior citizens across the Nation don't know what it contains. The authors of this bill did not let the senior citizens of this country see what was in the bill because they knew once they found out they would lose their prescription drug coverage. I assure you, Mr. President, people who are in the donut hole, the donut hole is going to be outrageous. There being no doubt, I am afraid the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post]

2 BILLS WOULD Benefit TOP BUSH Fundraisers

More than three dozen of President Bush's major fundraisers are affiliated with companies that stand to benefit from the passage of two central pieces of the administration's legislative agenda: the energy and Medicare bills.

The energy bill provides billions of dollars in benefits to companies run by at least 22 executives and their spouses who have qualified as either "Pioneers" or "Rangers," as well as to the clients of at least 15 lobbyists who have achieved similar status as fundraisers. At least 24 Rangers and Pioneers could benefit from the Medicare bill as executives of companies or lobbyists working for them. Eight who have clients affected by both bills.

The latest count, Bush's re-election campaign has designated more than 300 supporters as Pioneers or Rangers. The Pioneers were created by the Bush campaign in 2000 to reward supporters who brought in at least $200,000 in contributions. For his reelection campaign, Bush has set a goal of raising as much as $200 million, almost twice what he raised three years ago, and established the designation of Ranger for those who raise at least $100,000.

With the size of donations limited as a result of the campaign finance law enacted last year, fundraisers who can collect $100,000 or more in contributions of $2,000 or less have become key players this election cycle. The law barred the political parties from collecting large—sometimes reaching $5 million—"soft money" contributions from businesses, unions, trade associations and individuals. This has put a premium on those who can solicit dozens, and sometimes hundreds, of smaller contributions from employees, clients and associates.

The energy and Medicare bills were drafted with the cooperation of the winners and losers of the contributions from dozens of industries. Power and energy company officials; railroad CEOs; pharmaceutical, hospital association and insurance company executives; and the lobbyists who represent them are among those who have supported the bills and whose companies would benefit from their passage.

The Medicare bill was scheduled to be acted upon by the House late last night. If passed, it will go to the Senate. The first two provisions in the Medicare bill would provide more than $25 billion over 10 years aimed at increasing domestic oil and gas production, and $5.4 billion in subsidies and loan guarantees. The bill also grants legal protections to gas producers using the additive methyl tertiary-butyl ether (MTBE), whose manufacturers face a wave of lawsuits, and it repeals the Public Utility Holding Company Act of 1935. It also provides a new array of consumer protection that limits mergers of utilities.
The bill has been the focus of a bitter ideological and partisan fight for three years. A leading sponsor, Rep. W.J. "Billy" Tauzin (R-La), Chairman of the House Energy and Commerce Committee, praised the legislation, saying, "All Americans can look forward to cleaner and more affordable energy, reliable electricity and reduced dependence on foreign oil to power their cars.

Public Citizen, which has tracked the legislation and correlated patterns of contributions to members of Congress and to Bush, denounced the package. "This is the national energy policy developed in secret by corporate executives to members of Congress and to Bush, and the Republican agenda is to see Medicare dismantled. If he is for our problems. It would make his day to privatize Medicare. You can bet that once the ink is dry, they will be starting on Social Security and going after that, too."

Mr. Gingrich even went so far as to say he believed the pharmaceutical companies are getting an unfair treatment; that they are punished by the success. Wrong. The bill doesn’t ask for a penny from the pharmaceutical companies, I disagree.

On page 53 of the bill, it protects drug companies from Government efforts to negotiate lower prices. That is on page 53, line 18. It says that Medicare cannot negotiate for lower prices for drug companies.

A recent Peter Hart poll found that almost two-thirds of seniors view this bill unfavorably. Most of them identified themselves as members of AARP, American Association of Retired Persons. Among those AARP members, only 18 percent said Congress should pass the bill, whereas 65 percent said Congress should get back to work. Last week, AARP members from Maryland, New York, and Pennsylvania tore up their membership cards in front of their organization’s headquarters here in Washington. According to William Novelli, CEO of AARP, of "selling out" to insurers and selling out to Newt Gingrich. Where did they ever get that idea?

Well, in fact, the relationship between Newt Gingrich and the bigwigs at AARP goes way back. William Novelli, the head of the AARP, wrote the preface to Gingrich’s book, “Saving Lives, Saving Money.” In that preface, he states:

"Newt’s ideas are influencing how we at AARP are thinking about our national role in health promotion and disease prevention and in our advocating for system change."

That is Mr. Novelli in Newt Gingrich’s book. I would have to ask Mr. Novelli which of Newt’s ideas are “influencing how we at AARP are thinking about our national role in health promotion and disease prevention and in our advocating for system change."

Mr. Novelli’s thinking? Is it Newt’s wish that Medicare wither on the vine? Is that influencing Mr. Novelli’s thinking? AARP’s endorsement is disturbing for another reason. They have a flair for conflict of interest in this matter. They receive vast revenues from the sale of insurance to seniors. Royalties from such arrangements include deals with UnitedHealthcare Insurance Company, Metropolitan Life Insurance Company, and Advance PCS, the accuracy benefit manager. All that accounted for more than one-third of AARP’s $630 million in revenues last year, according to AARP’s 2002 annual report.

If you open up any newspaper in the last 3 days, you have to stop the full-page ads by AARP telling you why this bill is such a good bill—full-page ads in USA Today, the New York Times, Washington Post, and on and on.
First of all, I want every elderly person who belongs to AARP to think about this and the dues they pay. Think of all that money being siphoned off to ad agencies. Think about all that money being spent on these full-page ads to try to get Congress to rush this through and pass it. Well, Americans deserve better from AARP. They deserve better from Congress.

This bill reflects the priorities of Newt Gingrich, who has been hostile to Medicare since its inception. Seniors know what the winners and losers are with this bill. HMOs, PPOs, pharmaceutical companies, on premium support, they win, and seniors and disabled lose. On cost containment, they win because Medicare is prohibited from bargaining for better prices, and seniors and disabled lose. On drug coverage, pharmaceutical companies win and seniors lose. On health savings accounts, pharmaceutical companies, on premium support, they win, and seniors and disabled lose. On competition, pharmaceutical companies win big time on that and seniors lose.

It is sad to me that I am saying tonight that somehow I am opposed to insurance companies. Nothing could be further from the truth. In my State of Iowa, I think we are, if I am not mistaken, the second largest domiciliary for insurance companies in America, second only to Connecticut. Insurance has a prominent role in Iowa. It employs a lot of people. Insurance can provide meaningful protection for a lot of people. I happen to have a lot of insurance—homes, cars, life insurance; I have all kinds of insurance. It is a good deal. I have benefited from insurance. Insurance is good. It shares the risk. You put people in a large pool and it shares the risk. That is the basic essence of insurance, and there is one principle of insurance that everyone understands, or should understand: The bigger the pool, the less the risk for everyone in the pool.

But what is Medicare doing? What are we doing in this bill with Medicare? We are dividing up the pool: a little bit here, a little bit there, a little bit there. Under the health savings accounts, the wealthiest will opt out. Under premium support, the wealthiest will be cherry-picked by the HMOs.

The PRESIDING OFFICER. The Senator’s time has expired. Under the previous order, the Senator from Nevada is recognized.

Mr. ENSIGN. Mr. President, I now want to take my time and talk about the Medicare reform and prescription drug bill that we have before us today. I rise to explain how and why I am going to vote on this bill.

From the day I was sworn into office in 1995 as a Congressman, I have spent as much time on strengthening the Medicare program as I have any other single issue considered by Congress. On the Health subcommittee of the House Ways and Means Committee, I learned the details of how this comprehensive healthcare system works for our seniors and the disabled. I have tried to keep true to the principle of making Medicare more oriented to keeping seniors healthy, not just waiting until they become ill to treat them.

With the growth of Medicare costs and the baby boom population, I also believe just as strongly that the structural security of Medicare must be kept healthy and reforms must not wait until the program is ill.

As a Senator, I have continued to pursue my passion for healthcare policy. I campaigned on and introduced my own Medicare prescription drug bill, along with Senator CHUCK HAGEL.

I was proud that our bill received the votes of the majority of the Senate when it was considered last year, although not adopted as the final bill.

Aside from the prescription drug benefit in the bill, I strongly believe that for Medicare to remain healthy, structural reforms must take place that control unnecessary costs through market forces and allow the program to operate more efficiently and more preventatively.

This bill contains a number of provisions that I hope will help drive down the increasing costs of health care, not just for our seniors, but throughout the entire healthcare market place.

Health Savings Accounts will give patients control over their care, to include who patients go to for care, as well as control over their individual expenditures. If shown to be successful, this would be the most sweeping healthcare reform since our managed care model over a decade ago.

Likewise, income-relating of the Medicare Part B premium, the disease management demonstration project, and the prescription drug card with a private account—by the way, that was a proposal of the Senator from Iowa, HAGEL, and I introduced—are all positive aspects of this legislation.

I am pleased that in the bill are two other critical reforms that I spearheaded in the House and now in the Senate.

Placing a 2-year moratorium on the outpatient therapy cap is a win for our oldest and sickest Medicare seniors. Those who suffer from life-threatening ailments such as Parkinson’s disease and stroke should not have to pay every dollar out of pocket just because they require additional care.

The bill also includes a provision that eliminates the late penalty military retirees pay for joining Medicare. Military retirees, who gave so much of their lives to our country, deserve access to the best healthcare benefits available without being penalized for changes in the system. They thought they were going to get lifetime Medicare. Then, when they were put into the Medicare system they were not informed, or at least many of them were not aware that if they did not sign up right away, later they would have to pay extra penalty costs.

Joining me in helping to get these passed was Senator LINCOLN, and I would like to thank her for all of her efforts.

The reason I have struggled so fervently over the merits of this legislation is the substantial financial burden this bill places, not only on the Medicare program, but on the country.

The benefits in this bill will assist seniors and disabled Americans only to the degree that our Nation is fiscally able to sustain paying for it. That is why I drafted a bill that was responsible to the next generation of workers who will bear the burden of paying the price tag on Medicare prescription drugs.

I want to put up a couple of charts that help us understand what we are dealing with for the next generation.

Until 1970, we had about 20 million seniors in our Medicare Program. Today we have a little over 40 million seniors. 30 years later. Thirty years from Medicare will have close to 80 million seniors, equaling another doubling of the number of seniors.

This chart shows the problem. These are the number of workers per senior, the number of people who we have in this country. In 1970, for every one retiree we had a little over seven people, on average. In 2000, that had slipped to 3.9. That huge expanse...
of the baby boomers is in full bloom in 2030, we will have 2.4 workers for every one retiree.

I remember Senator Phil Gramm telling us that means there are a lot more people riding in the cart and a lot fewer people pushing the cart.

I believe this bill threatens the fiscal security of the Medicare Program and compromises the continued growth of our economy by lacking the necessary cost controls to keep it from consuming the budget. I personally believe the cost of this bill is grossly underestimated. By the time the drug benefit goes into effect in 2006, we will have a better understanding of the enormous cost of this bill but at that time it will be too late to do anything about it. Without measures to contain overutilization, the Government or the private sector plans will be forced to ration prescription drugs for our seniors, similar to the way care is rationed in Canada.

What the new legislation requires legislative corrections after becoming law, I believe that before the ink is dry on this new benefit, a campaign will be underway to expand this program by closing the coverage gap that exists in the bill. There will also be efforts to reduce deductibles and reduce premiums as well, further transferring costs onto the next generation.

While providing seniors with a prescription drug benefit is so very important, it must be done in a way that does not bankrupt Medicare and threaten future access to care in our country for our seniors. It also needs to be fiscally responsible to the next generation.

I believe the Congressmen and Senators who put this bill together labored intensively, and they did it for the number of reasons.

I will vote against this legislation for a number of reasons. As has been stated by so many Senators, there is a lot that is good in this bill. Clearly, the part about reimbursement to doctors and other health care providers is very important. Interestingly, while giving enormous subsidies to PPOs and managed care to the tune of some $12 billion, they take away from oncologists and other cancer providers in this bill $11.5 billion. That is a part to which I strenuously object.

For my predecessor, Senator Connie Mack, who has been at the forefront of the fight against cancer, this is one of the provisions that is causing him enormous agony. Visiting with so many of the oncologists all over the country, it is just inexplicable to them as to why there would be a $11.5 billion cut on cancer care. The truth is, it was a tradeoff. It was a tradeoff back when we originally considered the bill in the Senate to provide for rural health care. You had to get the money out of somewhere. The only way to get it back from cancer care. I think that was not only a poor choice, but I think it was a tragic choice. But that is in this bill. That is one of the reasons I am against it.

But there are other things that are good in this bill, and a lot of that has to do with trying to get physicians and other health care providers adequately compensated instead of cuts that were enacted some 5 to 7 years ago in the Balanced Budget Act of 1997, which resulted in cuts for health care providers to the bone in their Medicare reimbursement.

But there is a lot more in this bill that is causing me great concern. It is that I am going to vote against it. I want to share that with everybody.

One of the toughest jobs that I have had in a lifetime of public service is the years that I served as elected Insurance Commissioner of the State of Florida. I inherited a mess in the aftermath of Hurricane Andrew. I had to learn something about insurance marketplaces and how in a devastated insurance market we could encourage and nourish the free market back to competition. In the aftermath of Hurricane Andrew, the companies—other than the 12 that went bankrupt—were fleeing the State of Florida. Those who stayed were cancelling homeowners right and left.

We had to dig in to see what would make the insurance marketplace tick, and what would encourage insurers to come back into the marketplace; at the same time, what would provide the needed commodity—namely, in this case, homeowners insurance—to the communities of Florida.

Because a marketplace had been disrupted by the most costly natural disaster in the history of the country in insurance losses, a lot of it we had to learn by first impression. We were successful in doing that. It took a long time. It was very difficult. One of the things that I learned about insurance in the marketplace is when you get to health insurance, you should let the principle of insurance work for you; otherwise, you take the best group and spread it over the largest possible group so that the health risk—when it comes out in costs because people get sick and they have to have health care expenditures—because it is a huge group and it is a diverse group in age and health, the per unit cost comes down.

One of the things that used to frustrate me the most as the Insurance Commissioner of Florida was when the new products would be filed, they would be filed for a very small group. The insurance company would drive the cost of the premium down so that it made it very attractive for people to take that particular brand of health insurance. But over the course of time, instead of the insurance company continuing to expand that group, they would keep it stagnant. Over time, people would drop out. Over time, people would get older. Over time, people would get sicker. The group would get sicker. The group would get older. The group would get smaller. Since the group was defined and not expanding, what do you think the costs were going to be? The costs
were going up. That meant the premium was going up in order to make that group actuarially sound in what they were charging for that insurance.

People were stuck in an insurance group. They had no place else to go because they were employed by a private employer. They certainly couldn’t go out on their own and buy a policy for one individual. The cost would be astronomical for that. They were stuck in a spiraling, upward cycle of insurance costs and insurance premiums that went to the top.

I saw people literally cry giving testimony about how they could not afford it.

I learned something from that. I learned that if you are going to have a logical way of handling health insurance, it can’t be with a small group. It can’t be with a segmented group. It needs to be with a large group.

Beyond this particular bill, as we look ultimately to the future of what we are going to do about health care delivery and its costs in this country, in my judgment, since I would like to see it delivered by the private sector and free market competition, you are going to have to expand the groups. You are going to have to make them as large as possible so that the companies compete for that business. It is when you start to shrink that large group that you get into trouble. Senators, that is what this bill sets out to do. It starts to selectively take people in Medicare, segmenting them, separating them, dissecting them, and ultimately when the healthier people in America—in this particular case, Medicare—when the healthier people in Medicare are siphoned off, it leaves the sicker seniors to be dealt with in Medicare. And what will happen to the cost? The cost will go up and it will go up big time.

The figure has been thrown out in this bill that the starting point for the premiums for the Medicare prescription drug benefit will be $35 a month per person. That is not going to happen. It will happen when it starts off in 2006, but as the group gets sicker, the costs are going to go up and the premiums—that $35 per person per month—are going to go through the roof.

Why are they getting siphoned off? Look at the provision. The provision means of income, this is a very attractive alternative. Health savings accounts will allow someone to take dollars, without paying tax on them, and put them into a health savings account, which will be tax-deductible. It is likely like present law regarding medical savings accounts where, if the dollars are not used, they self-destruct, these dollars will accumulate. And it will not be just for medical emergencies. Those dollars can be put aside. They can go out and buy an insurance policy that has a high deductible, such as $5,000. Even if they put $5,000 into the health savings account, they have saved a lot of money because they are not paying money to buy risk coverage. If they are going to the emergency room, say, a $500 deductible policy. That money can accumulate and they can pay for other things than medical expenses, such as cosmetic surgery. So, for a good part of our country that has to do with Medicare, that is another attractive option.

It is dissecting the overall insured population, and when the crisis comes, it will make it very difficult to get the large pools of money we can spread the health risk and where private sector insurance companies can come in and bid for that particular pool. That is another reason I oppose this legislation. It violates the principle.

Some talk about it as a giveaway to the HMOs and the PPOs, pushing seniors into managed care where they lose their choice of doctors. That speaks for a longer time, well into January of 2006—that is another 10 years and 1½ months—people are going to start realizing what has happened.

There is another reason I oppose this bill. That is, you cannot go out and offer the alternative. I have explained for prescription drugs, subsidized by the Federal Government for managed care, without private employers who have drug coverage for their former employees, now retirees, with those large pools of money we can spread the health risk and where private sector insurance companies can come in and bid for that particular pool. That is another reason I oppose this legislation. It violates the principle.

If it were an equal prescription drug benefit, that would be OK for the senior citizen, the retiree. But the shock they are going to get is when their private employer, former employer, drops them and goes to a retiree health care plan. They will leave Medicare under this bill to give them a prescription drug benefit, and, lo and behold, they will find it is a very inadequate benefit. If they have $5,000 worth of drugs that they have to buy in a year, the senior citizen under this plan is going to pay out of his own pocket $3,600, $3,600 under this prescription drug plan for the senior citizen who has an annual prescription drug cost of $5,000.

So none of these retirees who are going to be dropped are going to be quite shocked and quite unhappy and quite disappointed, when they thought they were getting a full prescription drug benefit.

So in my State, for example, it is estimated by one of the very credible studies—and I have heard no one who has disputed this study—that 2.7 million retirees will be dropped from their private health care coverage in my State of Florida, that translates to 166,000 people. And I suspect that is going to be a very unhappy 166,000 people in the State of Florida.
It is true that since this bill does not cover those up to 150 percent of the poverty level, there is going to be, for that group, some increased coverage that they do not have now, but it is not going to be much. It is not going to be much of the government that would otherwise qualify because they meet the income test of being at that level of the poverty level, lo and behold, this bill now puts an asset test on them. That asset test is going to disqualify thousands of them. And if it does not go down in the other direction and say, yes, $400 billion dollars in deficit financing this country, each to be actuarially determined what is going to be the premium that will be actuarially sound and some say as many as 50 regions in this country, each to be actuarially determined what is going to be the premium that will be actuarially sound with regard to that premium, with regard to that premium with regard to the cost. So I do not think this bill is procompetition even though that is my reasons for opposition is one that has been mentioned many times here. Mr. President, $400 billion is lot of money. It depends on how you look at it. The Senator from Nevada, who just stood up and announced he was voting against the bill, has made a very eloquent statement about the cost being so high, $400 billion, at a time we are hemorrhaging to the tune of half a trillion dollars in deficit financing this year.

But I might want to take it in another direction and say, yes, $400 billion is lots of money, but it is not being efficiently used. The reason it is not being efficiently used is that Medicare is strictly forbidden, in this bill, from negotiating with pharmaceutical companies for bulk purchases.

Now, I thought we were for free market competition. I thought we were for letting the market forces determine what the price is. But this is an exact opposite of that. This is an interference in the private marketplace for it says Medicare cannot negotiate in bulk purchases a price less than the retail price. It is in here. It is in here not only on one page, it is in here on two pages.

It is unlike what has been done for nearly 20 years in the Veterans' Administration, in a bill that passed this Senate on a voice vote because it was noncontroversial that the last Government would negotiate through bulk purchases for the acquisition of drugs for the Veterans' Administration.

The Veterans' Administration is serving a population of about 25 million veterans. Medicare is serving a population of about 41 million Americans. If the Veterans' Administration can negotiate prices downward, why should not Medicare be able to lower the cost of the drugs to seniors? It is not logical that you would not. And it is certain that is what you can consider are we constrained under the Budget Act that we cannot spend more than $400 billion, until we waived that today.

So $400 billion, at a retail price of a drug, that on the retail market is going to cost at least twice the cost of the drug to the Veterans' Administration, which is buying in bulk—we would be able to provide so many more of the benefits of prescription drugs to seniors without their having to pay so much in a deductible and in copays; and in some cases the copay is an entire 100 percent until they get past the threshold of spending $5,000 a year for drugs.

Now, I have counted noses. This thing is going to pass. It is either going to pass tonight or it is going to pass in the morning. It passed the House two nights ago, when they held the vote open for 3 hours until they twisted some arms and turned the vote around. So it is going to pass.

Well, it is not going to pass with my vote for the reasons I have stated, that I think are against the interests of the United States and my State. But I am going to do something about it after it passes because I have already started drafting a bill that is going to say, what is good for the Veterans' Administration ought to be good for Medicare as well, and that if the Veterans' Administration has been in effect for two decades, that was noncontroversial when it was passed—can purchase in bulk and therefore bring the price down, so, too, ought Medicare, for the sake of our senior citizens, be able to get a more extensive prescription drug benefit than the meager one they are going to get in this bill.

I will be introducing that bill. I think one of the people I am going to work with is my Senator. Mr. GRAHAM, since he has announced his retirement in the last year of his service as a Senator, and the two of us will put together a comprehensive package. But that is certainly one aspect of it that we are going to be following.

I thank the Senate for its attention. I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I would propose to proceed for a short period—I think we are going back and forth—unless one of my colleagues signifies to the contrary.

I have listened very carefully, as indeed I think all Senators have, to the very strongly held views of colleagues on this bill. My good friend, the Senator from Florida, who proudly serves on the Armed Services Committee, and I work together. I was quite interested in what he had to say. I guess on most military issues we are together, but on this one we seem to have differences of opinion. I would say that our distinguished colleague from Florida does represent quite a few senior citizens, so I can respect he has done, and more of his homework to develop his views here tonight. Nevertheless, I respectfully differ, and we are going to have to think what is in the best interest of the country as we approach this vote, whatever that will to rise in support of the conference report to H.R. 1, the Medicare Prescription Drug and Modernization Act of 2003. Medicare was created in 1965, a nationwide insurance program that offered health insurance protection for American citizens, and those who have had the misfortune of becoming disabled. The program provides broad coverage for many health services, but there are gaps—a how well we know that—in this program that has been working since 1965. Those gaps create no coverage in some instances. That is the reason we are here today, to plug those gaps.

I think under the leadership of the distinguished Senator from Iowa, Mr. Grassley, the distinguished majority leader, many others who have worked so long and hard on this bill, we have done more than plug the gaps. We have done more. I hope that increase, which is well deserved by the seniors, is appreciated because it is important to these individuals.

I myself proudly fit into the category of a senior citizen. In fact, when I am speaking publicly, quite often I am not introduced as a senior Senator but as a senior citizen. There is a lot of laughter among the crowd, but I look them square in the eye and say that I am very proud to have that status as a senior citizen. My mother lived to be 98 years old. I kind of hope I can follow along with that.

One area in the current Medicare Program where a major gap exists is in the coverage of prescription drugs. We know that so well. Medicare currently provides no outpatient—if you are in the hospital, you can get outpatient drug coverage. That is because when Congress created Medicare in 1965—it is interesting, when they created it in 1965, prescription drugs but
were not a major component of the health system.

That is fascinating to me. My father was a medical doctor. He was a surgeon. I remember he used to carry that black bag, and he used to have several bottles of pills in it to the best of my knowledge. I know he was very careful in how he dispensed all those drugs. But when we stop to think, it has been a dynamic, if not revolutionary, change in the practice of medicine and health care owing to the development of prescription drugs. So has it been in our town meetings and otherwise. How many of us have worked these years extensively throughout our States. We have been privileged to serve in this Congress. Some of us here in this Chamber have in the past voted for a number of provisions to add such a prescription drug outpatient Medicare Program. I have in the past voted for a number of pieces of legislation, have cosponsored a variety of bills to add such a prescription drug benefit. In fact, in an effort to reach a legislative consensus, I sponsored with Senator Baucus a bipartisan bill. I was joined by Senators Collins and Dayton early this year. It was very simplistic. I look at the remarkable size of that. It is about 8 inches thick. Our bill was probably not more than 6 inches. What we did is we went to a partial solution of this problem faced by so many people who could not afford their drugs.

None of these measures ever got enough support in either the House of Representatives or the Senate. As a result, while we in Congress continued to debate this issue, America's seniors continued to suffer.

Today, though, we have a historic opportunity before us. Early Saturday morning, allowed by the provisions of the bill, I went down to the pharmacy in front of my house, and there I bought a new prescription drug discount card. It is estimated these cards will save seniors between 15 and 25 percent on their prescriptions. Low-income beneficiaries will also receive a $600 subsidy on their cards towards the purchase of prescription drugs.

I am very proud in the way the drafters of this bill have put such a tremendous emphasis on the low-income Americans. Pain knows no class, no age. Pain is endured by all. Perhaps the poor are more fortunate than the rich in that others were able to alleviate our pain, but we certainly cannot let those less fortunate than ourselves suffer. So I think this $600 subsidy is a magnificent part of this bill.

Then, starting in 2005, beneficiaries will be able to, at their option, sign up for a new Medicare prescription drug program. This program is entirely voluntary, so if a senior already has solid prescription drug coverage and does not want to participate, he or she does not have to. In both 2004 and 2005, beneficiaries will receive catastrophic coverage. In 2006, beneficiaries will qualify for the generous low-income Medicare prescriptions cards.
Federal budget. The Congressional Budget Office estimates that this legislation will cost the taxpayers approximately $400 billion over the next 10 years. Over the next few years we must closely watch the implementation of this legislation to ensure that the program's costs do not explode exponentially beyond the CBO estimate. To do so would leave a tremendously unfair burden on America's younger generations.

Next, in Congress we must pay close attention to the possible unintended consequences of this legislation. Almost 1/2 of all seniors currently have retiree employer-sponsored prescription drug coverage. However, due to rising health care costs, more and more employers are dropping retiree health coverage. This legislation will provide a solid fall-back plan for those seniors who lose their retiree coverage due to rising costs.

I crafting this legislation, though, we were mindful of the prospect that the mere existence of a Medicare prescription drug benefit might somehow encourage companies to drop their retiree prescription drug plan. This is certainly not our intention, and the legislation provides important Federal incentives to employers who offer good retiree prescription drug coverage. Nevertheless, in Congress we must provide strong oversight to ensure that this legislation does not have the unintended effect of actually causing retirees to lose existing employer-sponsored coverage.

Finally, I regret that the bill before us today includes provisions that would sharply cut Medicare funding for cancer care provided to Medicare beneficiaries. After the Senate passed Medicare bill included a $16 billion cancer care cut, I fought hard with Senator SAM BROWNBACK and Senator BILL NELSON to ensure that the final bill contained no such cut. Through our efforts, we garnered the support of 53 U.S. Senators. Ultimately, though, the Conference Report to H.R. 1 cuts reimbursement for cancer treatment by approximately $11 billion over the next 10 years.

Proponents of this cut claim that it is needed so that cancer treatment reimbursement more accurately reflects the true cost to the physician. On the other hand, the hundreds and hundreds of cancer patients and oncologists who communicated with me on this issue maintain that these cuts will be devastating to cancer care in this country.

I remain committed to working with my fellow Virginians and others in the Senate to ensure that cancer patients are not negatively affected by these provisions.

In closing Mr. President, the bill before us today is the product of a number of years of hard work by a lot of people in Congress. It presents the best opportunity we have ever had in the Congress to update the Medicare program with a prescription drug benefit.

While I do have some serious concerns about certain provisions in the bill—on balance—I firmly believe voting for this bill is the right thing to do. I look forward to this bill becoming law but remain cognizant of the need for the U.S. Congress to closely monitor the implementation of this legislation.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Ms. CANTWELL. Mr. President, I rise at this late hour to add my voice in opposition to the legislation that I believe we will be voting on later tonight or early tomorrow morning and to basically explain that I think under this bill, my constituents in Washington State, who would benefit from a prescription drug benefit, or are currently benefiting from something, will be worse off after this legislation than if we did nothing at all.

That is the important point for us to discuss today. Going home to Washington State over the summer, and in September and in October, the voices of Washingtonians basically said we would like to see a prescription drug benefit. Actually, first, they said we would like to see a reduction in the cost of prescription drugs, whether you have a benefit or not. Those who have insurance now are seeing increases in the rates of prescription drugs and cannot afford the continual increase in pricing. I am going to talk about that.

I urge all of you to keep in mind that if you get a prescription drug benefit, go ahead, but certainly don't do harm by passing something that puts seniors worse off than they currently are.

While I voted for the bill that came out of the Senate, I think this conference report is far off from where we need to go. My colleague from Virginia, who just spoke, talked about the physician reimbursement rate and hospital reimbursement rate, for which I applied. I also point out that the reimbursement rate for Medicare patients that is still within this framework of a national average has Washington State at the very low end. In fact, I think we went from 41st in the Nation to 45th in the reimbursement rate. As a place where we want people to come and provide health care benefits, they are certainly not incentivized under this legislation to want to come to Washington when they can practice in other regions and make more money but this government has the failures of this bill far outweigh the strengths of the legislation.

I may come at this differently than my colleagues who want to, as I say, privatize Medicare. I certainly believe that in the Harvard School of Public Health did a study in June of 2002, they asked people: If you retired and you had a choice to get a benefit under the Medicare health insurance program or from a private plan, such as a PPO or HMO, which would you choose? And 63 percent said they wanted a program under Medicare. Only 19 percent said they wanted a plan under a private provider, a PPO or HMO organization. So I think the public is clear that they have said they trust Medicare.

In fact, I found great pleasure recently when the Seattle Post-Intelligencer characterized this debate, I think in an editorial. They had a description that was right on the spot:

Two constituents obviously are saying to each other, honey, see, the Republicans—what they promised is that we would get out of the faceless control of the Government bureaucrats on Medicare.

Unbeknownst to the couple, they are sitting in the faceless hands of insurance company executives. I think that is fundamentally what is wrong with this legislation, that while we have had a trusted system for many years and an increase in the cost of prescription drugs going from maybe 5 percent of your health care costs at the time Medicare was introduced to something like 25 percent of your health care costs, Medicare prescription drug benefits should just be part of basic care under Medicare. Instead, we are saying we are going to subsidize insurance companies to somehow provide a prescription drug benefit for you. I think what we are going to find is that it is going to have disastrous results.

There are a lot of things in this legislation about which I think people in the State of Washington are concerned. Obviously, this particular debate, as the New York Times called it today, is really a debate—I ask unanimous consent that this article be printed in the RECORD, entitled "Medicare Debate Turns to Pricing of Drug Benefits."

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

[From the New York Times, Nov. 24, 2003]

MEDICARE DEBATE TURNS TO PRICING OF DRUG BENEFITS

(From Robert Pear)

WASHINGTON, Nov. 23—With Congress poised for final action on a major Medicare bill this week, some of the fiercest debate is focused on a section of the bill that prohibits the government from negotiating lower drug prices for the 40 million people on Medicare. That provision epitomizes much of the bill, which relies on insurance companies and private health plans to manage the new drug benefit. They could negotiate with drug companies, but the government, with much greater purchasing power, would be forbidden to do so.

Supporters of the provision say it is necessary to prevent the government from imposing price controls that could stifle innovation in the pharmaceutical industry. Critics say the provision—first made in the Harvard School of Public Health did a study in June of 2002, they asked people: If you retired and you had a choice to get a benefit under the Medicare health insurance program or from a private plan, such as a PPO or HMO, which would you choose? And 63 percent said they wanted a program under Medicare. Only 19 percent said they wanted a plan under a private provider, a PPO or HMO organization. So I think the public is clear that they have said they trust Medicare.

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[From the New York Times, Nov. 24, 2003]
In the Senate, debate continued on Sunday, with Democrats asserting that the bill would severely undermine the traditional Medicare program. Senator Edward M. Kennedy, Democrat of Massachusetts, said Medicare would lose its strength if Congress wanted to give him the power to negotiate lower drug prices for Medicare drug plans and to negotiate on behalf of large groups of employees with private insurance.

Democrats acknowledged they did not have the votes to sustain a filibuster. But they said it was a matter of principle, and they intended to keep the Senate in session for as long as it took to force a showdown with the Senate Republican leadership, whose passage is a priority for President Bush.

Senator Dianne Feinstein of California, Ron Wyden of Oregon, and Kent Conrad of North Dakota, all Democrats, announced on Sunday that they would vote for the bill. Other Democratic senators who have endorsed the Medicare drug benefit plan include: John B. Breaux and Mary L. Landrieu of Louisiana, Blanche Lincoln of Arkansas and Ben Nighthorse Campbell of Colorado.

But Senator Don Nickles, Republican of Oklahoma, said he would vote against the $400 billion bill. "We are building a new expansion on a house that's teetering on a cliff," Mr. Nickles said. "We are saddling future generations with enormous liabilities."

No provision has been mentioned more often in Congressional debate than the section that prohibits the government from interfering in negotiations with drug companies. Democrats have repeatedly asserted that Medicare could provide more generous drug benefits if, like other big buyers, it took advantage of its market power to secure large discounts.

But many Republicans have expressed alarm at the possibility that federal officials might negotiate drug prices. The Medicare program, they say, dwarfs other purchasers, and the government is unlike other customers because it could give itself the power to set drug prices for all regular Medicare recipients. It sets the rates paid to doctors and hospitals for treating Medicare patients.

Under the bill, the government would subsidize a new type of insurance policy known as a prescription drug plan. "In order to promote competition," the bill says, the secretary of health and human services "may not interfere with the negotiations between drug manufacturers and pharmacies and prescription drug plan sponsors," or "require a particular formulation or institute a price structure for the reimbursement of drugs."

Tommy G. Thompson, the secretary of health and human services, said Sunday that if Congress wanted to give him the power to negotiate drug prices, it could do so next year. But "that's not a reason to oppose this Medicare bill," said Mr. Thompson, who negotiate with Bayer to obtain a lower price for the company's anthrax medicine, the antiviral Cipro, in 2001.

Representative John Allen, Democrat of Maine, said it struck him as absurd that "the government will not be able to negotiate lower prices for the drugs on which it plans to spend $1.4 trillion over the next 10 years."

"The bill will allow the pharmaceutical industry to continue charging America's seniors the highest prices in the world," Mr. Allen said.

Representative Peter A. DeFazio, Democrat of Oregon, said, "We could provide a much more meaningful benefit if we negotiated lower prices as other nations have done."

Representative Rahm Emanuel, Democrat of Illinois, said: "We could bring down big drug prices if we allowed the secretary of health and human services to negotiate on behalf of 40 million seniors. That is what Sam's Club does."

Sam's Club, a chain of warehouse stores that is a division of Wal-Mart, acts like a purchasing agent for its members, who can buy low-price goods.

Republicans say that health plans will be able to negotiate lower drug prices for Medicare drug plans and to negotiate on behalf of large groups of employees with private insurance. The Senate majority leader, Bill Frist, Republican of Tennessee, said: "We tend to use the words 'would act like a' in the previous sentence, because we think that competition through the private sector, through bulk purchasing and negotiation, is a more effective way to do things than government." The Medicare drug plans would be offered by state-licensed insurance companies. They, in turn, could hire pharmacy benefit managers like Express Scripts, Medco Health Solutions and AdvancePCS to negotiate with drug makers, issue discount cards and line up networks of pharmacies.

With Congress poised for final action on a major Medicare bill this week, some of the fiercest debate is focused on a section of the bill that prohibits the government from negotiating lower drug prices for the 40 million people on Medicare.

That particular article goes on to talk about the fact that we are switching over to insurance companies when we could have a benefit under Medicare and when Medicare could provide those cost savings as a big market.

Now, some people say: Gee, we don't want to set price controls because that will somehow artificially impact pharmaceutical companies. Pharmaceutical companies are not the people who need the financing and the access to capital. It is the biotech industry. Washington State happens to be home to many biotech companies. They need access to capital. It is one of the actual advantages of what we call economic competitiveness. The United States has in making pharmaceutical drugs; the fact that our access to the capital system allows these biotech companies to do years and years of research and then maybe 10 to 15 years later actually getting a drug produced. So they need access to the capital market.

Once those drugs are created, we need to do something about controlling the costs of those drugs. This section of the bill, agreeing to the New York Times article, says:

The provision epitomizes much of the bill, which relies on insurance companies and private health plans to manage the drug benefit. They could negotiate with drug companies, but the government, with much greater purchasing power, would be forbidden to do so.

I have great concerns about what is the basic hamstringing of this proposal as it relates to prescription drug benefits when the key opportunity before us would be to put this benefit under Medicare and capitalize on those savings.

Mr. President, that is why I had supported earlier legislation and find it very difficult to support this legislation. I am going to talk about why, because this is a particularly bad proposal. We are hampering ourselves from having other price controls in this legislation.

I agree with my colleagues on the other side of the aisle, as we start this new benefit, we must be cognizant of what kind of cost measures we can do to make sure we continue to provide this for our citizens. Before I get to that, I want to mention, I have great concerns about the retiree benefit under this legislation.

We have about 49,000 retirees in Washington State who might end up losing their coverage under this bill in the future. They have good, solid insurance coverage plans that I don't think are too generous, but under this proposal they might go away.

There is a certain percentage of the population under this proposal that actually will start paying a variety of premiums based on income, and while I believe this to be a good idea, really these people have been in this program—it has been a program based on a payroll tax into the Medicare trust fund—they have paid into the trust fund expecting to get reliable health insurance coverage back. Now they are going to be paying aggressively on their premiums.

About 51,000 residents in Washington State are going to wake up very much surprised to find that as a result of trying to provide a small package to the country, all of a sudden they are paying more on their Medicare Part B program. I know my phone is ringing very much against this legislation, but I don't know if those 51,000 people realize it is actually their premium rates that are going to go up.

Third, I think the legislation, as it relates to low-income seniors, is another area where we are leaving seniors basically worse off than they are today. When we vote to cover the 15 percent of the poverty level under Medicaid with a prescription drug benefit. The lowest income seniors in America are now going to have to pay a copayment. One of the reasons we created the program at 100 percent of poverty for people on Medicaid is so they can get access to prescription drugs because they couldn't afford a program to pay for prescription drugs. We are taking the poorest of our population and now saying that they have a copayment, too.

The asset test—I am sure some of my colleagues will talk about that—for
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those at 150 percent of the poverty level, which is basically incomes of about $13,000 per individual or $18,000 for a family of two, that the asset test is going to be $6,000 for the individual or $9,000 for a couple, that means after that, you are not going to benefit from the program in the same way.

Basically, you are limiting the opportunity for this section of low-income individuals to benefit from what would be a more profitable way of dealing with a prescription drug benefit and giving the insurance companies and the pharmacy benefit managers an incentive to make sure that they say yes to you if you qualify but limiting them on the asset test.

In Washington State, for those individuals below 150 percent of poverty level, they are going to be worse off under this legislation.

I hope this legislation is not a death knell for those who are living with cancer because according to the CBO estimates, this bill could basically cut $11.5 billion over the next 10 years for cancer beneficiaries because of the reimbursement rate for cancer care. Basically, we are making cuts to programs, and I have heard from facilities, oncologists, and cancer patients all across the State that they are very upset about the legislation and the reduction in reimbursements for cancer patients. This is another group of people who will be worse off if this legislation passes.

As I said, my primary concern with this legislation is it does very little to rein in the cost of prescription drugs. Talking to my constituents, yes, they would like to see a prescription drug benefit, but they don’t want to be worse off than they are today. Even without the benefit, they expect the Senate to do something about controlling prescription drug costs.

What have we done? I see my colleague from Michigan on the Senate floor. She had a great proposal that we offered with several of my colleagues to control the costs as it was put forth by pharmacy benefit managers. In traveling around Washington State, actually a summer ago, it became very clear to me that a great deal of purchasing of pharmaceutical drugs for individual plans were done by pharmacy benefit managers. They are the middlemen in this process, and pharmacists benefit managers often negotiate huge savings for various employee groups, companies, and organizations. Yet it is unclear what happens to the negotiated discount. Is it passed on to the patients the beneficiaries of that plan? Is it basically profit by the pharmacy benefit managers? What happens to that money? In fact, we have had instances in this country where pharmaceutical companies and the pharmacy benefit managers work together under the same entity. Thereby the middleman is basically helping to negotiate and sell a higher price for the pharmaceutical company.

Most of those companies have gotten out of line. An amendment would have prohibited pharmaceutical companies and benefit managers from working together under the same ownership. But a recent September 9, 2003 study by Loyola University Chicago Law School found that the cost to taxpayers for this inherent conflict of pharmacy benefit managers is in the range of somewhere between $14 billion and $29 billion over the next 10 years. I think that is quite considerable.

To me, the most disturbing charge of the prescription drug benefit is like putting Enron in charge of our energy policy. Thank God we were able to make some comment and statements that we are not going to have that energy policy of the free market without rules and transparency which basically drove up the cost of energy pricing. But that is what we have here because basically we are saying Government can’t do anything to control the prices. But that is what we should throw this into the private sector, and it is unclear what rules they are going to use to control the prices. The one amendment that was in this legislation saying that pharmacy benefit managers had to come clean about the drug benefits they negotiated with pharmaceutical companies, and what percentage of those dollars they were passing on to consumers—that got thrown out of the legislation.

So a key aspect of this bill, which would have said let’s provide transparency, let’s give money back to seniors, let’s make sure consumers are getting the savings that are being passed on by being in a big market and having market leverage—those things are gone.

I believe our Attorney General of the United States ought to investigate. I don’t see why the manufacturers of these drugs that are selling through a PBM, can’t list the top volume of 50 drugs they have sold and the difference between the prices they received at the pharmacy level and what discounts were realized. They don’t have to give all of their pricing information. They don’t have to overexpose what I think would be private corporate information that allows them to be competitive. But the Department of Justice ought to be able to investigate collusive activity that is ripping off seniors in America, when somebody negotiates huge discounts based on volume but then doesn’t pass those discounts on to consumers.

So, as I said, this is a key part of the legislation that was left out. I hope we will get to those limits on the premiums that drug-only plans can charge.

Seniors need a comprehensive benefit that covers their total prescription benefit needs. Why tease them with a program that we are somehow going to cover their prescription benefits and then not control the price, have it in the private sector, and then have the private sector dictate to them: Here is the very limited number of drugs that are going to be provided.

Forty percent of Washington State seniors enrolled in the prescription drug benefit under this program would fall into what is the donut hole. Easily some 122,000 people in my State could fall into the donut hole. Again, another percentage of the population that I don’t think are—yes you might not say they are better off. It depends on whether they have a drug benefit now. But they are certainly not going to get anything from this legislation and they are going to be far more confused about whether they qualify for a certain level.

Again, my colleagues, I am sure, have talked about the economic impact of this legislation. I would go back, saying we should start with a prescription drug benefit.

When my colleague, the Senator from Michigan, and I first came into this Congress, when we had a huge surplus, that was the time we should have put forth a prescription drug benefit that would have been a more comprehensive prescription drug benefit. But we didn’t do that.

So what my constituents are telling me, and these are even constituents
Nothing would please me more than to be able to stand on the floor this evening and say: We did it. We have put together a voluntary, comprehensive prescription drug benefit under Medicare for seniors and the disabled—although certainly they are very important people. They use the majority of the prescription drugs. But we know right now the explosion in prices of prescription drugs is driving the entire cost of the health care system.

When I talk to those who are in the auto industry, or when I talk to small businesses, when I talk to those who are in the furniture business in Michigan, or in retail sales or work in State government, I hear the same thing. Medicare is a part of that. Of which the bulk of increases in health care are a result of the explosion in prescription drug prices.

So this is an issue that affects everybody. As we look at this question under Medicare, this is also an issue that affects every person as well as every person who is paying for Medicare. So this is a big deal. It is important that we get this right. It is important that we be able, at the end of the day, to say we have strengthened one of the great American success stories called Medicare, and that we have put in place the competition and the accountability to bring prices down. This bill absolutely does not do that. It doesn’t do either one of those things.

First of all, it starts from the premise that seniors want something other than traditional Medicare. When we look at what seniors have said when they have had a choice, here is what they said. Eighty-nine percent of those seniors said they want the choice they want. When I hear folks talking about what they want in Medicare, they are not asking for more bureaucracy, or more insurance paperwork, or more insurance companies to choose from. They want to update Medicare for prescription drugs, that is all—just update Medicare for prescription drugs. Eighty-nine percent of the Medicare beneficiaries have already told us what they want to do. They want traditional Medicare.

This bill basically sets in place—some of it is immediate with prescription drug coverage where you have to choose from private insurance plans if they are in your area, and some of it is down the road a bit in 2010 when the entire evening of Medicare begins. In some areas, people will have a very different system that will attempt to move them into private insurance.

That is not what folks have said to me. People say we should do that because it costs less. Medicare is in trouble financially down the road. We need to do something to lower costs. When you look at this, Medicare costs about 2 percent and private HMOs cost 15 percent. So that can’t be the reason we are doing this. It costs more to go into private plans than it does with traditional Medicare.

For many of the reasons colleagues said on the floor, traditional Medicare has a very large insurance pool—those who are sick, those who are well, those who are older, those who are younger, all together—the bigger the pool, the bigger the risk pool, the lower the price.

It is not because it would cost less, because it doesn’t cost less; it will cost us more. It will cost taxpayers more. It costs more for services under the private sector than it does under traditional Medicare.

Why are we doing this? I think we are doing this for one reason: Unfortunately, the driving reason behind this legislation is that the pharmaceutical lobby has decided, instead of continuing to fight Medicare coverage and traditional Medicare prescription drug benefit as they have done for many years—they decided they don’t want to stop it anymore because it is too big an issue for people. It is a critical life-and-death issue in order to pay for your medicine.

That is not to say you got up today and decided to eat or get their medicine. That is not rhetoric; it is real. So they changed their approach and thought they couldn’t stop it anymore because it is too real for people: This is a real problem. Let us create a benefit that is done in a way that divides people up into private insurance plans and in a way that doesn’t allow Medicare to use all of its leverage to be able to lower prices.

So behind all of this, there are two things. There are those who really do believe it ought to be done in the private sector, that we ought to go back to private insurance. But you couple that with an industry that wants to make sure that: No matter what, we can’t lower their prices; let us make sure that no matter what, people have to pay the highest prices.

That is why there is no reimportation, which is really important in my State. The idea of having a local pharmacist in Michigan able to do business with a pharmacist in Canada, be able to bring prescription drugs back into the local pharmacy in Michigan at half the price, many of them made in the United States, they are safe, they are FDA approved, bring them back, and create a way to lower prices—they don’t want that. That is not in the bill. They do not want a strong provision to tighten patent loopholes so competitors can be able to come in and use the name of generic drugs. That is not in the bill.

We have a weakened version of that. Amazingly, as colleagues have said,
they were actually able to get language into the bill that says Medicare is prohibited from group purchasing on behalf of seniors and the disabled. It is amazing. That is just amazing. The private insurance companies can try to get that abolished, but everybody can try to get the best price. But Medicare on behalf of our seniors is prohibited from trying to get the best price.

That would only be in the bill for one reason; that is, because the industry has been successful in creating a whole new group of customers who will be forced to pay the highest possible price.

How do we know this? This is not just me talking. The Boston University School of Health has looked at this legislation and estimates there will be $139 billion in increased profits over the next 8 years for the world's most profitable industry. At $17 billion annually, this means about a 38 percent rise in drugmaker profits.

I am not talking about a fat roll for making a profit. I have a major pharmaceutical company in Michigan. They do wonderful research. I am very proud of them for doing this research. But we are talking about an industry that is already one of the most subsidized by taxpayers, because they do not make shoes, or chairs, or cars, they make lifesaving medicine. We want them to make it. We want them to do research.

So we help them pay for it. We give them the taxpayer protection so that they are protected from competition. We give them the ability to write off their research and write off their advertising. They get a lot of support and help. Why? Because we want to be able to afford the product.

At the end of the day, when, by the way, they are spending 2 1/2 times more on advertising and marketing and administration rather than research, which is a big concern of mine, but at end of day are seeing prices going down so people can afford them but efforts to actually protect prices and allow them to go up.

We are looking at about a 38 percent rise in drugmaker profits. Certainly any business would welcome that. But that is on the backs of American citizens. This is on the backs of American taxpayers who are paying the bill—American seniors who just want to know that they can count on Medicare, get treatment from their own doctor, live a healthy life, and visit grandkids and great-grandkids. They trust us to look beyond the 650 lobbyists, or however many there are, trying to get the best price. They trust us to look beyond the 650 lobbyists, or however many there are, trying to get the best price. They trust us to look beyond the 650 lobbyists, or however many there are, trying to get the best price. They trust us to look beyond the 650 lobbyists, or however many there are, trying to get the best price.

The last thing this does, there are 64 million low-income seniors and disabled who will lose access to the drugs they need. Many of them will actually pay more. How in the world does it make any sense that we would have a prescription drug benefit that has been described as helping our low-income seniors the most, but actually costs people more out of pocket, people who are currently on Medicaid, who find themselves under Medicare with a different system, a different asset test, different copays, and would actually pay more.

We should be focusing on and helping the people who really are choosing every day whether or not to eat or get their medicine or pay the electric bill. When we look at this whole picture, as much as I would love to say this is a great deal, this is a bad deal. My colleagues say this is a first step. There is an old saying: Beware of the first step. I think the first step is right off the cliff on this legislation for too many people.

In closing, there is one important piece in this bill that has strong if not unanimous bipartisan support that I wish we were passing separately this evening. That is the issue I have talked about a number of times: what is happening to our doctors, our hospitals, our home health agencies, nursing homes, and others who have been cut too much are cancer care providers. Those who care for our seniors and the disabled have seen resources cut.

That, in turn, is cutting access. We have known that cuts were coming now for the last 3 years, and instead of doing something about it sooner because our doctors and other providers desperately needed us to, it gets rolled into this legislation that is highly controversial. I regret that. I have offered separate legislation pulling out all of these provisions. I offered it on Saturday, and I asked unanimous consent we take it up immediately and pass it. It was objected to on the other side. I regret that, as well.

The reality is, in the middle of this bill I believe there are some very important providers being held hostage, folks I want to support, whom I have supported, and I will support in the future. Folks for whom I have fought, and unfortunately because of the fact that this is in the middle of this bill to unravel Medicare and hurt them in the long run and increase cuts in the long run for all of them, I am not going to be able to support this bill. However, I would like to record to reflect that our doctors and hospitals and others who have been cut too much are cancer care providers. They are still cut too much in this legislation. I am extremely upset that is the case.

But we do have in this bill provisions for rural hospitals, urban hospitals, and others that are desperately needed. I am at least pleased there are provisions there recognizing the desperate needs our providers feel. I am pleased when we look at the broad bill before the Senate that unravels Medicare, keeps prices high, causes people to lose their health insurance in the private sector, and causes the most vulnerable seniors to pay more, this is a bad deal. I am hopeful, still, that those listening this evening will call their Members before the vote that I believe is coming tomorrow morning. Tell the Members to go back to the drawing board. We can do better than this for people. I am still very hopeful this will be stopped and we will get back to the drawing board and get it right.

Mr. CONRAD. Mr. President, I want to thank Senator GRASSLEY and Senator BAUCUS for all of their work on this bill. Prescription drug coverage under Medicare is long overdue, and I am pleased that we are near to final passage on a drug benefit that will provide our seniors a cut-off that will help them in their needs. That is why we made it this far is in no small measure to the important work of Senators GRASSLEY and BAUCUS.
As we continue to debate the Medicare conference report, I want to make particular note of the efforts of Senators Baucus, Grassley and Murray to address the Medicare bias against self-injectable biologics and oral anti-cancer medications. Congress has not authorized coverage for certain drugs that are administered by injection or self-injection. These biases can mean that Medicare pays for treatments that are more costly and that require patients to travel long distances for treatment. Working together, we have pushed hard for paying of coverage of these drugs for an interim period, until the Part D drug benefit begins. This immediate coverage would make a real difference for thousands of seniors suffering from cancer as well as various chronic illnesses, such as rheumatoid arthritis and multiple sclerosis. 

While I am pleased that the Medicare conference includes measures to provide coverage of these medications over the next 2 years, I am disappointed that the funding for this policy was limited and the number of beneficiaries who will be allowed to benefit from this coverage was capped. Also, I am concerned that the Medicare conference report language does not accurately reflect the intent of the conference, which is clearly laid out in the statute of the conference report. I would like to ask my colleagues to comment further on this issue. 

Mrs. MURRAY. I just want to be sure to clarify that the conference report language was a mistake. It was a clerical error. If you look at the House-passed bill, it clearly includes all forms, both oral and injectable. By contrast, the conference report language clearly includes only oral forms of these drugs. I would like the record to reflect that.

Mr. BAUCUS. Mr. President, let me review current law. Under current law, the Medicare Board of Trustees oversees the financial operations of the Medicare Hospital Insurance—or HI—trust fund—Medicare Part A—and the Supplementary Medical Insurance—or SMI—trust fund—Medicare Part B. The Social Security Act requires Medicare’s trustees to submit reports to Congress annually by March 31. The Medicare Part B Trust Fund is composed of the beneficiaries’ medical expenses incurred in hospitals, skilled nursing facilities, hospices, and a portion of home health care services. Payroll taxes provide most HI trust fund revenues. Employers and employees each pay 1.45 percent of earnings. Self-employed workers pay 2.9 percent of net income. Other sources of HI revenue include: interest on trust fund investments, the federal income taxes on Social Security benefits received by nonresident alien individuals, and the Social Security taxes paid by employers and employees, which are combined with the taxes paid by self-employed individuals as contributions to the HI trust fund.

Mr. BAUCUS. Mr. President, let me review current law. Under current law, Medicare Part B pays for physician and other health care practitioner services, other medical and health services, including laboratory and other diagnostic tests, outpatient hospital services and other clinical services, and therapy and ambulance services. Durable medical equipment, and home health services not covered under Part A. SMI trust fund revenues come from beneficiary premiums to purchase Part B and general revenues. The Part B premium is set at an amount that aggregate premiums make up 25 percent of program costs. The monthly premium for 2003 is $58.70. General revenues make up the remaining 75 percent of Part B program funding.

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Mr. GRASSLEY. I thank the chairman for the clarification.

Mr. GRASSLEY. I thank my friend from Montana for that explanation. And as he and the Senators from Washington and North Dakota know, we have a demonstration program in this bill that covers, until the Part D drug benefit starts in 2006, self-injectable and oral anti-cancer drugs. This demonstration program is in the statutory language. That is good news. However, the report language is clearly in error and refers to an entirely different provision, not true.

Mr. BAUCUS. Mr. President, let me review current law. Under current law, Medicare Part B pays for physician and other health care practitioner services, other medical and health services, including laboratory and other diagnostic tests, outpatient hospital services and other clinical services, and therapy and ambulance services. Durable medical equipment, and home health services not covered under Part A. SMI trust fund revenues come from beneficiary premiums to purchase Part B and general revenues. The Part B premium is set at an amount that aggregate premiums make up 25 percent of program costs. The monthly premium for 2003 is $58.70. General revenues make up the remaining 75 percent of Part B program funding.

Mr. GRASSLEY. I thank the chairman for the clarification.

Mr. GRASSLEY. That is correct. Mr. CONRAD. Isn’t it true that the conference committee intended to provide $500 million above what Medicare would have expended absent this provision to cover self-injectable medications and oral anti-cancer therapies?

Mr. GRASSLEY. Yes. Mr. BAUCUS. I thank the chairman for the clarification.

Mr. CONRAD. I also thank the chairman for the clarification and, again, would like to thank both the chairman and Senator Baucus for their work on this important effort. I also strongly share their view that the rural health care provisions in the Medicare conference report are a real victory for not only our States, but for all of rural America.

Mr. MURRAY. I just want to be sure that we provide the greatest degree of relief for patients and their families. I was disappointed to learn of this error in the final report language, and it does undermine the entire negotiations for this provision. It certainly undermines the intent of the Conrad-Murray amendment adopted by the Senate during consideration of S. 1. I appreciate your working with me to rectify that error.

COST CONTAINMENT PROVISIONS

Mr. BACUS. Mr. President, let me take a few moments to provide some background on the cost containment provisions in the Medicare conference agreement.

A similar situation exists for oral anti-cancer medications. Coverage is available for oral anti-cancer drugs if they are also available in injectable form. But Medicare coverage is denied for anticancer therapies that are available only in injectable form. New injection therapies to treat cancer, as well as many that are in various stages of development and approval, are available only in oral form, and therefore are not covered under the Medicare program. Under current law, Medicare will cover certain drugs that are administered by injection or self-injection. These biases can mean that Medicare pays for treatments that are more costly and that require patients to travel long distances for treatment. Working together, we have pushed hard for paying of coverage of these drugs for an interim period, until the Part D drug benefit begins. This immediate coverage would make a real difference for thousands of seniors suffering from cancer as well as various chronic illnesses, such as rheumatoid arthritis and multiple sclerosis.

While I am pleased that the Medicare conference includes measures to provide coverage of these medications over the next 2 years, I am disappointed that the funding for this policy was limited and the number of beneficiaries who will be allowed to benefit from this coverage was capped. Also, I am concerned that the Medicare conference report language does not accurately reflect the intent of the conference, which is clearly laid out in the statute of the conference report. I would like to ask my colleagues to comment further on this issue.

Mrs. MURRAY. I also want to thank Senators Baucus and Grassley for their support of the Conrad-Murray language that would have eliminated this discrimination against self-injectable drugs. This amendment would reward companies who innovate their treatments to meet their patients’ needs, not Medicare reimbursement policies. Many of these patients suffer from rheumatoid arthritis and MS, two disabling conditions that can restrict mobility and make it very difficult to even get to a physician’s office. As my colleagues know, I have spent the last 4 years working to end this outrageous disincentive in Medicare reimbursement policies. 

Mr. BAUCUS. It is important to note that without Senator Murray’s efforts and leadership on this issue, we would not be here today. I also thank the Senator from North Dakota for all that he has done to realize this important benefit. And I thank both Senators, as well as the chairman, for working with me to level a Medicare reimbursement playing field that has long been biased against treatments and products. We have the most comprehensive rural health package in history in this bill, and I am proud of that.

With respect to self-injectable biologics and oral anti-cancer medications, let me cover some background. Under current law, Medicare will cover certain drugs that are administered “incident to physicians’ services” but self-injectable biologics which are complete replacements for physician administered minimum drugs are not covered by Medicare. In other words, if a doctor is required to inject the drug, you’re covered. If not, you’re out of luck.
in the preceding fiscal year from the general revenues and the percentage the Medicare general revenues bore to all other general revenue obligations of the Treasury that year. The bill would require this information for each year from the beginning of Medicare and for 10-year and 75-year projections. The bill would also require the report to compare the rate of growth of Medicare general revenue funding to the rate of growth in the gross domestic product. The bill require the Committee on Ways and Means Energy and Commerce to publish each report and post it on the Internet.

The Senate-passed bill was quite similar. Section 132 the Senate bill would require the trustees submit a report on the status of the combined two trust funds and the Prescription Drug Trust Account. The bill would require the report to include a statement of the amounts spent on benefits in the preceding fiscal year from general revenues and the percentage that the Medicare general revenues bore to all other general revenue obligations of the Treasury that year. The trustees would make this calculation separately for Medicare benefits and for administrative and other expenses. The bill would require this information for each year from the beginning of Medicare and for 10-year and 50-year projections. The bill would also require the report to compare the rate of growth of Medicare benefits and administrative costs to the rates of growth in the gross domestic product, health insurance costs in the public and private sectors, and other expenses as determined appropriate by the trustees.

Section 132 of the Senate bill would require the 2004 reports to include an analysis of the total amount of the unfunded obligations of Medicare. The analysis would compare long-term obligations, including the combined obligations of the HI and SMI trust funds, to the dedicated revenue sources for the program—not including transfers of general revenue.

With regard to Senate Procedures, the Senate bill would express the sense the Congress that the committees of jurisdiction would hold hearings on these reports.

Now let me turn to the conference agreement before us today. Under the conference agreement, the trustees would submit a statement of general revenue funding as a percentage of total Medicare spending contributions to the Medicare Program. The report would also include a historical overview of general revenue contributions and expenditures of general revenue contributions in 10 years, 50 years, and 75 years. The trustees would compare these trends in Medicare funding to growth rates for gross domestic product, private health costs, public health costs, and appropriate measures. And the trustees would report on the costs of the new drug benefit under Medicare Part D.

The report would also include an analysis Medicare that assumed that general revenue funding would exceed 45 percent. Starting 2005, the Medicare trustees would annually determine whether there was "excess general revenue funding" that is, "general revenue funding" exceeding 45 percent Medicare outlays during the current year or the next 6 years. If the trustees did so 2 years in a row, it would be a "Medicare fund warning." Under the conference agreement, "general revenue Medicare funding" would mean total Medicare outlays minus "dedicated sources." "Dedicated sources" would mean funding received outside the Federal Government, specifically the HI payroll tax, the income tax raised by the 1993 changes in taxation of OASDI benefits, amounts States pay to the Federal Government account on dual-eligible funds collected the "claw-back," premiums paid by Medicare, and gifts to Medicare. The conference agreement would not include interest fund assets in "dedicated sources," as Republicien conferere views the general fund as

Here is a plausible example of how the system would work. When Medicare's trustees issued their March 31, 2010, report, they would examine fiscal year 2006. If the trustees projected that in 2016, general revenues would exceed 45 percent Medicare funding, then 2010 would the "notice" year. The conference agreement says that Congress and the President should address the matter under existing rules and procedures.

When Medicare's trustees issued their March 31, 2011, report, they would examine fiscal years 2011 through 2017. If the trustees once again projected that in 2016, total Medicare would exceed 45 percent Medicare funding, then 2011 would be the "warning" year. The conference agreement would trigger actions in the next year, 2012, the third in this series of years.

Next, Presidential legislation: Section 802 of the conference agreement sets out the Presidential response. After 2 consecutive years of trustees' projections that Medicare would have excess general revenue funding, the President would propose legislation in response within 15 days after the President's first annual budget of the next session of Congress. The legislation could use any means to respond, including adding to the dedicated sources. But if the legislation in response did not include matter within the jurisdiction of the Finance Committee, then the Senate discharge procedures would not apply.

Now the statutory language says that the bill must "contain" matter within the Finance Committee's jurisdiction. The joint statement of managers, based on an earlier draft of the bill, said that that the matter was not limited to the Finance Committee's jurisdiction. The joint statement of managers is in error on this point. And of course, the statutory language controls.

Mr. FRIST. Will the Senator from Montana yield on that point?

Mr. BAUCUS. I yield to the majority leader.

Mr. FRIST. Mr. President, I thank the Senator. I thank the Senator from Montana and rise to say that the Senator with his remarks that the statement of managers is in error and that the statutory language must control. The result would be faithful to the intent of the conferences on this measure. Mr. BAUCUS. I thank the Senator.

Mr. President, returning to my discussion of the conference agreement's provisions, the conference agreement expresses a sense of Congress that the legislation that the President submits in response should eliminate excess general revenue Medicare funding for the 7-fiscal year period. If, during the year in which the trustees issue a warning, Congress enacts legislation that would eliminate excess general revenue Medicare funding for the 7-fiscal year period, then the President would not have to propose legislation in response to the latest warning.

The warning would also trigger certain House procedures. Section 803 of the conference agreement sets out the procedures for House consideration of the President's legislative proposal. Within 3 days of receiving the President's legislative proposal, the majority leader and minority leader of the House, or their designees, would introduce the proposal. The legislation would be referred to the appropriate committees which would be required to report Medicare funding legislation no later than June 30. The chairman of the Budget Committee would certify that the Medicare funding legislation would eliminate excess general revenue Medicare funding for the 7-fiscal year period.

Unless the House of Representatives has voted on final passage of the legislation by July 30, the conference agreement would provide fallback procedures. After 30 calendar days—and concurrently 5 legislative days—the introduction of the legislation, a motion to discharge any committee to which legislation has been referred would be in order under specified circumstances, and debate on the motion to discharge would be limited to one hour.
The conference agreement provides for floor consideration in the House of the discharged legislation by the Committee of the Whole no later than 3 legislative days after discharge.

Now let me turn to Senate procedures of the conference agreement sets out the procedures for the Senate consideration of the President’s legislative proposal. Within 3 days of receiving the President’s legislative proposal, the majority leader and minority leader of the Senate, or their designees, would introduce the proposal. The Presiding Officer would refer the legislation to the Finance Committee. If the Finance Committee failed to report the legislation—with or without amendment—by June 30, then a single motion to discharge the committee of any Medicare funding legislation would be in order. That motion to discharge would be subject to 2 hours of debate. If Congress enacted legislation that the Budget Committee chairman estimated that would impact general revenue, then the motion to discharge would not be available for the rest of that session of Congress.

Once legislation got to the calendar, normal Senate rules would govern its consideration. Motion to proceed to the bill would be fully debatable. Consideration. The motion to proceed to the Medicare funding bill and amendments would be in order. That motion to proceed with reauthorization for Federal railroad safety programs. The bill would be considered with a calendar. In order to clarify the in-revenue. The Federal Government, recognizing that these personnel perform important functions, has taken steps to extend this authority across States borders, as many North American railroads are extensive and traverse State boundaries.

In particular, I thank the chairman for his commitment to work with me to address a problem that has been brought to my attention regarding the use of railroad police officers. These railroad employees, who are commissioned by States, are given certain police powers for protecting railroad employees, railroad property, and the general public. The Federal Government, recognizing that these personnel perform important functions, has taken steps to extend this authority across States borders, as many North American railroads are extensive and traverse State boundaries.

In this reauthorization, we look to extend this authority even further, to allow railroad officers to conduct law enforcement activities with respect to railroads other than the rail police officer’s employing railroad, as our national system of rail transportation is an interconnected system. While I welcome this extension, as these officers perform an important security function to protect our rail system, I feel we should take a closer look at a related problem—the potential for abuse of this police power. As a special case under Medicare Part D, President authorities, rail police officers answer to private sector employers and are not directly accountable to the public like most law enforcement officers. I am mindful that this could present potential for abuse—under the authority of State law enforcement officers, these rail police officers could engage in activities unrelated to law enforcement, such as enforcing railroad company policies or even labor agreements.

Given the potential for abuse, I was prepared to offer an amendment to the bill during the committee’s executive session to address this problem. However, the chairman has graciously committed to working with me to resolve the issue, and I look forward to working with him.

Mr. MCCAIN. Mr. President, I appreciate the concerns of the Senator from New Jersey and have been working with him to address this issue. It is a complex matter, and one that merits further examination. As such, the ranking member of the committee, Senator HOLLINGS, and I are writing to the Inspector General of the United States Department of Transportation to apprise them of the additional duties performed by rail police officers that are not related to law enforcement. We are interested in learning whether such duties are appropriate, and how potential abuses can be avoided. I am confident that the Inspector General’s assessment and recommendations will be useful in helping us craft a bipartisan legislative solution should one be necessary.

Mr. HOLLINGS. I also thank the chairman and the Senator from New Jersey for their joint and important work.

Mr. BAUCUS. Mr. President, I rise today to engage the distinguished chairman in a colloquy regarding three sections of the conference report, 1860D–2(d)(1)(B) and 1860D–15(b)(3) as they relate to the new Part D prescription drug benefit, and 1860D–31(e)(1)(A)(i), in order to clarify the intent with respect to the prices paid for prescription drugs, particularly the concept of negotiated price.

Mr. GRASSLEY. I thank the Senator from Montana and my Democratic colleague, the Senator from New Jersey, for seeking to clarify this issue. I would be pleased to engage in a colloquy.

Mr. BAUCUS. As I understand the conference report, how the bill defines negotiated price is critical to Medicare beneficiaries, prescription drug plans, and Medicare Advantage plans offering prescription drug coverage. More specifically, I understand in section 1860D–2(d)(1)(B) that with respect to drugs purchased under Medicare Part D, the intent is for negotiated prices to include “any dispensing fees for such drugs.” I also understand in section 1860D–15(b)(3) that “gross covered prescription drug costs includes“costs directly related to dispensing.” The issue for me then is how the conference report intends the Secretary to operationalize the concept of dispensing costs especially with respect to...
Medicare Advantage plans that Medicare members do not fill prescriptions at retail pharmacies. I am referring to plans that operate their own pharmacies and take possession of prescription drugs directly from manufacturers, whereas under ACA, these plans, is it the intent of the conference that dispensing costs include all reasonable costs related to plan activities needed to deliver prescription drugs to their Medicare members, including the costs of delivering this benefit? For example, this would include salaries for pharmacists, and facility- and equipment-related costs.

Mr. GRASSLEY. Yes, the distinguished Senator is correct. The intent of the conference report is to recognize that different Medicare Advantage plans are organized in different ways to deliver the new Part D prescription drug benefit and the benefits of the Medicare-endorsed drug discount card.

I understand that Medicare members of some Medicare Advantage plans fill their prescription in retail pharmacies and others in a plans' own pharmacies. For Medicare beneficiaries who will be using retail pharmacies to fill their prescriptions, the conference report indicates that the prices negotiated between the prescription drug plan or the Medicare Advantage plan plus dispensing-related costs include the pharmacies' reasonable over-head costs.

Similarly, it is the conferees' intention that Medicare Advantage plans whose Medicare members do not use retail pharmacies, but instead fill their prescriptions at the plan's pharmacies be reimbursed for the costs they incur in delivering the benefit when reimbursed for the same types of costs.

SECTION 507

Mr. BREAUX. I coauthored Section 507 of H.R. 1, the Prescription Drug and Medicare Improvement Act of 2003, which was the current law including physician self-referrals. I would like to engage in a colloquy with my colleague, Mr. GRASSLEY, in relation to the exception language contained in this provision.

I would like to clarify congressional intent with regard to the “exception” language included in S. 1, as this language may ultimately be included in any compromise between the two bills. I would like to discuss the extent to which the Senate would have discretion to exempt a hospital based on the factors identified in the language. The language in the conference agreement states that, for the purpose of determining whether a hospital qualifies as under development and, therefore exempt from the self-referral limitation, the Secretary shall consider—

1) whether architectural plans have been completed, and necessary approvals have been received, zoning requirements have been met, and necessary approvals from appropriate State agencies have been received; and

2) whether the Secretary determines would indicate whether a hospital is under development as of such date.

It was my intent in crafting this language that the factors outlined would serve as an illustrative guide to the Secretary. The Secretary “shall consider” these factors, but will not be required to see that each and every factor has been considered. For example, in my understanding, that the Secretary would have discretion to make a reasonable determination of whether a specialty hospital is “under development”.

Mr. GRASSLEY. Yes, I believe you are correct in saying that the Secretary could choose to consider these factors, but would not be limited to or bound by those factors. The language states that the Secretary “shall consider,” which implies that the Secretary shall consider these factors, but that he or she should use the factors to make a reasonable decision as to whether a specialty hospital was “under development” as of a certain date.

Mr. BREAUX. Is it your understanding that a specialty hospital that has, as of November 18, 2003, met zoning requirements, received approval from the local planning board, and received partial funding, but has not yet completed all architectural plans would qualify as “under development”?

Mr. GRASSLEY. Yes, it is my understanding that the Secretary would have discretion to determine to what extent the hospital was under development as of November 18, 2003. If the Secretary found that the hospital was "under development" despite not having completed all architectural plans, the Secretary could exempt that specialty hospital from the 18-month self-referral limitation.

Mr. BREAUX. Similarly, is it your understanding that a specialty hospital that has completed or substantially completed architectural plans but has not yet received full funding would also qualify for the exception?

Mr. GRASSLEY. Yes, Mr. Breaux. The Secretary would have discretion to exempt a hospital that had completed architectural plans and initiated funding and, in making this determination, would consider the extent to which the other enumerated factors had been completed. It is my understanding that the language included in H.R. 1 is meant to provide guidance to the Secretary, and that the Secretary will ultimately determine to what extent the factors have been completed. If the Secretary found that the hospital was "under development" as of November 18, 2003.

Mr. BREAUX. I thank my distinguished colleague for engaging in the colloquy.

RETAIL PHARMACIES AND COMMUNITY PHARMACISTS

Mr. ENZI. Mr. President, I rise today to engage the distinguished chairman of the Finance Committee, Senator GRASSLEY, in a colloquy regarding benefits that Medicare beneficiaries may receive through retail pharmacies and community pharmacists.

Section 1560D—4 of the conference report to accompany the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 states that sponsors of Medicare drug plans or organizations that offer Medicare Advantage plans shall permit plan enrollees to receive benefits through a pharmacy other than a mail-order pharmacy. The conference report states that such enrollees would pay any additional charge.

Senator from Wyoming is correct in noting that the conference report permits plans to set a different charge to the beneficiary for a mail-order prescription versus a retail prescription. However, it is my expectation that any differential in charge be reasonable and based on the actual cost of delivering the service. I would be concerned if differences in charges were used as a method of steering seniors and the disabled to mail order pharmacies.

I know that Chairman GRASSLEY and I both agree that since seniors trust their local pharmacists, they should be allowed to keep those relationships in place.

Mr. GRASSLEY. Mr. President, I say to my colleague from Wyoming that Medicare Advantage plans and Medicare Advantage organizations should not force seniors or the disabled to choose a mail-order house when they would prefer to patronize their local community pharmacy.

The Senator from Wyoming is correct in noting that the conference report permits plans to set a different charge to the beneficiary for a mail-order prescription versus a retail prescription. However, it is my expectation that any differential in charge be reasonable and based on the actual cost of delivering the service in or through the setting in which it is provided. I also would expect that the Secretary of Health and Human Services would disapprove of any plan that would impose a differential charge that was intended primarily to steer Medicare beneficiaries to mail-order pharmacies versus retail pharmacies.
Mr. ENZI. I thank the distinguished chairman for this clarification.

Mr. INOUYE. Mr. President, I have voted today to oppose the termination of debate on the Medicare Conference Report because I have carefully analyzed the report and come to the conclusion that far from being a bipartisan compromise on prescription drug benefits, the report is nothing short of an attempt to compromise the integrity of the Medicare and Medicaid system as we know it.

When it comes to health care in America, there are many parties in interest—providers, patients, care facilities, and pharmaceutical suppliers, to name a few. These groups have interests that may, at times, be in conflict, but I believe one overwhelming interest unites them all: providing the American public with the health care services and treatment that it needs. Regrettably, I find that the report we have been asked to consider has abandoned the unifying principle.

Worse than abandoning our commitment to the health of our Nation, when viewed as a whole, the report strikes at the foundation of the Medicare and Medicaid systems. Rather than buttressing the American health care system for our senior citizens and disabled persons, the report actually sows the seeds of its demise by undermining its ability to provide a prescription drug benefit, subsidizing competing private health plans, and increasing Medicare premiums without increasing the benefits provided.

The overwhelming drive to reconsider the Medicare and Medicaid systems came from listening to our constituents and their frustration with the ever-increasing cost of the medicines they needed. From blood thinners, to antibiotics, to state-of-the-art pharmaceuticals for cancer and HIV/AIDS, the cry for help was clear: the cost of prescription drugs was breaking the backs of the Americans who were already below the poverty level. Just the opposite, it is a way of increasing the Medicare costs that may, at times, be in conflict, which represent a huge win for pharmaceutical companies, the big drug companies, the VA.

The report would also provide a $12 billion subsidy to private Health Maintenance Organizations and Preferred Provider Organizations, and a $12 billion subsidy to PPOs. With a massive subsidy such as the VA.

If the Federal Government were to provide a prescription drug benefit for all Medicare recipients, the costs to American citizens would be substantial. The report would also provide a $12 billion subsidy to private Health Maintenance Organizations and Preferred Provider Organizations. With a massive subsidy such as this, there will be no question but that HMOs and PPOs will have a competitive edge over Medicare because they will receive more money per plan participant than Medicare will, and with money transferred to private insurers will be able to provide more benefits.

Mr. SCHUMER. Mr. President, our seniors deserve a comprehensive, meaningful drug benefit under Medicare—it’s something that I, like so many of my colleagues, have been fighting for years. The world of health care has changed, and Medicare should be updated to give seniors the services and care they need. I voted for this bill when it first came to the Senate because I thought it was a good start, and I hoped we could build on it in conference. Unfortunately, now that I see the result, I have to say this is not good enough for New York’s seniors—in fact, the bad parts outweigh the good.

The bill contains some good things—it provides a good benefit for seniors who have low incomes or very high drug costs who have no other drug coverage. But for the average middle class senior who is already moderate drug costs, the benefit is much too small.

In fact, the way this benefit is structured, hundreds of thousands of New Yorkers who currently have coverage may actually end up worse off than they are today—and that doesn’t sound like a benefit to me.

When I voted for the bill the first time around, I said that if it got any weaker, got any closer to the House version, I could not, in good conscience, support it. And, unfortunately, that seems to be what has happened here.

Other than the generic drug provisions—which represent a huge win for consumers across the board—It seems to me that the choice was between seniors and the big drug companies, the big drug companies have won.

Of all the bad things in this bill, the thing that angers me the most is that Congress has squandered away the single best weapon we have against rising drug costs by forbidding Medicare from using its buying power to negotiate lower drug prices with the drug companies.

At a time of rising budget deficits and escalating costs, it really makes you wonder why the Congress would go out of its way to forbid the Federal Government from using its buying power to get prices like we do through the VA.

If the Federal Government leveraged its full buying power under Medicare, we might not have a doughnut hole in this benefit at all.

The impact of this reckless prohibition is borne out by an independent study that shows that the drug companies will earn windfall profits of $139 billion over the next eight years alone from this bill.
This bill not only ensures we will be paying the highest possible price for drugs in this country, but it also guts any chance at reimportation—guaranteeing the drug companies a captive audience.

Is that the Republicans’ idea of cost containment?

What this bill does is ensure that the government is gouged by the drug companies while putting a huge bulls-eye on the Medicare program. The prohibition on negotiating, and artificial “cost containment” mechanisms in this bill will simply help the opponents of Medicare justify shifting more and more costs onto the backs of seniors.

Under the drug benefit before the Senate today, the average middle class senior could still be saddled with up to 80 percent of their drug costs. And almost 30 percent of beneficiaries would actually pay more for this Medicare drug benefit than they would be getting back in drug coverage. What kind of relief is that?

So this bill represents a paltry benefit—or no benefit at all—for most people who currently have no drug coverage. I had hoped that the bill would—at the very least—help provide a down payment for—and one-third of New Yorkers who currently have no coverage, but I don’t think it even does that.

In fact, there is a very good chance this benefit will actually jeopardize access to affordable drugs for New Yorkers who currently have good coverage. Of the 2.7 million Medicare beneficiaries in New York State, 989,000 have prescription drug coverage from their former employers; 329,000 are enrolled in the state’s pharmaceutical program—known as EPIC; and about 537,000 are covered under New York’s Medicaid program.

First, let’s look at the EPIC program. Right now, EPIC is available to individuals with incomes less than $35,000 and couples with incomes less than $50,000. People in EPIC currently have access to nearly any drug their doctors prescribe, and can go to virtually any pharmacy in the state to get their prescriptions filled.

I fought to get strong language in the Senate version of the Medicare bill that would have provided these New Yorkers with a benefit better than the one they get through EPIC. The Senate would have provided New York State a subsidy equal to about $375 million per year to help it continue the EPIC and even expand it to provide a more generous benefit, to cover the disabled, which the State currently does not do, and to enroll even more people.

The watered-down compromise in the conference report leaves far too many questions unanswered.

Under the bill, if the State wants to use any of the new Federal investment in Medicare, it has to force EPIC seniors to go and enroll in a Medicare private plan and the State legislature will have to go back to the drawing board and restructure the entire EPIC program to coordinate with the Medicare plans.

The end result will be a program so laden with red tape that it is a virtual certainty that seniors fall through the cracks and lose coverage. It will be an administrative nightmare for the State to implement.

I have yet to hear one compelling argument for how the bill before the Senate will improve EPIC program. The State can’t even tell me what will happen to EPIC and the 329,000 seniors who depend on it if this Medicare bill passes.

Even more shocking is that the bill grants the private Medicare plans a say in how generous any additional state coverage can be. The way I read it, under the new scheme, the Medicare plans will be able to limit which drugs an enrollee has access to and limit pharmacies they can go to—no such restrictions currently exist for EPIC enrollees. In short, when it comes to EPIC, many seniors may be worse off with the bill than without it.

One of the concerns I have about this bill is that it simply doesn’t do enough to protect retirees who have good employer-sponsored coverage.

The conference made some progress toward reducing the employer drop rate by giving employers a tax break worth an additional $18 billion. However, to truly protect retirees from losing coverage would cost about $55 billion.

Even with the change made in conference, an estimated 215,000 New Yorkers will likely lose their retiree coverage if this bill becomes law, and many others may see their options narrowed. That’s simply too big a risk for me.

In addition, starting in 2005, all Medicare beneficiaries would be saddled with higher deductibles for doctor visits. Under the bill, Medicare premium would no longer be universal, but higher for about 15 percent of New Yorkers—those with incomes of $80,000 and up—a provision which disproportionately affects states like New York.

In addition, over 500,000 Medicare beneficiaries in New York —living in Rochester, Buffalo, Glens Falls and the Capital Region—may be selected for the premium support demonstration program which would provide seniors with a false choice of entering a private plan or being forced to pay more for their traditional Medicare.

As I have said, the bill does provide a good benefit for low-income seniors and seniors with very high drug costs who don’t have access to any other drug coverage. However, the new assets step forward for all seniors, consumers, and purchasers of prescription drugs—is the extraordinary victory we have achieved in the face of the unprecedented influence of the big pharmaceutical companies: generic drugs.

The generic drug provisions which Senators GREGG, KENNEDY, McCaIN and I have been fighting for over the past few years—and which passed the Senate by a vote of 94–1—represent a huge step forward for all seniors, consumers, and purchasers of prescription drugs.

The provisions close loopholes in the law and end the abusive practices in the pharmaceutical industry which have kept lower-priced generics off the market and cost consumers billions of dollars.
The Gregg-Schumer amendments to the Hatch-Waxman Act, would put an end to the practice of brand companies listing frivolous patents for the sole purpose of automatically delaying generic approval. It would also ensure that the 30-month stay of generic approval, and only on patents listed at the FDA before a generic application is filed. This way, the 30-month stay of generic approval before a generic application is filed. The way the provision works, if an applicant has to go to market within 75 days or it forfeits its right to the exclusivity.

First, the Gregg-Schumer provisions would limit brand drug companies to a single 30-month stay of generic approval, and only on patents listed at the FDA before a generic application is filed. This way, the 30-month stay—only one at all—will run concurrent with FDA approval of the generic application and minimize delay.

Second, key to ensuring that patent issues are resolved in a timely way, the provisions clarify that a generic applicant has a right to seek a declaratory judgment that its product does not infringe. If a patent is invalid, and direct courts that they must hear these declaratory judgment cases to the maximum extent permitted by the Constitution.

With the removal of the automatic 30-month stay, if the generic company did not have a clear right to seek resolution of potential patent disputes on its own, the brand company could simply file a new patent and sit back and wait—leaving the generic at risk of being sued and having to pay triple the brand's lost profits if it does decide to enter the market. This clarification of the courts' jurisdiction will have an immediate effect on both pending and future declaratory judgment actions brought by generic applicants.

Third, the provisions enforce the patent listing requirements at the FDA by allowing a generic applicant, when it has been sued for patent infringement, to file a counterclaim to have the brand company delist the patent or correct the patent information in FDA's Orange Book.

Fourth, the generic provisions re-vamp the 180-day exclusivity incentive provided in the Hatch-Waxman Act. Under the act, the first generic drug company to challenge a patent on a brand drug has the exclusive right to market its drug for 6 months before any other generic can compete. This feature encourages generic applicants to challenge weak patents and brings consumers much quicker access to affordable generic drugs.

However, at times, brand and generic companies have abused this exclusivity period—both through collusive agreements and use of other tactics that allow the provision to act as a bottleneck to generic competition. The Gregg-Schumer provisions end this abuse because the generic company forfeits its exclusivity if it doesn't go to market in a timely manner.

The provision works, if another generic applicant has resolved patent disputes on the patents which earned the first to file its exclusivity—either through a court decision, settlement, dismissal because the brand company says it does not intend to sue, or withdrawal of the patent by the brand company—the first generic applicant has to go to market within 75 days or it forfeits its right to the exclusivity.

If it forfeits, then the exclusivity is lost and any other generic applicant that is ready to be approved and go to market can go. Either way, the provisions ensure that consumers have access to a low-cost generic as soon as possible.

I am very pleased that the conferences preserved these important, pro-consumer cost containment provisions. Indeed, they are the only part of this bill where consumers, seniors, and taxpayers prevail over the big drug companies.

In closing, I had truly hoped this Congress would craft and pass a meaningful Medicare drug bill that addresses one—those with protected beneficiaries who have access to good coverage through other programs and which would have provided real relief to seniors with no other choice.

While I agree with good provisions, the package before us does neither. I think we can do better, and we owe it to the 40 million seniors in this nation who have waited decades for drug coverage under Medicare to do better than this.

Mr. ROCKEFELLER. Mr. President, on July 30, 1965, President Lyndon B. Johnson stood with President Harry Truman and, together, they delivered the Medicare program. They proudly addressed the American people as President Johnson proclaimed, "No longer will older Americans be denied the healing miracle of modern medicine. No longer will illness crush and destroy the savings that they have so carefully put away over a lifetime so that they might enjoy dignity in their later years." Today, those words still move me and yet, if I am to be honest, they also haunt me as we consider the future. This bill fails on all counts.

West Virginians and many of my colleagues know I have been working on Medicare for 20 years. I sat on the Medicare Commission for a year during which we debated the best way to improve Medicare. Before that, I chaired the U.S. Bipartisan Commission on Comprehensive Health Care, which discussed ways to address the problems of the uninsured and the need for long-term care reform in this country.

Today, I am the ranking member of the health subcommittee of the Senate Finance Committee. I was a member of the conference committee on this bill—but in name only, not in practice. Nevertheless, my goal has always been, and continues to be, improving Medicare for the future. This bill is a tool to force seniors to leave the traditional Medicare program they know and trust in order to obtain the drug benefit they need and deserve.

Many people have said that this plan is voluntary and, therefore, if a senior chooses to stay in traditional Medicare and get a drug benefit, he or she can do so. This legislation does not guarantee that in any way. Under this legislation, seniors will have two different options for receiving a drug benefit. The first option is to stay in traditional Medicare and get a drug benefit, he or she can do so. This legislation does not guarantee that in any way. Under this legislation, seniors will have two different options for receiving a drug benefit. The first option is to stay in traditional Medicare and get a drug benefit, he or she can do so. This legislation does not guarantee that in any way. Under this legislation, seniors will have two different options for receiving a drug benefit. The first option is to stay in traditional Medicare for their doctor and hospital services and enroll in a "drug-only plan" to receive their drugs. The second option is to give up traditional Medicare and enroll in an HMO or PPO for all of their health costs, eliminates your Medicare coverage for 2.7 million retirees; prevents efforts to keep drug costs down; and effectively prohibits seniors from importing cheaper drugs from Canada.

I recognize that this bill commits $40 billion to a Medicare prescription drug benefit and truly helps some low-income seniors who are without coverage today, and I am glad that it gives a critical boost to rural hospitals and doctors. But the fine print matters and will have very dangerous consequences for how much seniors have to pay for their Medicare benefit, whether this drug benefit really serves seniors, and whether we are strengthening or weakening Medicare for the future. I have always said that a Medicare prescription drug bill must be voluntary, affordable and accessible to all Medicare beneficiaries; must truly help with the high cost of prescription drugs; and must strengthen the Medicare program for the future. This bill fails on all counts.
which the Administrator of CMS said does not exist in nature and would probably not work in practice. The former head of the Health Insurance Association of America said that drug-only plans are like insuring against haircuts. There is no limit on whether these plans will emerge, but let’s say for a moment that they do. Well, at least seniors should be assured that they can remain in traditional Medicare and get a prescription drug benefit. They will be forced to enroll in an HMO in order to get a drug benefit and they will have no choice.

At the same time, private insurance plans will be assured even greater profits through a $12 billion “slush fund” created by this legislation. Proponents argue that this “slush fund” is necessary to bring HMOs into rural areas. The fact is that this additional funding is necessary because HMOs have overwhelming administrative costs. To the extent that they provide better care they will be priced out of continuing to provide it to the HMOs.

Again, to be fair, this bill has some provisions, including those affecting physician services and rural hospitals that will be helpful to my home State of West Virginia. If you are a county in particular, I can understand that good care is critical to good health, and that we must adequately reimburse Medicare providers for that good care.

However, despite this, I have grave concerns about the compromise produced by the Conference Committee charged with reconciling differences between the House- and Senate-passed Medicare reform bills. I was on the conference committee. I understand the arguments on both sides. And now, more than ever, I believe that the Congress needs to take action. Their seemingly endless discussions on our seniors and the administration’s inactivity thus far have only served to delay the day these seniors will lose their health care coverage simply because of the enactment of this bill. I think that is not what we want.

Most disturbing, 45,000 “dual eligible” beneficiaries will pay more for every prescription drug they receive under this legislation. Dual eligibles are seniors who qualify for Medicaid by virtue of their income. They currently receive drug coverage under Medicaid. In my State of West Virginia, these seniors pay between $0.50 and $2.50 per prescription depending on the total cost of the drug. Under this legislation, they could be required to pay twice that much. I want to be clear on this point because I was among those insisting that the dual eligibles be included under the Medicare benefit and not left in Medicaid. I believe this conference report does the right thing by including these seniors in the Medicare benefit. However, this legislation precludes States from “wrapping around” Medicare. In other words, States will add $2,800 coverage for every prescription drug they receive under this legislation. Dual eligibles are seniors who qualify for Medicaid by virtue of their income. They currently receive drug coverage under Medicaid. In my State of West Virginia, these seniors pay between $0.50 and $2.50 per prescription depending on the total cost of the drug. Under this legislation, they could be required to pay twice that much. I want to be clear on this point because I was among those insisting that the dual eligibles be included under the Medicare benefit and not left in Medicaid. I believe this conference report does the right thing by including these seniors in the Medicare benefit. However, this legislation precludes States from “wrapping around” Medicare. In other words, States will add $2,800 coverage for every prescription drug they receive under this legislation.

For example, Medicaid covers long-term care, but Medicare does not. So, for those seniors who are also eligible for Medicaid, the Federal Government provides matching dollars to states to pay the difference between what they receive under Medicaid and what they receive under Medicare. This conference report completely twists that concept of protecting our poorest seniors against increased costs in an unprecedented way. This arrangement represents a fundamental change in the relationship between Medicare and Medicaid. Many predict that the individuals affected will choose to forgo the prescription drugs that they need rather than try to pay what they cannot afford.

In my judgment, this bill represents the greatest threat to the Medicare program since its enactment. While numerous opportunities existed to strengthen it, they were ignored. Instead of devoting $12 billion to closing the $2,800 coverage gap, this conference report gives it to HMOs. Instead of protecting the rights of our seniors to stay in traditional Medicare and get a prescription drug benefit, this bill protects the rights of the private plans to charge any premium they want. Instead of sharing retiree coverage for the two to three million beneficiaries across the United States who will lose drug coverage as a result of this bill, this bill includes tax shelters that threaten to undermine the entire employer-based system. This bill is a give-away to special interests, compiled in the dead of night, under wraps. It is shameful. Public policy, like life, is a series of choices and it is our choices that will shape the lives of our seniors.

While I have painted a bleak picture, I strongly believe that we can avoid disaster. We can do so by putting this bill aside and coming back to the table with a proposal that protects seniors and preserves the long-term viability of what is a truly great program. We can take into account the seniors who won’t benefit from the low-income provisions in the bill. We can protect retirees, and we can implement positive reforms that are productive, not destructive, confusing, or manipulative. It is not too late. It is not too late. I urge my colleagues to reject this bill and to immediately go back to work for the kind of Medicare drug benefit seniors deserve.

Mr. COLEMAN. Mr. President, we stand here today at a historic moment in this country as we begin consideration of the Medicare prescription drug bill. This is a triumph not for a party or a President but for America’s seniors and their families. This is an incredibly hopeful day for all Americans who long for a national government that can get things done for people.

I campaigned on a promise to get things done—deliver to the American people what they need to live better lives and what they are looking to Congress to accomplish to make America a stronger country. Prescription drugs, energy, and health care act were all at the top of the list of issues that most Americans were looking for Congress to take action. Their seemingly simple request was for us here in Washington to put politics aside and do what’s right for the American public.

I am proud to say we are seeing that happen with this Medicare bill. This is a bipartisan effort that, although not...
perfect, makes a good start at addressing the needs of Minnesota's seniors and health care providers as well as those across this country.

This is the largest and most comprehensive rural health care improvement ever considered by this body. Last year, as I campaigned across Minnesota and spent many hours talking to our rural health care providers, it was apparent to me that most of our hospitals and doctors had given up hope for fair Medicare reimbursement.

Thanks to the strong leadership of Chairman Grassley, we have a bill before us that has $26 billion—or $2.6 billion each year for 10 years—for rural providers, something that one short year ago seemed nearly impossible.

Quality rural health care is one of the foundations of our rural communities—this isn't simply about making sure our rural hospitals are adequately reimbursed. This is about preserving a way of life for America.

Without rural hospitals and physicians, it is tough to raise a family and hard to attract new businesses to rural communities. Without access to healthcare, many of our out-state towns simply don't exist.

This bill seeks to eliminate many of the disparities in reimbursement rates that have existed too long and crippled the rural health system. Hospitals, physicians, and ambulances, as well as all of those health professionals who work within these systems will not see Medicare reimbursement rates that better reflect the realities of the costs of providing care in rural communities.

As I look back on the accomplishments of the first session of the 108th Congress, addressing the rural health care payment disparity under the Medicare program will undoubtedly be one of the most meaningful achievements to Minnesotans. Many said it couldn't be done and today I have the great opportunity to come to the Senate floor and tell my constituents that we will be voting on a bill that takes a major step in providing equality with urban payments that will significantly improve their ability to provide quality care.

Minnesota has a long tradition of providing high quality care, but many of our seniors have not had access to this care because of the lack of prescription drug coverage under the Medicare program.

Again, I have the great honor coming here and announcing to the seniors back home that help is on the way.

Beginning in 2006, the 677,400 Medicare beneficiaries in Minnesota will have access to drug coverage for the first time in the history of the Medicare program, and 187,356 of these people would not otherwise have access to drug coverage.

The mean access to new drug therapies that could never be imagined in 1965 when Medicare was created. It is time to bring this program in line with current medical practices.

A 1965 Cadillac is a classic. A 1965 health care benefit is a travesty. This bill will provide prescription drug coverage for 41 million people in this country—41 million people! Is this the perfect benefit? I'm not sure what the one that looks like. But I do know that the average senior's drug costs will be cut roughly in half under this proposal. That is meaningful assistance for all seniors and the bill provides even more assistance for those low-income seniors who need to shoulder even more of the burden.

Let's not let perfect be the enemy of good. In the words of the AARP, one of the largest senior associations, "Millions of Americans can't afford to wait for perfect."

And we know that drugs are most effective when used to prevent the onset of a health condition. Right now almost 93 percent of our health care dollars go to treat a person who is sick. With more advanced screening and early detection capabilities, we have a program that waits for people to develop dangerous and costly conditions before they can receive care.

It appears to me that there is a 1965 Cadillac model of care, not a model that belongs in a 2003 health care system. This bill for the first time includes a 'Welcome to Medicare' physical that will allow beneficiaries to get an assessment of their health condition and possibly detect conditions that could possibly escalate over time. It also includes cardiovascular screening, blood tests and diabetes screening that will be available without deductibles or co-pays to encourage seniors to take advantage of these benefits.

I want to stop for a moment at the word 'encourage.' It is absolutely critical for every senior to know that they don't have to take advantage of the preventive screenings, they are not required to participate in the prescription drug plan, and most importantly, no seniors under this proposal are forced into a private health plan. Every senior who chooses to remain in traditional Medicare has that equally important option under this bill.

This bill is about expanding choice. Time and time again I hear from seniors who have said they want to receive the same benefits that my colleagues and I here and in the House of Representatives have fought for. This bill is about giving more seniors the opportunity to participate in a plan that looks very close to the benefits that I and most individuals in the private sector enjoy.

This bill is good for our seniors, it is good for health providers, and it is good for the American public who are tired of the partisan battles that have characterized this Congress. I thank Senators Grassley and Baucus and the members of the conference committee who have crafted this bipartisan Medicare act to give the American people a truly historic time in this body's history.

As we look toward completing our work for this first session, I am hopeful that the spirit of cooperation that has led to this bill will be extended to the many important issues we will leave unresolved this year.

The Thanksgiving season is upon us. Our work in this session is nearing its end, but we must be done until and unless we seize this historic opportunity and bring a prescription drug benefit and hopes for a better and healthier life and make this a Thanksgiving to remember for all the right reasons for our senior citizens and their families.

Mr. BYRD. Mr. President, the Republican leadership and even a member of the President's Cabinet twisted arms and bullied individual House Members late in the night and into the wee hours of Saturday morning. A roll call vote was held open for almost 3 hours—the longest House roll call vote in history—until enough Members ignored their conscience, cried "mercy," and voted "yes" on the Medicare bill. Did the average American who most Americans would find such tactics repulsive and unbecoming of how Members of Congress should behave. One might expect to see such arm twisting and intimidation during a presidential interrogation scene in an episode of "Law & Order," but not during a session of Congress—especially on a vote of such great importance to the citizens of this country.

What happened the other night was nothing short of a subversion of the democratic process itself and a subversion of the democratic principles our Founders stood for. Is this the manner of legislating that our Founding Fathers had in mind when they so craftly designed the political institutions of this country? I do not believe it is the scenario our Founders envisioned when they created the Senate—to act as the "saucer," as George Washington so wisely said, to absorb the overheated passions pouring out of the House of Representatives.

If ever there were a time for the Senate to act as that "saucer," it is now. It is a time when the health care security of 40 million senior citizens, and millions of Americans for years to come, could be on the brink of collapse as a result of this bill. We may even be in a race toward the finish line of Medicare itself. And I am afraid that the race is driven by partisan politics, extreme ideological fervor, and blatant special-interest greed—exactly the reasons for which our Founding Fathers established this great country.

The more I read through this Medicare bill, the more I become convinced that the spirit of cooperation that has led to this bill will be extended to the many important issues we will leave unresolved this year.
that history is again repeating itself. I can recall a painful experience during my majority leadership when an outraged citizenry, composed mostly of seniors, forced Congress to repeal the ill-fated Medicare Catastrophic Coverage Act back in 1989. The year before, Congress was engaged in a Medicare debate eerily similar to the one we are having today. An agreement was reached to make the most sweeping change in Medicare’s “then” 23 years of existence.

At that time, Congress agreed to two key changes to the Medicare Program—a prescription drug benefit and a “stop-loss” protection from catastrophic medical bills. Facing deficits as we do today, Congress decided that beneficiaries should pay for the new benefits themselves, with the wealthier paying the most. The new law included a compensated benefit that was too difficult to explain and a lengthy delay in the benefit’s taking effect. In the end, that delay and the bill, and that delay, cost the Medicare program roughly 172,000 beneficiaries in Georgia. This could equal $469 million in savings over the next eight years for the State of Georgia.

The bill also would increase Medicare funding for doctors, hospitals and other health care providers, particularly in rural areas, where reimbursement levels have been below the national average. Additionally, the bill provides cost incentive to encourage companies to retain the health coverage they provide their retirees. I want to voice my support for all of those important provisions.

Following my review of the conference report, however, I can’t help but feel that this is not the best we could do. I feel like we missed the mark on trying to ensure Medicare’s solvency. While we are trying to ensure that prescription drug coverage is provided for those seniors who need them, we should also ensure that future generations are not overburdened by the costs of this expanded entitlement program.

Attempts to cap the bill’s cost have been diluted. Instead of putting cost containment provisions in the legislation, there is a vague transfer of power from today’s lawmakers to future lawmakers to handle the cost when it becomes a problem. In 2007, the Congressional Budget Office has estimated that the bill will cost $40.2 billion. By 2013, that price tag hits $65.2 billion. I am not comfortable leaving these problems to be solved in the future. If we cannot logically solve them now, how do we expect future Congresses to tackle cost containment while this program is spiraling out of control?

Helping today’s seniors with access to prescription drugs must be balanced with our responsibility to future generations, our own children and grandchildren. These generations will have to pay, literally, for our miscalculations. They will be able to look back clearly at where we made mistakes. Today, future generations are a main concern of mine because I think this bill lacks some common sense regarding fiscal restraint. It
has the potential to expand our budget deficit for years to come. Placing the cost burden of an entitlement program on the shoulders of our children's generation seems very unfair. Shouldn't it be possible for this legislative body to create a prescription drug benefit plan that is fiscally responsible? Have we successfully done this? With a cost containment trigger we could have done just that and we have missed the opportunity.

In addition to the looming fiscal problems of this measure, I am also very concerned with cuts for the reimbursement of drugs for cancer treatment. Community oncology practices in Georgia and nationwide will be at risk of closing their doors because of these cuts. When approximately 1.4 million people are diagnosed with new cases of cancer each year and approximately 550,000 people die from cancer each year, why are we decreasing these drug reimbursements?

Our small town pharmacists may also experience financial risk as a result of the passage of this bill. They play a fundamental role in delivering these benefits to our seniors. Pharmacy Benefit Managers, PBMs, should be required to pass all financial concessions they receive from manufacturers such as discounts, rebates, and indirect subsidies and should be audited to ensure accountability. I want to ensure that these pharmacists will be able to compete on the same level as the PBMs and purchasing by mail so that they can continue serving their patients. We also need to acknowledge and protect the role of medication counseling services provided by our pharmacists as this is a valuable benefit to the patient.

Another concern is the lack of flexibility within the Medicare program. Competition among private healthcare plans in Medicare will help ensure more comprehensive coverage and gives seniors the ability to choose the healthcare plan that best meets their personal health needs rather than a one-size-fits-all government plan. A Medicare-approved private healthcare plan needs flexibility in designing benefits so that seniors can have the option to choose the coverage that makes the most sense to them and best suits their health needs. Seniors deserve choice and flexibility within their benefits, and this bill does not give seniors the full extent of flexibility they deserve.

Lastly, the means testing provisions included in this bill are positive but are not strong enough. Our goal should be to help those seniors who cannot afford life saving drugs and currently have to make the difficult choice between putting food on their table and buying the prescriptions they need. We should not waste taxpayer money on subsidizing wealthy seniors who can easily afford to pay for their own medicines.

Individuals who fall into the category of 150 percent of Federal poverty level or those with a total income of $13,470 or less will receive great benefits. However, the gaps in coverage for the middle class will make this legislation somewhat effective or possibly even more costly for certain beneficiaries. Preventing them from need is imperative, but we cannot sacrifice those folks that fall in the middle.

The decisions we will make today by voting for this measure will affect the health of every American and significantly impact future generations. I stand before you today burdened by trying to make the best decision for America's seniors, for Medicare solvency, and for the financial security of our children and their future generations. This bipartisan agreement is a necessary step to completing the promise we made to seniors, and that is to provide prescription drug coverage. It is for this reason that I will vote for this conference report, but I will continue to seek ways to improve this program by seeking stronger cost containment provisions and increasing the flexibility for the plans.

Thank you, Mr. President. I yield the floor.

Mr. KOHL. Mr. President, I rise today to oppose the Medicare conference report. Once again, the Senate is on the verge of passing a bill that is good for everyone—except the people the bill is supposed to help. Our Nation's seniors rely on Medicare and are asking for Congress' help with a real Medicare drug benefit. This bill doesn't do it. It is a dream package for drug companies, insurance companies, and the people who make TV ads for politicians. And it is a nightmare for too many Medicare beneficiaries.

Our elderly and disabled citizens rely on Medicare. They know it and they are comfortable with it. They know it will cover most of their health care needs whether they're healthier or sicker, middle class, affluent, or low income. For years now our seniors have asked us to add a prescription drug benefit to Medicare to help them pay for the costs of their medication. It is a simple, straightforward request that this bill actually prohibits the Federal Government from negotiating with drug companies for lower prices. What a waste of taxpayers' dollars. We could have used the tremendous purchasing power of the 41 million Medicare beneficiaries to make sure that prices are fair. Instead, this bill is a windfall for the drug industry. Just look at drug companies' stock prices rising up over the last few days; it is clear who the winners under this bill are.

The drug benefit itself is far less generous than seniors expect and deserve—and for many seniors, it will do more harm than good. Many seniors will still be responsible for much of their drug costs. Those with drug costs below $810 a year will actually pay more than they do today if they sign up for the drug benefit. Seniors with drug costs of $5,000 will still pay almost $4,000 themselves—almost 80 percent of the bill. There is a giant hole in the drug benefit—a gap in coverage where seniors continue to pay their monthly premiums but get absolutely no help from Medicare with their drug bills. I voted against the original Senate bill in part because of this gap. Now instead of closing the gap in conference, this bill actually doubles its size.

Even worse, this bill will cause many retirees who already have good drug coverage through their former employers to lose it. According to the Congressional Budget Office, 2.7 million seniors nationwide could lose their current coverage, including as many as 60,000 in Wisconsin. These seniors...
worked hard to earn retiree health coverage. That coverage will now be in jeopardy.

In addition, while there is additional help for some low-income beneficiaries, millions of poorer seniors will be worse off because of this bill. Up to 60,000 seniors who are eligible for both Medicare and Medicaid—the poorest of the poor—will have higher costs. Up to 110,000 dually eligible seniors in Wisconsin could be affected. In addition, the bill cuts out the extra help for millions of seniors if they fail a restrictive asset test.

There are some good things in this bill. It includes an increase in Medicare payments to Wisconsin that will finally begin to level the playing field for Wisconsin's doctors, hospitals, and seniors. I am pleased that this was included.

I know there are some who say we can't afford to wait for a perfect bill. But I believe that this bill is not just far from perfect, but that it will do harm to many of our seniors and will waste billions of taxpayer dollars in a giveaway to the insurance industry and drug companies.

This drug benefit is nowhere close to what seniors have asked us to deliver. They wanted to pay less for their prescription drugs. We could have done tremendous good here. We could have brought the price of drugs down using bulk purchasing through Medicare, greater use of generic drugs, and allowing seniors to purchase less expensive drugs from Canada. Instead, we have a complicated and skimpy drug benefit, huge subsidies to drug and insurance companies, and a sea change in the Medicare Program. This is not what seniors asked for, and they will not be satisfied, we can't afford to wait for a perfect bill. We could have done this,"

I oppose this bill because we are asked to pass this bill today because we

**CONGRESSIONAL RECORD—SENATE**

Nov. 24, 2003

S15751

**Mr. KENNEDY.** Mr. President, I rise today to say a few words about Section 1101(d), a provision of the Medicare Prescription Drug Improvement, and Modernization Act of 2003 relating to the Hatch-Waxman Act and the authority of Federal courts to entertain actions for declaratory judgments. This provision originally was added in the Senate, as part of the Greater Access to Affordable Pharmaceuticals Act, and was not passed by the House. I think this provision is intended to accomplish something profound. Lawfully, I believe, Congress have required that a declaratory judgment plaintiff satisfy the "reasonable apprehension" test before being allowed to bring declaratory judgment actions in Federal court.

Section 1101(d) provides that, so long as a generic drug company has filed an Abbreviated New Drug Application, ANDA, and the patentee has not filed suit within 45 days of receiving notice, "the courts of the United States shall, to the extent consistent with the Constitution, have jurisdiction in any action * * * for a declaratory judgment that such patent is invalid or not infringed." This subsection will provide relief to alleged patent infringers—at least in the Hatch-Waxman context.

First, this language sweeps away the type of discretionary barriers to a declaratory judgment action imposed in decisions such as EMC Corp. v. Norand Corp. The Federal Circuit in that case found that the district court actually had jurisdiction to entertain a declaratory-judgment suit. It nevertheless allowed the district court to dismiss the action, holding that district courts may do so unless "there is no real prospect of non-judicial resolution of the dispute." The Federal Circuit apparently felt that a patentee should be able to use what may prove to be an invalid patent as a source of "bargaining power" in license negotiations. This refusal to entertain a litigant's action where jurisdiction unquestionably exists is, of course, at odds with the rule, announced 182 years ago in Cohens v. Virginia, that the Federal courts "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." Blame for this practice, however, cannot entirely be laid at the feet of the Federal Circuit. The Supreme Court, in the 1995 Wilton v. Seven Falls decision, reiterates the triad of injury in fact, causation, and redressability constitutes the core of Article III's case-or-controversy requirement. In setting the constitutional standard for allowing declaratory judgments, the Supreme Court in its 1977 Aetna Life Ins. v. Haworth decision focused on the dispute's adversity, definiteness, concreteness, and the specificity of the claims. This language inevitably invokes the injury-in-fact element of the Article III standing inquiry. It is from the injury-in-fact case-law—which asks whether an injury is concrete and particularized, and actual or imminent—that the courts draw new standards for constitutionally adequate case or controversy in the declaratory judgment context.

It bears mention that the Supreme Court has not hesitated to find
actual Article III injury where a plaintiff forewent a legally cognizable benefit as a result of being actually and reasonably deterred from particular conduct. Just 3 years ago, for example, the court held that even where a defendant's allegedly infringing conduct caused no harm to the environment, environmentalist plaintiffs had standing where their "reasonable concerns about the effects of those discharges, directly affected [their] recreational, aesthetic, and economic interests."18

And in 1979's Babbit v. United Farm Workers, the court found that plaintiffs deterred from constitutionally protected conduct had standing to challenge the offending statute where the threat of its enforcement was "not imaginary or wholly speculative." The Court further specified that the plaintiffs were "not without some reason in fearing prosecution" where "the State has not disavowed an intention" of enforcement, a fact that rendered the position of the plaintiffs irrefutably adverse.19

Similarly, in the 1986 decision of Wesberry v. Sanders, the court held that plaintiffs challenging the district's lack of representation in Congress had standing to bring their case.20

Unlike the Senate bill, the conference report does not gamble all on the hope that courts will find the filing of an ANDA—which automatically constitutes an act of infringement—to always qualify as a constitutionally adequate "case or controversy." In the final ANDA Act, the courts have left the courts with options short of striking down section 110(d), if more is required. By including the language "to the extent consistent with the Constitution," the conferees allowed the courts to support as much of the reasonable-apprehension test as they feel is constitutionally necessary. As the report language makes clear, this may include the entire reasonable-apprehension test as currently construed by the Federal Circuit. As Federal Circuit Judge Gajarsa observed in his concurrence in the Minnesota Mining case, that test will ordinarily be satisfied in declaratory judgment actions brought by ANDA applicants where proceedings are stayed in the Orange Book. In any event, the courts should impose prerequisites to seeking declaratory relief—whether reasonable apprehension, the standing tests suggested here, or any other requirements—so long as the extent required by the Constitution.

I ask unanimous consent that two letters from Professor Yoo be printed in the RECORD.

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

**BOAT HALL SCHOOL OF LAW, UNIVERSITY OF CALIFORNIA AT BERKELEY, BERKELEY, CA, JUNE 14, 2003.**

**HON. ORRIN G. HATCH, CHAIRMAN, COMMITTEE ON THE JUDICIARY, S. 113, WASHINGTON, D.C.**

**DEAR SENATOR HATCH:** I have been asked by the Generic Pharmaceutical Association to provide my views concerning the constitutionality of a proposed amendment to the Hatch-Waxman Act that would allow a generic drug manufacturer who has filed an abbreviated new drug application (ANDA) to seek federal declaratory relief with respect to the patents listed in the Orange Book. Under current law, if a generic manufacturer files an ANDA application to manufacture a drug for which the brand-name drug holder would exist if the patents listed in the Orange Book were to be removed, the FDA may, in its discretion, issue a notice to the patent holder that includes information about the bioequivalence with the NDA-approved drug. If the FDA does not respond to the notice within 45 days, the ANDA application is approved by the FDA. If the patent holder disagrees with the decision, they may file an appeal to the Federal Circuit, which automatically confers subject matter jurisdiction to the court.

In order to evaluate the constitutionality of the proposed changes, it is necessary to first understand the statutory framework at issue. Under the Federal Food, Drug, and Cosmetic Act, a pharmaceutical company that seeks to manufacture a new drug must file an application with the FDA that includes information about the drug's safety and effectiveness. 21 U.S.C. § 355(j)(2)(B)(i). An ANDA application would allow a generic drug manufacturer who has filed an abbreviated new drug application (ANDA) to seek federal declaratory relief with respect to the patents listed in the Orange Book. Under current law, if a generic manufacturer files an ANDA application to manufacture a drug for which the brand-name drug holder would exist if the patents listed in the Orange Book were to be removed, the FDA may, in its discretion, issue a notice to the patent holder that includes information about the bioequivalence with the NDA-approved drug. If the FDA does not respond to the notice within 45 days, the ANDA application is approved by the FDA. If the patent holder disagrees with the decision, they may file an appeal to the Federal Circuit, which automatically confers subject matter jurisdiction to the court.
necessary steps." C. Wright & A. Miller, Fed-

eral Practice and Procedure §2751. In the area of patents, "the owner of a patent might assert that a manufacturer was infringing on his patent. In a typical case, the manu-
facturer contended that his product was not an in-
fringement or that the patent was invalid. The manu-
facturer was helpless, however, to secure a judg-
ment that it was not necessary to await suit for infringement, unless the manu-
facturer preferred to yield and dis-
continue the activity." Id.

Decisions on questions of law first arose in the states, but uncertainty initially re-
maind as to whether such cases could be heard due to the controversy requirements of Article III of the Constitution. Willing v. Chicago Auditor-
ium Ass'n, 277 U.S. 274 (1928). In 1927, how-
ever, the Supreme Court of the District of Columbia in National Practice and Procedure 

the Constitution. The word

Judgment Act: "Any such declaration shall have the force

and effect of a final judgment of the court of the United States, upon the filing of an

appropriate pleading, may declare the

right and other legal relations of any inter-

ested party seeking such declaration, wheth-

er or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment of the court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment of the court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."

Act of June 14, 1934, ch. 512, 48 Stat. 955, codified at 28 U.S.C. §2201(a). In essence, this act allows plaintiffs to bring suit against a defendant who would hold a federal right to seek a coercive rem-
dy against the plaintiff, if the defendant had chosen to bring suit first. The legislative history of the Act reflects that Congress was concerned about the uncertainty in business and legal relations, including the case in which a patent holder chose to delay litiga-
tion for patent infringement.

The Supreme Court soon made clear that the Declaratory Judgment Act was constitu-
tional even though the statute extended fed-
eral jurisdiction to cases in which the holder of the federal right had not yet sought to en-
fors his federal right. Finding that declar-
atory judgment was an exception to the controversy requirement, the Court ex-
plained: "The Declaratory Judgment Act of 1934, in its limitation to 'cases of actual con-
traversy,' is without regard to the constitu-
tional provision and is operative only in

respect to controversies which are such in the constitutional sense. The word 'actual' is one of the several terms in which the constitution gives the sense must be one that is appropriate for judicial determination. . . . A justiciable controversy is thus distinguished from a dif-
ferent character, from one that is academic or moot. . . . The controversy must be defi-
nite and concrete, touching the legal rela-
tions of parties having adverse legal in-
est. . . . It must be real and substantial con-

The Federal Circuit clearly employs a total-
ity of the circumstances approach toward de-
termining "reasonable apprehension," one that looks at conduct that falls short of simply filing a lawsuit. See Shell Oil Co. v. Amoco Corp., 970 F.2d 885, 889 (Fed. Cir. 1992). In some cases, the Federal Circuit has looked to the activity of the patent holder in regard to third parties, Arrowhead, 846 F.2d at 736-
39, express written or oral charges of in-
fringement by the patent holder, id. at 796; Shell Oil Co., 970 F.2d at 889, or a threat of a suit, B & P Chems. Ltd. v. Union Carbide Corp., 4 F.3d 884, 897 (Fed. Cir. 1993). The proposed amendment would make clear that conduct that falls short of filing a lawsuit is still suf-

cient to support a declaratory judgment ac-
tion. Indeed, generic drug company Second, I am concerned about potential patent infringement. The Hatch-Waxman amendments could make clear that conduct that falls short of filing a lawsuit is still suf-

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tion. Indeed, generic drug company Second, I am concerned about potential patent infringement. The Hatch-Waxman amendments could make clear that conduct that falls short of filing a lawsuit is still suf-

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the Declaratory Judgment Act, rather than as a true test of Article III justiciability. The Act itself states that a court may declare the rights and other legal relations of any interested party seeking a declaration within its jurisdiction. . . . any court of the United States, upon the filing of an appropriate petition, may declare any other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaratory judgment or decree shall have the force and effect of a final judgment or decree and shall be reviewable as such. ’ ’ Act of June 14, 1934, ch. 512, 48 Stat. 955, codified at 28 U.S.C. § 2201(a).

The legislative history of the Act shows that Congress was concerned about the uncertainty in business and legal relations, including the case in which a patent holder chose to delay litigation for patent infringement. Professor Edson R. Sunderland, and advocate of the Act, testified before Congress that a declaratory judgment would allow a patent holder to use a certain patent. You claim that you have a patent. What am I going to do about it? There is no way that I can litigate my right to it. I can only do it by proceeding on the exception by going ahead and using it, and you [the patent holder] can sit back as long as you please and let me run up just as high a bill of damages as you wish to have me run up, and then you may sue me for the damages, and I am ruined, having acted all the time in good faith and on my best judgment, without any knowledge of the facts, whether I had a right to use that device or not.

The Supreme Court soon made clear that the Declaratory Judgment Act was constitutional, even though the statute extended federal jurisdiction to cases in which the holder of the federal right had not yet sought to enforce it. Finding the declaratory judgment suits met Article III’s case or controversy requirement, the Court explained: ’ ’ The declaratory judgment act is constitutional, not in the constitutional sense. The word ‘actual’ is one of emphasis rather than of definition. Thus the operation of the Declaration judgment Act is not confined to traditional forms or traditional remedies. ’ ’ Aetna Life Insurance Company v. Haworth, 300 U.S. 227 (1937).

In my 1993 letters to the Senate Judiciary Committee for the last two years during my tenure as Legal Counsel (many of whom were my colleagues for the last two years during my service there as a deputy assistant attorney general), I disagree with their conclusion. Both the Justice Department and I agree that Congress cannot extend the jurisdiction of the federal courts beyond Article III’s case or controversy requirement. This is a principle of federal courts law that has existed ever since Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803). We also agree that the Declaratory Judgment Act is constitutional, but not in the constitutional sense. The word ‘actual’ is one of emphasis rather than of definition. Thus the operation of the Declaratory Judgment Act is not confined to traditional forms or traditional remedies. ’ ’ Aetna Life Insurance Company v. Haworth, 300 U.S. 227 (1937). We also agree that many cases filed after the 45-day period would meet Article III’s case or controversy requirement. In this class of cases, therefore, the application of the Senate’s amendments to Hatch-Waxman would be clearly constitutional.

Where the Justice Department and I differ is whether Congress may extend federal subject jurisdiction to the remaining 25% cases that fall within 45-day period. According to the Department, the Federal Circuit’s ‘reasonable apprehension’ test—so called because it is based on a reasonable apprehension that the patent holder will sue—will exclude a certain number of cases that are filed after the 45-day period.

In fact, the Department believes that plaintiffs who file after the 45 days will almost never satisfy this test, because ‘ ‘in light of the statutory benefit conferred on the patent holder, it is clear that Hatch-Waxman could not be unconstitutional on its face but only as applied at best. ’ ’ I believe that Congress may extend federal subject matter jurisdiction to this class of cases, and that since this category may not be large, the amendment to Hatch-Waxman would not seriously impact the federal courts. ’ ’ It is likely that a court would consider the applicant’s reasonable apprehension to be diminished if the patent holder has not chosen to bring suit first. Declaratory judgments act first arose in the states, but it was initially suggested that such cases could not be heard in federal courts due to the case or controversy requirements of Article III of the Constitution. Wilting v. Chicago Auditorium Ass’n, 210 U.S. 16, 27—28 (1908). The Supreme Court gave res judicata effect to a state declaratory judgment, Fidelity Nat’l Bank & Trust Co. v. Swope, 274 U.S. 123 (1927), and in 1933 it upheld a state declaratory judgment, Nashville, C. & St. L. Ry. v. Wallace, 288 U.S. 249 (1933). Immediately after Wallace, Congress enacted the Declaratory Judgment Act of 1932, 28 U.S.C. § 2201(a).
correctly includes all of the possible cases in which no suit is filed within 45 days. As applied by the Federal Circuit, the ‘reasonable apprehension’ test creates an effect opposite of that desired by Congress.

The Federal Circuit appears to employ an inherently unpredictable totality of the circumstances approach to determining whether a potential patent infringer has a ‘reasonable apprehension’ of a lawsuit. Such an approach undermines the very purpose of having clear rules in the area of federal jurisdiction, and instead invite wasteful and excessive litigation merely to determine whether a case is appropriately brought in federal court. It requires the court’s authority to seek to correct misinterpretations of its enactments where, as here, the courts have acted in a way that undermines the very purposes of the statute it has passed. By adopting the amendment, Congress would simply be making clear the original purposes of the Declaratory Judgment Act, which the Supreme Court, almost immediately after the Act’s passage, had upheld as constitutional. By enacting the amendments to Hatch-Waxman, Congress is appropriately seeking to correct the misinterpretation of the Declaratory Judgment Act that goes too far in narrowing its scope. By employing the reasonable apprehension test, the Federal Circuit may be allowing declaratory judgment actions in only a subset of the possible range of cases that could be permitted by Article III’s case or controversy requirement. By enacting this amendment, Congress would be instructing the courts that it wishes to expand the exercise of federal subject jurisdiction, not restrict it, and that the Declaratory Judgment Act to the full extent permitted by the Constitution.

This brings me to another reason why the amendment would be necessary. As an independent and coordinate branch of government, Congress certainly has the authority to interpret the Constitution for itself and to base its enactments on that interpretation. This is exactly what happened with the original Declaratory Judgment Act: some doubted whether the potential defendants of enforcement actions could bring a suit seeking a declaration that their actions were legal. Yet, in order to create an environment in which all parties could conduct their actions with some assurance that their actions were legal, Congress enacted the Declaratory Judgment Act. In doing so, Congress acted on its own interpretation of the Article III case or controversy requirement. The Supreme Court subsequently agreed. Congress has even fuller authority where, as here, the Supreme Court as the final arbiter within the federal judiciary has never examined whether Article III or the Declaratory Judgment Act impose any special requirements in patent infringement cases. Please do not hesitate to contact me if you can provide further assistance. I have recently realized that the views I express in this letter are mine alone, and do not represent those of the American Enterprise Institute, where I currently am a visiting fellow, or of the University of California at Berkeley, where I have been a law professor since 1993. I may be reached at 202-666-5819, or yooy@berkeley.edu.

Sincerely,

JOHN YOO,
Professor of Law

Mr. NELSON of Nebraska. Mr. President, today I rise in support of the Medicare bill before the Senate. This is not a perfect bill, far from it. It is not the bill I would write. But it is a bill that will do more for our seniors and one we can build on in the future.

For the past decade this body has worked on adding a prescription drug benefit to Medicare. We all know it is desperately needed. The skyrocketing cost of drugs has put meaningful health care treatments out of reach of many seniors. Medicare simply was not crafted with a prescription drug component. That is not to blame any of the creators of the landmark legislation that created Medicare. They could not have known that science would eventually put the treatments and cures for many diseases in pill form. They did the best they could with the knowledge they had at the time. And that system served seniors well for a very long time.

But it does not serve them well today. The lack of prescription drug coverage is a glaring omission in the current Medicare Program. It prevents many seniors from getting the treatments they need and it limits their access to the full promise of the Medicare Program—to provide health care benefits to our seniors.

And we do not have the excuse that we were unaware of the importance of drug treatments. We know how these medications can improve and prolong the lives of countless seniors. We know that seniors urgently need this benefit and the medicine it will provide.

As I said, the bill before us is not perfect, and many people have raised legitimate concerns about its shortcomings. Some have said it is too expensive; some have said it does not cover enough of the drug costs for seniors. There is truth to both statements. And both sides have worked to confuse our seniors. A lot of money has been spent by special interest groups to advance their opinions rather than accurately and honestly discussing the legislation.

Putting all the clutter and spin aside, in a time of rising Federal deficits, this bill does move the ball forward. It takes a concrete step toward providing meaningful coverage. And it does make some efforts to contain long-term costs.

This legislation is the first step in covering drug treatments and this is a
major step for seniors across the country. For example, in my home State of Nebraska, today there are 259,000 Medicare beneficiaries. Of these, about 90,000 do not currently have prescription drug coverage. Through this bill, beginning in 2006, they will all have coverage.

The average out-of-pocket cost for drugs for a typical Nebraskan, including premiums, will decrease 35 percent from $760 to $500 per year. Low-income Nebraskans will receive $600 a year for their drugs, resulting in Nebraskans receiving $83 million in prescription assistance. After the drug plan is implemented, 108,000 low-income Nebraskans will pay little to nothing in premiums, deductibles and coinsurance. Because Medicare is taking responsibility for dual eligibles, Nebraska will save $167 million over 8 years. And the benefits for Nebraska extend beyond the drug benefit.

This bill will provide additional reimbursements for rural hospitals and health care providers. Nebraska doctors will receive $76 million over 2 years. Nebraskan hospitals will receive $11.3 million, and the rest of Nebraska's hospitals will share an additional $108 million over 10 years. This funding will help keep rural health care vital and available to rural seniors.

Furthermore, this bill contains a pilot program I pushed to include that will create a new Medicare designation of “rural community hospitals”. These hospitals will receive cost-based reimbursements for Medicare services. Seven Nebraska hospitals will take part in the 5-year program resulting in an additional $22.5 million for these hospitals to help them continue to provide high quality health care in their community.

Rural community hospitals are currently unable to keep pace with their costs. They are too big to qualify for additional Critical Access Hospitals funds, yet too small to take advantage of the volume benefits of larger hospitals. This new pilot program will allow Nebraska’s rural community hospitals to immediately benefit from cost-based reimbursements for inpatient services while testing the feasibility of expanding the program to similar hospitals across the Nation.

The seven hospitals are Beatrice Community Hospital, Box Butte General Hospital in Alliance, Columbus Community Hospital, Community Hospital of McCook, Jennie Melham Memorial Medical Center in Broken Bow, Phelps Memorial Health Center in Holdrege and Tri County Hospital in Lexington.

Nationally, this bill also takes steps to ensure that seniors do not lose employer-sponsored health coverage. Originally, the conferees only handled this issue halfway through a subsidy covering 28 percent of costs to employers $250 and $1000. I, and others, did not believe this would do enough to protect these benefits. So we have made that subsidy non-taxable; increasing the value of the subsidy by a third. Because of this increase, the Congressional Budget Office has stated that the subsidy could decrease by half; saving these benefits for millions of seniors.

The bill before us is not perfect, but it is a start. I do not believe this bill is the beginning of the end of Medicare, nor do I believe that is the final solution to the skyrocketing costs of health care.

With passage of this legislation, for the first time, seniors will have access to prescription drugs through Medicare. And we will be able to use this bill to build better coverage in the future. This bill goes fully into effect in 2 years; time that can be spent studying this coverage, adapting it and making sure it works for our seniors.

For seniors covered for this coverage. Many of those seniors are not here to see it happen today. They are no longer with us; they never got the drug coverage they needed. It is too late for them. But it is not too late for millions of seniors across the country to benefit from this bill. We owe it to them to pass this and get a concrete start on this issue. We can make changes if we need to, but we can’t get back the time we will have lost if we do not move forward now.

A vote against this bill will leave tens of thousands of seniors in Nebraska without a prescription drug benefit of any kind. Let’s pass this bill before it is too late for today’s seniors. We may not get an opportunity like this again.

Mr. BAUCUS. Mr. President, I want to speak for a moment today about the impact on States from this Medicare prescription drug coverage. I am concerned about our States’ fiscal crisis, and I have supported fiscal relief through the so-called “FMAP” increase, through increases in SSBG, and through general revenue sharing. And I am pleased that, in the long term, this bill is expected to result in substantial savings to States more than $17 billion by 2013.

But I remain concerned about the impact that this bill will have on States in the short term. Before this bill had been finalized, when there were early indications that States could be harmed by the so-called “holdback” formula in the first years of the drug benefit, I insisted that the formula be revisited. We added $4.5 billion so that the impact on states of the “woodwork effect,” new administrative costs, and the “holdback” provisions would not ultimately put the States in the red in any year of the drug benefit.

As sometimes happens, preliminary budget estimates did not turn out exactly as expected. The overall impact on State Medicaid budgets in the first year of the drug benefit will still result in States spending more than they will save. While I regret that, I firmly believe that, in the long run, this bill will strengthen State budgets and take some pressure off of strained Medicaid programs.

A longer term analysis shows that there are unexpected costs to States in the early years, or the expected costs are higher than we can know today, I pledge to work over the next 2 years to ensure that the States are not harmed when the Medicare drug benefit goes into effect.

Mr. President, one of the most important provisions in the rural package in this bill would reauthorize the Rural Hospital Flexibility Grant program for another 5 years. This grant program was created along with the Rural Hospital Flexibility Program, RHFP, in the Balanced Budget Act of 1997.

The RHFP is designed to help ensure continued access to medical services in rural and frontier areas of our Nation through demonstration projects to sustain hospitals. The bill created a new category of hospital called a Critical Access Hospital, CAH. In my State of Montana, 36 acute care hospitals have converted to CAH status.

The Rural Hospital Flexibility Grant program provides the tools States need to implement the RHFP. The purposes of this grant program are many.

First, it provides resources to cash-strapped rural hospitals to help them make the conversion to CAH status.

Second, it enables States to provide technical assistance to these facilities as they move through the conversion process.

Third, this grant program provides resources to help States further stabilize rural health care by fostering and developing networks of providers in rural areas.

Fourth, the program enables States to initiate a variety of other innovative approaches to improve health care in rural areas. For example, in my State of Montana, Flex grant funds have enabled the State’s CAHs to develop a pioneering quality improvement program.

There was strong support for reauthorizing this grant program among the conferees. There was also strong support for clarifying how these funds could be used to ensure that as much of this money as possible was used for the direct conversion to CAH status and other rural providers in the States.

In that regard, the bill was intended to specify that no more than 15 percent of a State’s grant allocation be used for “indirect” administrative costs. However, in drafting the bill, the word “indirect” was inadvertently dropped from the language.

I would like to clarify the intention of the conference committee that this 15-percent restriction be applied only to the direct amount of funds that can be used for “indirect” administrative expenses.

Mr. KYL. Mr. President, the majority leader, Senator FRIST, joins me in this
explanation of why the conference agreement on the Medicare Prescription Drug and Modernization Act of 2003 does not allow increased importation of drugs from outside the United States. Our explanation provides importation information and demonstrates this largely misunderstood issue that is vital to the health and safety of Americans.

Under current law, the Federal Food, Drug, and Cosmetic Act establishes a system under which prescription drugs must be approved by the FDA and properly labeled, packaged, tested, stored, and distributed pursuant to FDA regulatory requirements. This is the finest and most effective system in the world for ensuring drug safety, effectiveness, and quality.

To protect American consumers by ensuring the integrity of this system, the law generally prohibits the importation of prescription drugs. Section 801(d) of the Act prohibits importation of drugs that are unapproved, adulterated, or misbranded. Virtually all prescription drugs manufactured overseas for distribution in foreign countries fail one or more of these standards and, therefore, cannot be legally imported into the United States. It is important to note in this regard that just because a drug is manufactured in a facility that is subject to FDA inspection does not mean that the drug meets FDA approval or other requirements. Different countries have different manufacturing, testing, labeling, packaging, and other requirements from those imposed by the FDA, and in fact the composition of the drug product itself may vary from country to country. Manufacturers may use their own facility to manufacture a drug for several different countries, but they must vary their processes to ensure that each drug lot will satisfy the requirements of the intended destination country.

Some prescription drugs are manufactured in the United States and then exported. Section 801(d) of the Act prohibits the importation—sometimes called reimportation—of these drugs. Congress added section 801(d) through the Prescription Drug Marketing Act in 1988 to close a loophole under which counterfeit and substandard drugs were being brought into this country. There is an exception to this prohibition for the original manufacturer, who is part of the export chain and subject to supervision and audits by FDA and oversight. 

The manufacturer’s own importation of drugs that have never been outside its control is comparable to shipments between its manufacturing plants and warehouses within the United States, and is regulated under a different regime of importation of drugs that have been placed into the wholesale and retail distribution systems of foreign countries, where they are no longer subject to FDA jurisdiction.

In 1998, Congress authorized an additional exception to section 801(d) in the Medicine Equity and Drug Safety Act. This law added a new section 804 under which pharmacists and wholesalers would be permitted to import drugs from a list of designated countries, including Canada and the countries of the European Union. In order to protect American consumers, Congress inserted this exception into law only if it becomes effective until the Secretary of Health and Human Services demonstrates to Congress that its implementation will “pose no additional risk to the public’s health and safety” and will not result in a significant reduction in the cost of covered products to the American consumer.” Secretary Shalala and Secretary Thompson both concluded that they could not make this demonstration.

FDA has a written policy under which it permits an individual to import a small quantity of a prescription drug for personal use, but only if the drug is not available in the United States. This policy is intended to allow seriously ill patients to obtain unapproved drugs to treat potentially life-threatening and similar conditions for which adequate treatment is unavailable in the United States. It does not apply to importation of drugs that are approved in the United States or to non-prescription activities, such as commerce or advertising, whether conducted online or in print advertising or importation by persons other than individual patients. Moreover, even importation within the four corners of this policy remains technically illegal; the policy represents only a reasonable and limited exercise of FDA’s enforcement discretion in the interest of individual patient treatment.

A final, and important, legal requirement is that a prescription drug can only be dispensed to the patient based on a valid prescription. Otherwise, the drug is misbranded and cannot be imported, or shipped domestically. There is extensive evidence documenting the fact that many foreign sites do not dispense or mail any prescription at all, or with an invalid prescription based on a perfidious questionnaire and without any genuine medical examination—co-signing of prescriptions by foreign physicians who have no relationship with the patient. In the case of imported drugs, the patient does not meet the legal requirements and presents serious risks, as both U.S. and foreign authorities have made clear. These activities put patients at risk by taking the licensed healthcare provider out of the picture for deciding whether to initiate or continue treatment. Prescription drugs are classified as such because they cannot safely be used by laypersons without professional oversight. Drug importation commonly violates this basic safeguard.

Despite the existing prohibitions on drug importation, the volume of importation activity is growing as foreign pharmacies and domestic storefront sites have added legitimacy to the sale of prescription drugs. This growth is problematic, because these sites operate outside the oversight of any governmental bodies and others explore ways to direct American consumers to foreign sources for their needed medicines. All of these activities are illegal, and they pose threats to our health and safety.

According to the FDA, imported drugs are too often unapproved, contaminated, counterfeit, and contain different ingredients from those required by law. These drugs are not mere theoretical concerns. A recent series of spot inspections conducted jointly by the FDA and the U.S. Bureau of Customs and Border Protection found that 88 percent of more than 1,000 examined drug packages contained unapproved drugs and that they could pose “clear safety problems.” This included an unapproved blood thinner that could cause life-threatening bleeding; unapproved epilepsy, thyroid, and diabetes drugs that could cause life-threatening side effects; drugs that have been withdrawn from the U.S. market because of safety concerns; animal drugs not approved for human use; drugs with dangerous interactions; drugs improperly packaged in sandwich bags and tissue paper; and controlled substances. In another case involving a Web site purporting to ship FDA-approved drugs from Canada, a patient received an unapproved seizure medicine manufactured in India. In another case involving a U.S. storefront operation, the Web site shipped unrefrigerated insulin, which can degrade without changing its appearance and thereby put insulin-dependent diabetic patients at risk. Other examples include cases involving the sale of unapproved and/or adulterated drugs from foreign Internet sites, as documented in a recent press report of a year-long investigation into illegal drug importation, counterfeit, and distribution.

Another recent study also concludes that drug importation increases the risk of terrorism against the United States. Huge volumes of packages, only a miniscule fraction of which can be inspected, present an inviting target for the deliberate introduction of contaminants and poisons. Last year, in the Public Health Security and Bioterrorism Preparedness and Response Act, Congress gave the FDA substantial new powers to protect the safety of the food supply against terrorist threats. FDA has been implementing this law through new rules requiring advance notice of food imports and similar measures. Imported drugs present comparable threats, yet there is neither an analogous set of provisions nor adequate inspection resources to enforce existing legal standards.

Proponents of loosening the existing standards for drug importation have argued that we can rely on the Canadian drug regulatory system to ensure the safety of drugs exported from that country to the United States. This is simply wrong. Section 37 of the Canadian Food and Drug Act provides that it does not apply to exports. In a recent study, the Canadian authorities made clear that it “has never stated that it would be responsible for the safety and quality of prescription drugs exported...
from Canada into the United States." Health Canada also has described its concerns with cross-border Internet pharmacy sales as relating to the health of Canadians themselves as it should be.

While we have no doubt that the Canadian system works for Canadians, FDA Commissioner McClellan has made clear that purchases of drugs by Americans from Canada present entirely different concerns:

Buying between the U.S. and Canadian systems is not the same thing as buying within each system. The U.S. and Canada do not have integrated systems for taking timely action to assure the health of consumers in the face of a safety problem involving an illegally imported drug in the U.S. Protections to assure the appropriateness of a prescription, such as requirements for physician contact and monitoring, may differ. And each country has only limited resources to devote to their existing systems for assuring drug safety for their own populations, let alone to assuring the safety of an expanded scope and volume of drug imports. For example, Ontario, Canada's largest province, has exactly one investigator tasked with policing all pharmacy operations there.

In addition, as also documented by the FDA many drugs purporting to come from Canada actually were manufactured in Third World countries and either transshipped through Canada or shipped directly from those countries to the United States, in either case without any oversight from Canadian health officials. Such transshipment is becoming increasingly common, with Canadian sites now obtaining their products from countries such as Bulgaria, Argentina, and Pakistan for sale into the United States.

Importation supporters also have suggested that anticontenterfiling technologies can be used to assure the safety of imported drugs. This, too, is a false promise. Optical anticontenterfiling measures are used in our paper currency, yet they have proven inadequate. Even the proposed bill, which incorporates multiple anticontenterfiling measures, is being countered less than a month after its introduction. Counterfeit drugs, of course, present far greater concerns. The FDA is exploring anticontenterfiling technologies for drugs but, as Commissioner McClellan has made clear, "there isn't any magic bullet available today," and these technologies are "no substitute for a comprehensive Internet system for assuring the safety of the actual drug product." Moreover, even the ineffec-
tive anticontenterfiling technologies that are available would be very expensive, raising drug costs by an estimated $2 billion in the first year alone.

Finally, in contrast to the legal liability for adulterated or counterfeit drugs remains unresolved. American companies should not be held legally responsible for drugs they did not manufacture, or that were adulterated after leaving their control or that they manufactured to comply with foreign country requirements rather than for sale in the United States. The U.S. Govern-

ment should not be held legally responsible for drugs that it did not actually test and approve, or that were adulterated after the approval process was complete and the drugs were no longer subject to FDA oversight.

In short, drug importation presents a wide range of serious safety concerns. We cannot meet these challenges merely by writing prohibitions into the law. The law already requires that drugs be FDA-approved, yet it is abundantly clear that new and other violative products are streaming across our borders every day. Changes in the law to relax the current prohibitions on importation will only increase this cross-border traffic and, in the absence of new legal protections and new resources to effectively to enforce them, increase the threat to the American public.

The United States has every right under our international agreements to enforce legitimate regulatory requirements obtained and maintained and safety of our citizens. There is no question that the drug importation provisions of the Federal Food, Drug, and Cosmetic Act meet this standard.

Canada and other foreign countries impose strict controls on pharmaceu-
ticals as part of their high-tax social welfare systems. No reasonable concept of free trade requires that our country open its borders to drugs whose prices are kept artificially low with a leading scholar and supporter of free trade rights, Professor Richard Epstein of the University of Chicago Law School, has described drug importation as "a perversion of the basic principle of free trade."

Pharmaceutical price controls are a trade issue that must be urgently ad-
dressed by our government so that for-
egn countries and their citizens bear a fair share of research and development costs and access controls imposed by foreign coun-
tries constitute trade barriers within the meaning of our existing trade laws, and we urge the administration to use the full extent of its authority in bilateral and multilateral negotiations to remove these barriers for the benefit of all Americans. In fact, the legislation we consider today requires the U.S. Trade Representative to develop a strategy for negotiating the elim-
ination of price controls and requires timely Congressional briefings on the subject.

Drug coverage, particularly for Medi-
care beneficiaries as established by this bill, is the most important step we can take to ensure access. For those without coverage, drug importation imposes only great risks and offers littl-
tle or nothing in the way of savings. There is no evidence to suggest that drug importation actually will save money for Americans. As the FDA has stated, "it is likely that the intended cost-savings for consumers would be absorbed by fees charged by exporters, pharmacists, wholesalers, and testing labs." This is confirmed by the European experience with parallel importation, which demonstrates that the only real beneficiaries are middle-
men in the distribution chain, not the ultimate consumers. Recent experience in Europe also make it clear that Cana-
dians will act to protect the integrity and availability of drug supplies for their own citizens if these are threaten-
ed by importation, which will lead to higher prices for imported drugs—as well as increased transshipment from third-world drug supply sources, as discussed above.

In any event, claims of enormous cross-border price differentials are widely exaggerated because they do not reflect the variations in all American pharmacy Internet sites and re-
tailers show that substantial discounts cannot be obtained in the United States, with full confidence in product safety, quality, and integrity.

The myriad of questions and con-
cerns we have raised here explain why, rather than allow importation of drugs, this legislation calls for a comprehen-
sive study of the risks and benefits of importing drugs and of how trade nego-
tiations can be used to begin bringing down price controls, so that Americans and everyone else in the developed world share fairly in the costs of drug research and development.

Mr. VOINOVICH. Mr. President, I rise before the Senate in support of the conference report accompanying the Medicare Prescription Drug and Mod-
erization Act. While the conference report before the Senate is not a per-
fect bill, it is a good bill that will fi-
nally provide seniors a voluntary pre-
scription drug benefit through Medi-
care.

After years of having to carry the burden of high prescription drug costs with no assistance from Medicare, the bill that is before the Senate now, with the full support of the AARP, will finally provide 40 million Medicare beneficiaries nationwide, 16 million in Ohio, access to affordable prescription drugs.

I would like to applaud the work of our leader, Senator FRIST; our Finance Committee Chairman, Senator GRASS-
LEY; and the Finance Committee Rank-
ing Member, Senator BAUCUS. Through their leadership, the Senate is poised to finally move past politics and pro-
vide seniors with a real prescription drug benefit.

Unfortunately, we have fiddled around with the issue of Medicare re-
form for far too long in Washington. The truth is, even if the Senate passes the bill before us today, its full imple-
mentation will not occur until 2006. For those of my colleagues who have said that we are moving too quickly in adding a prescription drug benefit, the fact of the matter is that the Senate has not moved quickly enough.

As with the rest of the Nation, cur-
cently, Ohio's seniors are paying too
much out-of-pocket for their prescription drugs. The cost of these life-saving drugs is increasingly becoming a large burden for seniors, with some even traveling to Canada to find cheaper drugs. Seniors should not have to go to a foreign country to receive the benefits that their doctors prescribe. It is time seniors receive access to affordable prescription drugs in the United States.

This legislation will finally provide Medicare beneficiaries with a voluntary prescription drug benefit. This is especially important to the 400,232 Medicare beneficiaries in Ohio that currently have no public or private prescription drug coverage. For those beneficiaries that already have coverage through another source, such as through a former employer, and would like to keep that coverage, this legislation supports that choice as well.

As my colleagues know, approximately 12 million of the 40 million Medicare beneficiaries currently have prescription drug coverage through former employer-based retiree health plans. Many Ohioans that I have spoken to have concerns that the creation of a new Medicare benefit may cause many of them to lose their retiree coverage. However, the bipartisan conference report encourages employers to continue to provide coverage to their retirees by providing assistance for retiree health care costs including their prescription drugs costs.

In fact, the conference report provides $96 billion in subsidies to assist employers who continue to provide their retirees with health care coverage. This is critical because scores of retirees have lost their health care benefits over the past several years. The bottom line is that this bill will help employers to continue to provide their retirees with health care security.

Not only will seniors have access to affordable prescription drugs with this bill, they will have access to benefits that a modern health plan should have, such as preventive care and disease management—options that Medicare currently does not provide.

Moreover, these additional benefits are provided by giving seniors a choice and control over their prescription drug plans and health care providers. What is called for on the brink of finally strengthening and modernizing Medicare, I would be remiss if I did not take a step back and point out the roadmap that has lead us to this point.

The President has led the way to providing seniors with access to affordable prescription drugs. If my colleagues recall, at the beginning of the year, the President provided in his budget $400 billion for Medicare reform, which included adding a prescription drug benefit. This substantial amount illustrates the President’s commitment to our nation’s seniors. That was the first step.

Following the President was the action taken by Congress to lay out a blueprint for Medicare. During the prescription drug debate in 2002, the Senate operated without a budget resolution—the first time the Senate has not done so since 1974. However, this year Congress operated under a budget resolution.

Through these efforts, and those of the Finance Committee, a bill stands before the Senate that strikes a balance between providing seniors and the disabled access to needed prescription drugs today and doing so in a fiscally sensible way. Both plans of benefits to extend to future generations.

And while opponents of the bill claim that the benefits provided are not large enough, $400 billion does buy an awful lot.

Beginning in 2004, seniors will receive a prescription drug discount card that will provide immediate savings of 10 to 25 percent on most prescription drug purchases. On top of these discounts, the Federal Government would annually update and adjust the first $250 prescription drug costs for those seniors below 135 percent of poverty.

The implementation of the full program, which will include a new Medicare Part D and a Medicare Advantage program, will begin in January 2006. All Medicare beneficiaries will receive substantial subsidies through these new benefits. However, low-income seniors will receive additional assistance on top of these subsidies. In Ohio, this means 624,416 seniors will receive additional assistance.

For the 152,470 neediest seniors in my State of Ohio, those who qualify for both Medicare and Medicaid, under this bill they would pay: nothing in premiums; nothing in deductibles; and a nominal cost-share of no more than $1 for a generic drug and no more than $3 for a name-brand drug.

For the 492,872 seniors in my State of Ohio with incomes below 135 percent of poverty, and assets of no more than $6,000 per individual and $9,000 per couple, under this bill they would pay: nothing in premiums; nothing in deductibles; and A nominal cost-share of $2 for a generic drug and $5 for a name-brand drug.

For those 131,544 seniors in my State of Ohio with incomes between 135 and 150 percent of poverty, and assets of no more than $10,000 per individual and $20,000 per couple, under this bill they would pay: nothing in premiums based on a sliding scale but NO MORE than $35 per month; $50 annual deductible; and 15 percent co-payments up to $3,600; after $3,600, seniors would pay a nominal cost-share of $2 for a generic drug and $5 for a name-brand drug.

For seniors over 150 percent of pov- erty, the standard subsidized benefit would include: $250 annual deductible; $35 average monthly premium; the government would pick up 75 percent of a $2,500 annual deductible; and seniors would pay: premiums based on a sliding scale but NO MORE than $35 per month; $50 annual deductible; and 15 percent co-payments up to $2,250; between $2,251 and $3,600, beneficiaries cover all drug expenses out-of-pocket; and the government would pick up 95 percent of beneficiary out-of-pocket costs for drug expenses above $3,600.

In addition to the stand-alone benefit under traditional Medicare, the conference report would establish the Medicare Advantage program. All Medicare Advantage plans are required to offer at least the standard drug benefit established in H.R. 1 and would be encouraged to offer benefits enhanced access to the latest in health care technology through disease management, chronic care, and quick improvement programs.

These plans have the opportunity to provide seniors with better coverage at affordable prices. To help ensure participation in rural and urban areas equally, Medicare Advantage plans would submit bids to the Centers on Medicare and Medicaid Services on a regional basis. The Federal Government will share the risk with insurance companies and these plans.

It should also be noted that while the through this bill is to provide seniors with access to affordable prescription drugs, the bill also ensures that seniors will continue to have access to current Medicare benefits as well.

For instance, for those seniors whose relationship between a senior and their physician is paramount, last year, Medicare was scheduled to cut physician payments by 4.4 percent, which threatening seniors’ access to their doctors. Physicians had already received a 5.4 percent cut in 2002.

Congress temporarily fixed the formula in 2003 and doctors received a modest increase of 1.6 percent instead of a cut. For 2004, physicians were again scheduled to take a 4.5 percent cut. However, to ensure that seniors have access to their physician of choice, this bill includes modest increases in payments of 1.5 percent for both 2004 and 2005.

Additionally, physicians and their staffs have become increasingly inundated with regulations and paperwork from Medicare. Provisions are included in the bill to streamline some of this paperwork so that doctors can spend more time with their patients rather than filling out reams and reams of Government forms.

Seniors in rural areas will also be assured of continual access to Medicare benefits. One of the most important aspects of the bill is the rural provider provisions. Through the bill, providers in rural areas will be placed on an equal footing to that of their urban counterparts. Some of the specific rural provisions include: equalization of the urban and rural payments for inpatient hospital services under Medicare; revision of the labor-related share of the wage index used in Medicare’s payment system. Rural hospitals, because their local wage levels are lower than urban areas, are adversely affected by a high labor-related share; inclusion of payments to rural health agencies by five percent for services furnished in rural areas; and increase in payment for physicians that serve
beneficiaries in counties where there are a scarcity of physicians.

The House of Representatives has already acted and the President is waiting to sign the bill into law. It is time that the Senate act and pass the Medicare Prescription Drug and Modernization Act.

Mr. SPECTER. Mr. President, since Medicare was established in 1965, people are living longer and living better. Today Medicare covers more than 40 million Americans, including 35 million over the age of 65 and nearly 6 million younger adults with permanent disabilities.

Congress now has the opportunity to modernize this important Federal entity to create a 21st century Medicare Program that offers comprehensive coverage for pharmaceutical drugs and improves the Medicare delivery system.

The Medicare Prescription Drug and Modernization Act would make available a voluntary Medicare prescription drug plan for all seniors. If enacted, Medicare beneficiaries would have access to a discount card for prescription drug purchases starting in 2004. Participants would get a $250 dollar credit and

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, I have a unanimous consent request to clarify plans for at least early in the morning. I ask unanimous consent that when the Senate resumes the conference report to accompany H.R. 1 on Tuesday at 8:15 a.m., the time until 9:15 be equally divided between the chairman of his designee and the Democrat leader or his designee; further, I ask consent at 9:15 the Senate proceed to a vote on the adoption of the conference report, with no intervening action or debate.

Mr. FRIST. Mr. President, through the Chair, we are currently still negotiating and working on the omnibus, and we will continue to work for the next probably 6 to 7 hours. So I will not be able to comment definitively until probably first thing in the morning. Again, we continue to work. Initially we hoped to make progress even tonight on the omnibus, but we were unable to do that. So we will not be adjourning right afterwards. We will likely be in through tomorrow and would like to get as far as we can with the omnibus at that time.

Mr. DURBIN. If the majority leader will yield for a question, is it the intention of the majority leader to adjourn after that vote?

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Mr. FRIST. Mr. President, at this point I really cannot comment intelligently until we further have our discussions through the night in terms of what the plans will be over the course of the next few hours.

Mr. DURBIN. I thank the majority leader.

Mr. FRIST. Mr. President, over the past few days, we have heard a number of criticisms of the bill. And there is one criticism in particular that I want to address.

Opponents have claimed that the bill fails to contain prescription drug costs. I can only presume that this criticism reflects a misunderstanding—because the bipartisan agreement includes a number of critical provisions to lower prescription drug costs.

Under the Hatch-Waxman law, generic approval is allowed when a new
drug’s patent and market exclusivity protection expires, or when a 30-month stay terminates. The intent is to provide incentives to develop valuable new treatments through patent protection, but also to facilitate access to generic drugs. And the bipartisan agreement retains these critical reforms, ensuring speedier access to generic drugs for all Americans. Under the bipartisan agreement, a new drug applicant will receive only one 30-month stay of approval of a generic’s application, for patents submitted to FDA prior to the generic application. The agreement also takes additional steps to reduce or eliminate the delays in the movement of generic drugs to the marketplace.

As a result, patients will benefit from greater access to safe, effective, low-cost generic alternatives to brand name medicines. That’s why this bill is supported by the Generic Pharmaceutical Association and the Coalition for a Competitive Pharmaceutical Market. I would like to submit their letters of support for the Record.

The competition in this bill achieves significant “bang for the buck” because generic drug plans can negotiate discounts. CBO says the private insurance model has a cost management factor of 25 percent—the effect of price discounts, rebates, utilization controls, and other tools that a PDP might use to control spending. By relying on the bargaining power of drug plans, this bill will drive down the costs of prescription drugs.

The bipartisan agreement enhances research on the comparative clinical effectiveness of prescription drugs. This information will be quickly disseminated. By giving patients, health care professionals, health plans and the Medicare program better information on the comparative effectiveness of treatment options, this provision will ensure that patients and health care consumers get the most value for their money.

The bill includes other key cost containments. Prescription drug negotiations in the Medicaid program. This information will be quickly disseminated. By giving patients, health care professionals, health plans and the Medicare program better information on the comparative effectiveness of treatment options, this provision will ensure that patients and health care consumers get the most value for their money.

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In 2003 and 2004, the Congressional Budget Office estimated that exempting Medicare from best price rules would save $18 billion between 2003 and 2013. The bipartisan Medicare agreement will lower prescription drug costs. That is why it has been endorsed by pro-consumer groups including the American Association of Retired Persons and the Coalition for a Competitive Pharmaceutical Market.

However, opponents have claimed that this language “prevents” the Federal Government from negotiating drug prices.

The bill specifies that the government “may not interfere with the negotiations between drug manufacturers and pharmacies and PDP sponsors” and that PDPs “may not require any formulary or institute a price structure.” In fact, this provision first appeared in May 2000 in a Democratic bill. The provision protects patients by keeping the government out of decisions about which medicines they will be able to receive.

Through this bill, we are giving seniors new access to affordable prescription drugs. We are speeding the pace of cheaper generic drugs to the market. We are providing for research on the comparative effectiveness of prescription drugs. We are providing a drug discount card and greater relief for low-income seniors. And we are unleashing powerful new market forces that will drive down the costs of prescription drugs.

As a result, patients will benefit from greater access to safe, effective, low-cost generic alternatives to brand name medicines. That’s why this bill is supported by the Generic Pharmaceutical Association and the Coalition for a Competitive Pharmaceutical Market. I would like to submit their letters of support for the Record.

The competition in this bill achieves significant “bang for the buck” because generic drug plans can negotiate discounts. CBO says the private insurance model has a cost management factor of 25 percent—the effect of price discounts, rebates, utilization controls, and other tools that a PDP might use to control spending. By relying on the bargaining power of drug plans, this bill will drive down the costs of prescription drugs.

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Diabetes cases are more concentrated among non-Hispanic whites. The prevalence of type-2 diabetes is twice as high in African Americans as in non-Hispanic whites. African Americans and Alaska Natives are 2.3 times as likely to have diabetes as non-Hispanic whites of similar age. Diabetes cases are more concentrated among American Indians in the southeastern United States. Asian Americans and other Pacific Islanders are approximately two times as likely to be diagnosed with diabetes as compared to their white counterparts.

When it comes to cardiovascular disease, African Americans have the highest rate of high blood pressure of all groups and tend to develop it younger than others. Stroke is the only leading cause of death for which mortality is higher for Asian-American males. Breast and cervical cancer also hit African American women more often than their white counterparts. Although deaths caused by breast cancer have decreased among white women since the 1960s, African American women continue to have higher rates of mortality from breast and cervical cancer. African Americans are more likely to develop cancer than whites and are about 30 percent more likely to die of cancer than whites.

In the Medicare legislation before us, we have an opportunity to address the problem of health disparities head on. Today, roughly 20 percent of all Medicare beneficiaries are members of minority groups. And the Census projects that, by 2025, minorities will compose two-thirds of all seniors. Racial and ethnic minorities covered by Medicare suffer from more illnesses and are more apt to live in poverty than white beneficiaries.

So I am pleased that this bill particularly benefits racial and ethnic minorities, and assures that minority seniors and disabled people have access to needed medications at affordable prices.

The bipartisan Medicare agreement will help cut their prescription drug bills in half. The poorest seniors—particularly Medicare beneficiaries with incomes below 100 percent of the Federal poverty level who are eligible for Medicaid would pay no premiums or deductibles, and would pay only nominal cost-sharing of $2 for a generic drug or a preferred multiple source drug and $3 for all other drugs. 2.5 million low-income minority beneficiaries with incomes below 135 percent of the Federal poverty level would receive $2 for a generic drug or a preferred multiple source drug and $5 for any other drug. More than 400,000 minority beneficiaries, with incomes below 150 percent of the Federal poverty level, would receive $1 for a generic drug or a preferred multiple source drug and $3 for all other drugs.

The bipartisan agreement provides immediate help to those who need it most: low-income Medicare beneficiaries who do not have prescription drug coverage and do not qualify for Medicaid. This starts with the prescription drug discount card and builds on it with the needed payments for low-income seniors with a generously subsidized drug benefit in 2006. Over 13 million beneficiaries under 65, across all racial/ethnic groups, have no coverage for prescription drugs. But these limitations are particularly acute among some populations. In 1999, 46 percent of African Americans and 55 percent of Hispanics had incomes below the Federal poverty level, compared with 15 percent of white beneficiaries. Nearly two-thirds of African-American and Latino beneficiaries have incomes below twice the poverty level, compared with 41 percent of whites.

Starting in 2006, more than 1.5 million minority beneficiaries will gain access to new drugs, including over a half million Hispanic and nearly 700,000 African-American Medicare beneficiaries. The Bipartisan Agreement will help cut their prescription drug bills in half. The poorest seniors—particularly Medicare beneficiaries with incomes below 100 percent of the Federal poverty level who are eligible for Medicaid would pay no premiums or deductibles, and would pay only nominal cost-sharing of $2 for a generic drug or a preferred multiple source drug and $3 for all other drugs. 2.5 million low-income minority beneficiaries with incomes below 135 percent of the Federal poverty level would pay no premiums or deductibles, and would only pay nominal cost-sharing of $2 for a generic drug or a preferred multiple source drug and $5 for any other drug. More than 400,000 minority beneficiaries, with incomes below 150 percent of the Federal poverty level, would receive $1 for a generic drug or a preferred multiple source drug and $3 for all other drugs.

The bipartisan Medicare agreement includes new cardiovascular and diabetes screening tests that do not have deductibles or co-pays, so beneficiaries with limited resources who might not otherwise access these benefits are not deterred by the cost.

Disease Management is being introduced into Medicare programs to provide beneficiaries the tools and support systems to help them manage their chronic illnesses. Through these new benefits, conditions such as obesity, diabetes, heart disease, and asthma could be made far less severe for millions of Medicare beneficiaries, including those racial and ethnic minorities who suffer most from these conditions.

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The agreement includes critical provisions to study and disseminate the latest research on the comparative clinical effectiveness of prescription drugs, health care services, including among specific patient sub-populations. This will ensure that patients and providers can make informed choices about their treatment options. It will also make prescription drugs affordable for all Americans through important provisions, speeding generic drugs to market.

Ultimately, by adding much-needed prescription drug coverage to services already covered by Medicare, the agreement ensures that these individuals have access to more comprehensive, higher quality health care and treatment options.

The President. The Senator from Illinois.

Mr. DURBIN. Mr. President, I sincerely hope we do something about unemployment compensation benefits. We will be gone for 2 months. Nine million out of work, and 2 million have lost their jobs since this President took office. Frankly, many of them have seen their unemployment benefits expire.

Historically, traditionally, on a bipartisan basis, we have extended those unemployment benefits. I think it is a sad situation if we adjourn before this holiday season leaving literally millions of American workers without the basics they need to keep their families together. I hope if we do nothing else, we achieve that.

Those who may be following this debate may wonder why, at 20 minutes to 10 this evening, on November 24, Senators are still on the floor speaking about this legislation. This bill, which in its totality is about 1,100 pages long—and the sponsor of it, Senator Grassley, my friend, has admonished me not to say that the bill is 1,100 pages long—but the bill and its committee report is that length—is a historic piece of legislation.

There are some of us who believe, if this bill passes tomorrow, in the morning, as it is likely to do, that, frankly, for years to come people will be asking questions about how various Senators felt, how they voted, and what they did during the course of this debate. Those who support it believe it will be good and they take great pride in it. Those of us who believe this legislation is an abomination. When we consider the opportunity we had and the challenge we had when this legislation was brought before us, this bill fails to meet the test.

It is in this respect: We started off saying we need to help senior citizens for prescription drugs. Medicare did not include that benefit, and it should have. We know now that prescription drugs keep seniors healthy and strong and independent. We should give them a helping hand to pay for those expensive drugs. I think everybody agreed with that premise.

Then, when we started to debate, things started to change, because in order to achieve that goal many of us thought the Government would have to step in with some money to help seniors but also we would have to say to the drug companies, you have to charge $2.70 for your drugs. I think those two go together.

To think that the Federal Government is going to somehow subsidize the cost of prescription drugs and do nothing to bring those costs down, frankly, is counterproductive, as are the procedures that do not appropriate enough money to keep up with the meteoric rise in the cost of prescription drugs that seniors and other families across America face.

Sadly, the Senate passed a bill, supported by Democrats and Republicans, which at least moved in the direction of change but did not move far enough. It did not contain any cost containment. It did not challenge the drug companies in America to treat Americans fairly.

That bill passed and went to conference committee. We hoped it would be improved, but it was not. In fact, the bill was worsened in many respects. As a result of that, many of us who had hoped for a prescription drug benefit for seniors are going to oppose this particular legislation because it does not achieve that goal.

Sadly, it brings another element to the debate, but of us never bargained. There are those in the Congress who believe we have to basically dismantle and fundamentally change Medicare.

Medicare, a system of health insurance for seniors across America for over 40 years, has given seniors quality of life and quality health care, and statistics prove that it has worked. Seniors live longer. They are more independent. They are healthier. Medicare has proven that if we have Federal leadership, doctors and hospitals providing the best care to our mothers and fathers and our grandparents and grandfathers.

But there are some who opposed it from the beginning, calling it socialized medicine, and others who do not want to meet the obligations of Medicare as the baby boom generation qualifies to receive it. So they have set upon a path to basically change Medicare as we know it.

That was never part of the bargain. This was supposed to be about prescription drugs and seniors. Instead, it switched into a new realm. The House Republican leadership pushed into this conference committee a dramatic, and some say drastic, change in Medicare for its future. That has forced many of us not only oppose this bill but to oppose it strongly, believing our first obligation is to protect Medicare and our second obligation is to give seniors the benefit they need for prescription drugs.

This bill has failed. This bill will raise Medicare premiums for millions of senior citizens. It will force many senior citizens into HMOs. I do not have to explain HMOs to people who have tried to live with them. A health maintenance organization or similar insurance company basically rations care. It picks the doctor, not the individual covered or insured. But the HMO will pick your doctor and pick your procedures because they do not believe it is economical to cure something.

So doctors make decisions about what you need to stay healthy, and HMOs overrule the doctors.

Senator Kennedy, who is on the floor, and will speak after I do, has been a leader in this Senate, in the Congress, on a Patients' Bill of Rights. Why did we have to create a Patients' Bill of Rights? Because of the abuses of HMOs. And that is no surprise to people who have tried to live with them.

Now, this bill, pushed by the Republican leadership, wants to move American seniors out of Medicare and into these HMOs. They believe that is a better way to go, to ration health care through HMOs. They want the HMOs to pick the doctors and the hospitals. They do not want the seniors to choose them, as they do now under the Medicare plan.

The original argument was that these private insurance companies, because they would be competing in the open market, would provide more economical care for seniors. But, of course, that premise was destroyed by this bill because they included in the bill a $12 billion slush fund, $12 billion of Federal tax dollars that will go to subsidize the HMOs. In other words, they not only do not have to prove profitability; they can make a Federal subsidy as they try to lure the healthier seniors out of Medicare, leaving behind poorer and sicker Medicare recipients who will drive up the unit cost of care under that traditional program, making it more expensive to Congress and the American people, and its critics hope will lead it into a period of unpopularity and perhaps abandonment.

I believe that is their ultimate goal. I think that is what they are setting out to do. They want to force seniors into HMOs, subsidized, incidentally, by Federal tax dollars. They want to undercut full Government funding of Medicare.

That is not why I signed up for this debate. It is not the reason most Senators got involved in it. It, frankly, represents a distorted view of what we were setting out to do.

It also is going to eliminate drug coverage for millions of retirees. The Congressional Budget Office, which makes projections, tells us that 2.7 million retirees in America currently have health care benefits, including prescription drugs—2.7 million will lose that coverage because of this bill.
There is already a trend in America to take away health coverage for retirees. It is expensive. Many of the companies would like to get rid of it, if they can. The CBO tells us, the Congressional Budget Office tells us, this bill will create a lure and a force to entice the companies to leave. We must draw these retirees out of their current health care benefits in retirement into a situation where they are not insured—2.7 million.

In my home State of Illinois, 100,000 retirees will lose their health care benefits because of this bill. Was that even part of the bargain? Did we go into the debate saying, we are going to provide prescription drug coverage to seniors but in the process the 100,000 in my State are going to lose their health care coverage?

That is the result, and not a result on which we are speculating. It is from the Congressional Budget Office, as they reported it to us.

There is no element here as well. There is an element that I think really tells the story about why this bill is so popular in some quarters in Washington—not among seniors but with some special interest groups.

If you should have seen the right outside this Chamber this afternoon when the key votes were coming down. You could not even walk through. It was packed with lobbyists.

Now, there is nothing wrong with lobbyists. Lobbyists perform a valuable function. Listen to me for a minute. Listen to me for a minute. If you were to come to the Senate Chamber and tell us both sides of the story. As a Member of the House and Senate, I value lobbyists who are honest and tell me the side of the story.

But if you took a look at the lobbyists in the hallway outside on this vote, you noticed, overwhelmingly, they were lobbyists supporting this bill and lobbyists representing pharmaceutical companies and HMOs.

Why would pharmaceutical companies, or HMOs, or lobbyists support a bill that is supposed to lower prescription drug prices for seniors?

The obvious reason is that under this bill the drug companies and HMOs will give a reasonable price or we will look to another company with a comparable drug. We do that with the Veterans Administration. We could have done it with Medicare. But this bill expressly prohibits Medicare from entering into these negotiations to lower prices. Why? We cannot negotiate because companies that fought reimportation of drugs don’t want to bargain with Medicare. As a consequence, the seniors are the losers. That is basically what we are going to do with. We are going to continue to see outrageously high prescription drug costs.

Let me give an illustration of one element that I am not sure has been addressed during the course of this debate. That may be hard to believe after 2½ hours of debate. This bill lacks any serious attempt to lower the cost of prescription drugs. We can reasonably assume that prescription drug prices will continue to rise about 15 percent annually as they have in the past. It is one of the most inflated costs in our health care menu of opportunities, prescription drug prices. One major employer in Illinois, Caterpillar Tractor Company, self-insured for health insurance, told me the price of prescription drugs was the biggest single problem they are facing for employees and retirees.

Consider the example of a senior citizen struggling to make ends meet, the kind of senior we were supposed to help with this bill, a senior who in 2006, when this bill will first go into effect, has an income of $20,000 a year. That is probably in the high end for many seniors. Some survive on much less. But for purposes of illustration, this senior has was $17,600, a 15 percent increase uncontrolled versus a 3 percent increase in income. Do you know how much of that $17,600 will be paid by the Government under this bill when we have this period of time, 9 years after it goes into effect? It is $13,800, 53 percent of the senior’s income. So even with this bill under unwound, prescription drug inflation will drive seniors in a decade or more from spending a fourth of their income on prescription drugs to spending more than half of their income under the scenario I have just described.

Why? Senior citizens’ out-of-pocket drug costs go up even with this bill because the bill does nothing to rein in unsustainable inflation in prescription drug costs. That doesn’t help seniors.

They have us to take action to bring down the cost of medication.

If you take a look at the pharmaceutical companies and their approach on this bill, here is what they wanted when we started this debate. They wanted private-insurer-administered drug benefits that dilute purchasing power. They got it. They wanted financial incentives for HMOs, another step away from Medicare. They got it. They wanted a prohibition on Medicare negotiation for prescription drug prices. That is why.

I think is the fatal flaw in this legislation. They wanted meaningless reimportation. They got it. So getting drugs from Canada becomes even more difficult. They wanted watered down generic drug access provisions. They got it. They were successful. They wanted no public scrutiny of secret PhRMA-insurer kickback arrangements. They got that protection. And, finally, they wanted huge windfall profits, and they will get it.

Wall Street has already cost this out. Pharmaceutical stocks, which were already the most profitable in America, will continue to be such. The
loser will be senior citizens who were supposed get the help. That is why the pharmaceutical companies line up outside the door to the Chamber cheering for those who want to vote for this bill—because they know it means more business. One estimate is that if seniors are covered, the pharma companies will see an additional $4 billion in revenue.

What I have given you here is not an example; $5,000 a year for prescription drugs for a senior is sadly a reality. The seniors who will face this without a helping hand from the Government. There are terms of paying these inflated costs of drugs are going to struggle, and they may not succeed in paying for those drugs.

Let me show you this. Too, here are the compensation levels of those who run HMO insurance companies I described earlier. Remember what I said. The intent of this bill is to move seniors out of Medicare into HMOs. These are compensation levels: For companies such as Aetna, here is their CEO, he received $9.8 million; Anthem, $6.8 million; CIGNA, $5.9 million; Coventry, $21.6 million compensation for their CEO; Health Net, $6 million; Humana, $1.6 million; Oxford, $76 million for Mr. Norman Payson, not a bad year; Pacificare, $3 million; Sierra Health, $4.7 million; and then we get down to United Health Group, this group with a CEO by the name of Mr. Channing Wheller; he received $9.5 million in compensation.

I would like to stay with United Health Group for just a moment. This is not just another HMO, this is an HMO that is extraordinarily blessed by this bill. Let me tell you why. In addition to $2 billion in a slush fund to subsidize and underwrite HMOs that are going to compete with Medicare, there is an additional provision in here that gives $6 billion for a theory of health insurance called health savings accounts. If you have followed the debate in Washington, you may know that a year ago, a company based in Lawrenceville, IL, the Golden Rule Insurance Company, dreamed up this basic insurance idea that said: We will say to people that if you will take a high deductible health insurance policy and do not use all that you could in terms of health expenses during the course of the year, we will refund some of your money at the end of the year; so it is not only health insurance lite but a chance to recoup your money. They are medical, savings accounts. This was the darling of then-Speaker Newt Gingrich and his conservative Republicans.

They believed this was the answer to America’s problems for health insurance. We have eventually put in a demonstration project and said let’s at least try this concept and see how many people want to buy into it. It was a dismal failure. Very few people signed up. That didn’t stop the efforts to increase the provisions to help with the concept of medical savings accounts—now called health savings accounts—in this bill—not just to help them get started but a $6 billion slush fund of Federal tax dollars to underwrite health savings accounts.

Let me say, it is not a one-way street. In order to win the attention of Congress and $6 billion in Federal subsidity, Golden Rule, over the past 12 years, one of the most generous to political candidates. They donated $3.6 million to political parties in candidates—90 percent to the Republican Party. Mr. Gingrich received more campaign contributions from Golden Rule than any other Federal outsider over a 12-year period. In fact, he became their poster child and appeared on their television advertisements. The list goes on and on about Golden Rule and all the political contributions they have made.

This bill contains $6 billion for health savings accounts, such as those that have been devised by Golden Rule. This is how it works. Consumers or employers buy high-deductible policies. The deductible in at least $1,000 for individuals, $2,000 for family. The consumer or employer can put as much as $5,000 a year for an individual and $10,000 for a couple into the account. The contributions are tax deductible. Money can accumulate tax free. Withdrawing the money is tax free. It is virtually an unprecedented tax shelter that is being added here and subsidized with $6 billion. The funds can be withdrawn to pay medical expenses, including items not normally covered, such as vision, dental.

The problems are numerous. First, it compromises the current health insurance system. People who purchase high-deductible health insurance policies are the healthiest among us. As they shut out of traditional plans, the risk pools in those traditional plans are compromised, leaving people behind to pay higher premiums.

Past research by Rand, the Urban Institute, and the American Academy of Actuaries found that premiums for comprehensive insurance could more than double if these health insurance accounts become widely used.

Second, wealthy Americans are likely to use these as tax shelters.

In 1996, HIPAA established a demonstration project of health savings accounts. The GAO evaluation of the investigation showed that investment firms such as Merrill Lynch entered the health savings account market because of hedge fund surges that otherwise were using their accounts primarily as tax-sheltered savings vehicles rather than sources of tax-sheltered funds for paying medical expenses.

So here we are setting a new precedent in tax policy. The financial service industry loves it—$6 billion. Now you might ask yourself: What do health savings accounts have to do with prescription drugs for seniors? That is a good question. Well, that is what health savings accounts have to do with Medicare and seniors in general. The answer is nothing. The $6 billion subsidy in this bill for health savings accounts is making good on a promise by Republican leadership to reward their friends—in this case, Golden Rule. But wait, there is more to the story.

Golden Rule as an insurance company doesn’t exist anymore, but it sold out. The purchaser was United Health Group. R. Channing Wheller is their CEO who made $9.5 million. They are basically the architects of the health savings account, this HMO. This story is very interesting. This is a publication of AARP. It comes from October of this year. AARP makes a lot of money by selling insurance to seniors. If you open here, this is page 24 and 25, those two pages, you will see three advertisements from AARP on behalf of United Health Care Insurance Company’s insurance plans. What is the connection? AARP receives millions of dollars from the sale of health insurance policies and stands to gain under this bill. The AARP insurance or HMOs receive a quarter of their operating revenues last year and one-third in 2001. They receive royalties from policies marketed by United Health Group, the one that purchased Golden Rule. Last year they received $10.7 billion in premium revenue from their offerings to AARP members—$3.7 billion. This one company.

The royalties AARP earned as a result of that amounted to $123 million; access, fees, $30 million; quality control fees, almost a million dollars. AARP also earns investment income on the premiums received from members. That is a total of $161.7 million in revenue from insurance. According to Advertising Age Magazine, AARP and United Health Group hired a direct marketing agency in May to conduct a marketing campaign that could cost $100 million.

United Health Group is going to be one of the biggest winners under this bill, we are considering and will vote on tomorrow. It will be a big winner in at least two different directions: First, as an HMO, it is entitled to part of the $12 billion slush fund to lure seniors out of Medicare into their HMO. Secondly, because they have now bought Golden Rule, they will be authors of insurance policies called health savings accounts, which receive another $6 billion subsidy; and guess who is in on it as well. Our friends at AARP.

We are going to lose when seniors who belong to AARP have been asked whether they like this bill, they overwhelmingly say no. Let me get this figure right; I don’t want to misstate it. When asked last week whether they supported this bill—AARP members nationally, in a poll conducted—are 56 percent opposed it and 18 percent supported it; 56 percent of the seniors in AARP opposed it and 18 percent supported it.

In my home state of New Jersey, Bill Novelli and AARP have been leading the charge to pass this bill. If it is not that popular among AARP members, what is going on? There is money to be paid. AARP is
going to be selling insurance through the United Health Group with a massive Federal subsidy, and through the old Golden Rule health savings account with another massive Federal subsidy. They are not listening to seniors; they are listening to the insurance companies, to the HMOs, and that is a sad thing.

This bill squanders $6 billion that should have been paid for retiree coverage of prescription drugs, creating these new health savings accounts that ordinary Americans cannot afford; undermining employer-based coverage, $6 billion that should have been used to prevent the loss of retiree coverage. As I mentioned earlier, some 25 percent of the revenues going to AARP came off of insurance royalties.

So you ask yourself if the membership of this organization doesn’t care for this plan and opposes this plan, by a margin of more than three to one, why then is AARP front and center running ads in newspapers, television, and radio across America? Because, frankly, the ads are paid for by HMOs and pharmaceutical companies and represent an effort by the current leadership of AARP to jam down the throats of senior citizens a proposal they do not support.

What I suggest to seniors across America who are following this televised debate is this: If you belong to AARP, call them first thing in the morning at 1-800-424-3401 and tell them to stand up for seniors, don’t stand up for the insurance companies. Don’t stand up for pharmaceutical companies, stand up for seniors across America.

I, frankly, went back to Chicago this weekend and met with many people who said they have had it with AARP. They have no idea what happened to an organization created to serve seniors and, frankly, is turning its back on the seniors that need help the most. That, to me, is a sad commentary.

Someone said, basically, if you want to know about legislation, whether it is good or bad, ask the basic question: Who wants it? Who wants this bill, this 1000-page monstrosity? It isn’t senior citizens. Overwhelmingly across America they say we don’t want it. They are calling my office and every office on Capitol Hill. They want help to pay for prescription drugs they can’t afford. They want help under Medicare, the costs can be contained. They didn’t want a full-scale attack on the Medicare system itself, and that is what has happened.

Sadly, we know who really wants this bill: the pharmaceutical companies that stand to make outrageous profits into the future without any competition, and the HMOs that, with their Federal subsidies, will be luring these seniors out of Medicare.

This was an extraordinary and historic opportunity for the Senate and the Congress to do something meaningful. Forty years ago, when we created Medicare, the doctors across America opposed it saying it was socialized medicine. They did not want the Government involved. A few years after the fact, they realized Medicare was not only great for seniors but not bad for the medical profession either. They have been able to expand their practices, change their medical care, and make for a healthier America.

It worked to everyone’s advantage, but the special interest group at the time, the AMA, was opposed to it. Today this is a product of special interests that the AMA tried to stop. It was a product that was designed for seniors. It was a product that was designed to reward friends—the pharmaceutical companies that have spent $339 million lobbying Congress over the past 6 months, as well as the old buddy network.

They may win tomorrow, but this I will predict: When this bill goes into effect in 2006, conveniently after the next Presidential election so that all of us who oppose this plan will be gone, when this bill goes into effect and seniors across America realize they have been had, the telephone calls that Congressmen and Senators are receiving today will pale in comparison.

I urge those who voted for this flawed bill to consider those who stand up for seniors across America when our citizens worked hard, paid taxes, raised families, went to school, and prepared themselves as well as they could for their own retirement. But for millions of Americans, retirement meant misery, poverty and abandonment. They were on their own with no financial security and no health care in what was called, with great irony, the golden years of their lives. But all that changed in the wake of the Great Depression.

The scandalous neglect and serious hardship of the elderly was no longer tolerable. In the 1960s, Congress and the administration made a promise to our people. We guaranteed that any American who works hard, plays by the rules, and pays taxes will earn well-deserved financial security in retirement. A generation later, we added health care to that commitment. And ever since, the two most successful and beloved programs in the nation have been Social Security and Medicare.

The solution before us today is a shameful attempt to break that promise. It’s a right wing Republican assault on Medicare in the guise of a prescription drug program, and Republicans know it. They know that this bill will force millions of seniors into HMOs, and deny them their choice of doctor and hospital. They know that this bill does nothing to control the skyrocketing cost of prescription drugs. They know that it’s a fat deal for HMOs and pharmaceutical companies—and a raw deal for the elderly.

They know it’s a dress rehearsal for the coming assault on social security. They know that this is a dress rehearsal for destroying Medicare. It offers seniors a total dismantling of Medicare. It is the first step towards a total dismantling of Medicare. In exchange for destroying Medicare, it offers seniors a limited and inadequate drug benefit. The moment it is implemented, it will make nine million seniors—almost one quarter of all senior citizens—worse off than they are today.

Seniors already have the most important choice they want—the choice of
November 24, 2003

CONGRESSIONAL RECORD — SENATE
S15767

the doctors and hospitals they trust. That it the choice they will lose if they are forced to join HMOs or other programs that say an insurance company will choose their doctor for them.

Senior citizens already have the choice to join a private insurance plan competing with Medicare if they choose. But nine out of ten prefer to keep their Medicare. The bipartisan bill that passed the Senate earlier this year provided a reasonable additional choice—to receive prescription drug coverage under Medicare, or to receive that coverage through a private-sector drug plan.

But the conference report adopted the unacceptable House approach of ending Medicare as we know it. It establishes a massive demonstration program that will subject seven million senior citizens—one out of every six—to a so-called premium support program. The only purpose of premium support is to raise the premium in regular Medicare so that senior citizens will have to join HMOs to get affordable care that’s not competition. That’s compulsion.

If that weren’t bad enough, the conference report lavishes massive subsidies on HMOs and other private insurers who currently receive drug benefits for every senior citizen who joins an HMO, the government will pay a 25 percent mark-up—almost $2,000—more than it would cost to provide that same senior citizen with the same service under Medicare. As a result of this bill, insurance company revenues will increase by $150 billion a year. That’s not competition. It’s corporate welfare. It’s robbing Medicare and robbing senior citizens to enrich powerful special interests and big campaign contributors.

It’s creating a grossly tilted playing field on which Medicare cannot compete and senior citizens will be the losers.

Proponents of this plan admit that the benefits for most seniors are small. But, they say, look at how much we are helping low income seniors. What they don’t say is that 6 million of the poorest 20 percent of the poorest senior citizens and disabled beneficiaries who currently receive drug benefits under this bill will actually be worse off. Medicaid will be prohibited from supplementing Medicare coverage. These poorest of the poor, left behind.

The doctors and hospitals they trust will have to join HMOs to get affordable care, and the elderly were left out and left behind.

In addition, almost 3 million seniors, many with low incomes, with good retirement drug coverage today will lose it as the result of this bill. That’s not progress. It’s a massive retreat. As the old saying goes, our Republican colleagues have the poor, because they are creating so many of them.

Some low income seniors may get better drug coverage under this plan, but only at the price of the destruction of the promised benefit for all seniors, the low and moderate income alike. No senior citizen should be faced with this Sophie’s choice between the drug benefits they need and the dismantled Medicare they will face under the GOP plan. We passed a bipartisan bill in the Senate and that did not sacrifice Medicare on the altar of right-wing ideology. If we voted down the destructive, partisan bill before us, the Senate will have another opportunity to do the job right.

The drug industry too will reap a bonanza under this bill. If prescription drug prices continue to rise at double-digit rates, the minimal savings this bill provides to the average senior will be wiped out in no time by higher drug costs. This bill does nothing meaningful to hold prices down. In fact, far from anything to increase in drug costs, the Congressional Budget Office estimates that they will actually rise as the result of this legislation. No wonder the stock of our four leading drug companies went up $8 billion today.

It doesn’t allow drugs to be imported from Canada. It even bans the Secretary of HHS from bargaining for better drug prices.

The Senate is on trial today, and we will soon vote on whether to stop this charade. I urge my colleagues to stand up and fight. Fight it for the worker and for the senior citizens, for the retire- ment fund for 20 years. Fight for the three million retirees like him who will lose their health insurance because of this bill.

Fight for city workers like those in Springfield, MA, whose brave mayor plans to obtain cheaper prescription drugs from them.

Fight for the elderly grandmother on Medicaid, and the 7 million poor Americans like her, who count every penny, who can’t begin to pay for their prescription drugs under this bill.

Fight for the 36 million seniors who want to stay in the Medicare they love, and with the doctors and hospitals they trust.

Fight it to keep billions and billions of Medicare dollars out of your paycheck from lining the pocket-books of big drug companies and HMOs. That’s your money going to your Medi- care, and it should pay for your pre- scription drugs, not inflated profits of the drug industry and the insurance in- dustry.

Fight for a nation that keeps its commitments to our seniors—who fought our wars, raised our families, and built our economy. How can we turn our backs on them now? The more the American people learn about this legislation, the more they dislike it. The more senior citizens learn about it, the more they oppose it. Let us not turn our back on Medicare now. Let us not turn our back on senior citizens so that insurance compa- nies and pharmaceutical companies can earn higher profits. Let us vote no on the disgraceful bill, and come back and do the job right.

And we will do that job right, even if it takes the election of a new Congress and a new majority.

The Democratic Party fought for years to enact Medicare. We will fight for as long as it takes to save Medicare and to provide senior citizens the comprehensive prescription drug benefit they need.

We will fight today. We will fight this year. We will fight next year. We will fight this issue in every State and congressional district in 2004—and we’ll keep fighting until, once again, the fundamental values of democracy, justice rate higher than more wealth for those who are already wealthy, and more power for those who are already powerful.

For those who have not been following this debate in detail, let me review the particulars of this conference report. The more the American people understand what this bill does, the more they will demand that it be re- jected.

Medicare is a solemn commitment between the government and the people. It says, “Pay into the system during your working years, and we will guarantee you affordable, quality health care in your retirement years.” For 40 years, a fundamental part of that commitment is a guarantee that senior citizens can choose the doctors and hospitals they trust to provide them the medical care they need.

Today, there are those who want to break that commitment. They want to force the elderly into HMOs, where insurance company bureaucrats, not pa- tients, choose the doctor. They want to replace the solid guarantee of afford- able Medicare anywhere in the country with a system where what you pay de- pends where you live. They want to take our country back to the 19th cen- tury, when Government was by the wealthy and powerful—and the weak, the poor, the members of working fam- ilies, and the elderly were left out and left behind.

For a number of years, we have been working to improve Medicare by add- ing a much-needed prescription drug benefit. Democrats and Republicans alike have campaigned on that issue. Democrats and Republicans alike have promised senior citizens and their fam- ilies to fill the largest gap in Medicare protection—its failure to cover the high cost of prescription drugs. How in the world, the American people are asking, did we get from that non-partisan objective of improving the Medi- care program with a prescription drug benefit to a partisan proposal to rad- ically alter Medicare for the benefit of the insurance industry?

In July, the United States Senate passed a bipartisan program to add pre- scription drug coverage to Medicare. Seventy-six members of the Senate, Republicans and Democrats alike voted to replace the solid guarantee of affordable Medicare anywhere in the country with a system where what you pay depends where you live. They want to take our country back to the 19th cen- tury, when Government was by the wealthy and powerful—and the weak, the poor, the members of working fam- ilies, and the elderly were left out and left behind.

But by contrast, the House of Represent- atives passed a bill to radically change Medicare.

It included prescription drug cov- erage—but only as a Trojan horse for
the radical changes that were their real objective. Their bill was designed to privatize Medicare, to force senior citizens to join HMOs or other private insurance plans, and to benefit the wealthy and powerful at the expense of senior citizens. This was a radical program designed to by those who, in their arrogance, believe they know what is best for senior citizens. Senior citizens may not want to join HMOs or other private insurers—but in the view of the writers of this legislation, that’s because they just don’t know what’s good for them.

The House bill picked up where President Bush left off. The President proposed that senior citizens couldn’t get a prescription drug benefit at all unless they joined an HMO or other private insurance plan. That plan generated such a wave of public outrage that Republicans had to withdraw it. But the House bill achieved the same objective by proposals that were less blatant but equally effective.

Because the House bill was about radically restructuring Medicare according to the right wing blueprint, it could not command bipartisan support. It passed by the House by a narrow partisan vote. The report the conference produced—with all but two of the Democratic conferees excluded from the deliberations—and the partisan House proposal all over again. That’s why the vote in the House this morning was just as partisan, just as narrow, and only achieved by the most extraordinary perversion of House rules. Now it is up to the Senate to prevent this travesty from becoming law.

This is no longer a bill to provide senior citizens a drug benefit. It is a bill to reward powerful special interest and to force senior citizens into the unloving arms of HMOs and insurance companies. It is a right wing program to privatize Medicare and voucherize Medicare. It asks the elderly to swallow unprecedented and destructive changes to the Medicare program in return for a limited, inadequate, small prescription drug benefit. It does nothing to drug costs. It gives the pharmaceutical industry a free ride—and sticks senior citizens with the bill. And this conference report is so ill-conceived that not only does it put the whole Medicare program at risk; it makes nine million senior citizens worse off daily. And it raises payments to private plans by an amount greater than the Medicare population would lose off the day this program is implemented than they are today.

One of the most important of these destructive changes is a concept called “premium support.” It should really be called “senior citizen copay support” or maybe it’s called “premium support” because it uses Medicare premiums to support HMO profits. It replaces the stable, reliable premium that senior citizens pay for Medicare today with an unstable, unaffordable premium.

Here’s how it works. Today, Medicare premiums are set at 75 percent of the costs for Part B of the Medicare program, the part that pays for doctor care. Beneficiaries pay the remaining 25 percent. The premium is the same no matter where you live. It increases from year to year at the same rate as Medicare doctor costs. It is a stable, reliable amount that says Medicare is bad. HMOs and PPOs are good. And if senior citizens don’t agree, we’ll make sure that their premiums keep going up until they are forced to give up the doctors they trust to get the medical care they need.

Some of supporters of this program claim it is just a demonstration—nothing to get excited about. But it’s not a demonstration. It is a club to force 10 million senior citizens, or 20 million, or the whole country into this plan. If we pass this bill, we’re not just putting the camel’s nose under the tent. We’re putting the head and the hump in, too.

The people who support this program make no secret of what they want to do. They are on record as thinking the Medicare is outdated, that it should be scrapped, and that seniors should be forced into HMOs. That’s the same philosophy the President embraced when he initially proposed to give senior citizens a drug benefit only if they joined an HMO or PPO. I respect their opinions, but it is wrong to use senior citizen’s need for prescription drugs as a club to force through a radical change in Medicare that could never pass muster on its own.

Premium support is only one of the ways that this plan would privatize Medicare and force senior citizens to choose between the doctors they trust and the prescription drugs they need. The conference report pumps up the payment to private plans to a level where Medicare could be uncompetitive.

It’s fiscally irresponsible and unfair. It’s using the elderly’s own Medicare money to destroy the program they depend on.

The bill lavishes largesse on the private sector by stealing from Medicare in three ways.

First, the payment formula in the conference report is the same as the House’s—and it raises payments to private plans so that they are 109 percent of Medicare’s costs for caring for the same person.

Is that not odd? The private sector is supposed to be more efficient and save Medicare money—but Medicare, under this report, is paying them 9 percent more than it would provide Medicaid to cover the same services.

But that is only the beginning. According to the CMS’s own studies, Medicare pays an additional 16 percent in excess of Medicare’s own costs to private insurance companies because the senior citizens who join Medicare HMOs are healthier than those who do not.

So under this bill, Medicare is going to be paying a 25 percent markup for...
Impact of Conference Proposal on Revenues and Profits of HMO and Private Health Insurers

Revenues. The CMS Medicare Actuary has estimated that if H.R. 1 is enacted, 95 percent of all Medicare beneficiaries will be enrolled in private health plans by 2010, an increase from their current 11 percent enrollment. The most relevant provisions in the conference report are similar to H.R. 1. Medicare payments to private health plans are expected to increase by $150 billion to a total of $31 billion.

Profits. Under the average profit assumption, Medicare profits of the industry will increase by 490 percent to $5.3 billion in 2010. Under a higher profit assumption, Medicare profits of the industry will increase by 216 percent to $2.17 billion. Industry analysts estimate even higher potential additional profits of $25 billion.

Cost to Government. The Medicare Actuary has not provided an estimate of the impact of H.R. 1 on this cost. However, in a letter to Congressman Thomas, Chairman of the House Ways and Means Committee, dated June 4, 2003, the Actuary states that the provisions of the bill “would increase Medicare costs significantly.”

Premium Support. The Medicare Actuary has not provided an estimate of the proportion of Medicare beneficiaries who would enroll in private insurance plans under the premium support program. Since the Actuary has not estimated that private insurance plans would raise average Medicare premiums by as much as 25 percent however, it is reasonable to assume that a larger proportion of beneficiaries would leave Medicare and join HMOs or other private insurance plans under a full-blown premium support program, further increasing industry revenues and profits.

Mr. KENNEDY. Mr. President, there you have it. This legislation is by the insurance industry, for the insurance industry, and of the insurance industry. It is about privatizing Medicare so that HMOs can improve their bottom line and raise their stock prices. Senior citizens should not be forced to give up the doctors they trust to get the medical care they need. The only rationale for this misguided policy is an ideology that says higher profits for powerful special interests is the highest public good.

No wonder President Bush and the Republican leadership is fighting so hard for this bill. No wonder they are insisting on radical changes to Medicare that have nothing to do with prescription drug coverage for senior citizens. And no wonder senior citizens all over this country—and the organizations that represent them—are outraged and urging members of Congress to vote no.

The two most beloved and effective programs our government has ever created are Medicare and Social Security. Every American should understand that this debate is the dress rehearsal for the coming assault on Social Security. If the Republicans are successful with the legislation we are considering, they will have turned over Medicare to the insurance industry, so that their powerful friends can reap huge profits at the expense of senior citizens. But until we trust the beneficiaries of the HMOs and health insurance companies get their cut, it will be time for the stock brokers and the bankers.
A story in the Washington Post yesterday exposed the Republican plan. It said:

President Bush’s aids are reviving his long-shelved plan to let workers divert some Social Security taxes into stocks as a Social Security tax cut would. They say that this would solve the Social Security crisis, but that in the process, they would be ensuring that sooner or later, they would be able to sell off the stock market to the private sector. But in the meantime, they have not set a date for Social Security reform, and they have not ruled out the possibility of a Social Security tax cut, which would make it more difficult for the private sector to take over Social Security.

It goes on:

A Republican official said the White House has signaled Capitol Hill that Bush’s campaign “wants to spend a lot of money” on advertising promoting the issue. A presidential advisor says that Bush is intent on being able to say that if Social Security is “part of my mandate.”

Aides said Karl Rove, Bush’s senior advisor, has argued internally and to the president’s key supporters that recent polling and election results show that changing Social Security is no longer the “third rail of American politics.”

The article concludes:

Republican leadership aides on capital hill said [the Social Security issue] is more like-ly to be a winner if Congress passes the G.O.P. plan to add a prescription drug ben-fit to Medicare.

There it is, in the Republicans own words. Hold on to your hat. Today, Medicare, Tomorrow, Social Security.

It is no wonder that the Republican leadership insists, to rush this bill through. It is no wonder that the House leadership violated its pledge to allow the members three days to review it.

This bill can’t stand the light of day. Every hour that passes, we find more outrageous provisions tucked away in this bill just pasted over.

Let me review for the members some of the things that have been uncovered in just the last twenty-four hours.

The legislation the Senate approved earlier this year included an effective guarantee that seniors who wanted to remain in traditional Medicare would have a choice of at least two prescription drug only plans. If this simple two-plain test was not met for any reason, the government would provide a fallback plan. This assured that seniors who wanted to stay in Medicare would have a choice of plans to provide their drug benefit—or the Federal Government would provide the benefit directly, as it does other Medicare benefits.

The supporters of the conference report tout the limited $600 benefit that some very low income senior citizens will get next year along with their prescription drug card. But what they don’t say is that the price of getting this benefit would be/>

Major corporations will have unfettered access to your tax records—without so much as a “by your leave!” All those of you who think that that’s a good idea will lose this bill—but anyone who wants the benefit that drug companies and insurance companies have no business paying into your financial records had better call your Senator to tell them to reject this legislation.

To comply with the ill’s require-

ment that these drug benefits are tied to a person’s income, the bill allows HHS to disclose a senior’s tax records to any offices, employees, or contractors’ of the Department of Health and Human Services. That’s practically anyone—including the huge corporations that run the drug card programs. In the words of the bill, just applying for the card “shall be deemed consent” for this monstrous invasion of privacy.

Another dirty little secret tucked away in this drug bill is the freedom it gives the insurance companies offering the drug benefit to construct their formularies so that senior citizens can be sure that there will be a drug to meet their needs on drug formularies. The conference report says that there must at least two drugs on the for-mulary in each therapeutic class. The Senate bill says the therapeutic classes must be approved by the Secretary. The conference report says the plan gets to decide. The plan can decide to meet their needs on drug formularies. The conference report says the plan gets to decide. The plan can decide to meet their needs on drug formularies.

Whether the issue is choice of drug plans, or privacy of tax records, or availability of drugs the senior needs, or the size of the PPO slush fund, this bill is not worth revisited. No wonder Republicans want to get the legislation off the Senate floor and onto the President’s desk before all the rocks are turned over.

One of the most troubling aspects of this legislation is that a program that is supposed to improve the lives of senior citizens will make almost one-quar-ter of them worse off the day it is implemented.

Six million senior citizens and disabled people on Medicaid—the poorest of the poor—will be victimized. Their out-of-pocket payment for drugs will be raised, and they may not even have coverage for the drugs they need the most.

The people we are talking about are the people who pay thousands of dollars before you get regular, comprehensive policies by ordinary working Americans and people who are sick.

That means that seniors have to take what one-drug only plan offers—no matter how high-priced, no matter how inadequate the formulary, no matter how poor the service—or be forced to leave Medicare. It looks like President Bush plans to use this senior citizens’ drug coverage unless they give up their Medicare and their right to choose a doctor hasn’t been screwed; it has just been repackaged.

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the Urban Institute and 61 percent according to the American Academy of Actuaries.

Isn’t that astounding? The Senate started out with a bipartisan program to add prescription drug coverage to Medicare, and now we are asked to vote on a conference report that not only undermines Medicare but could raise health insurance premiums through the roof for younger Americans.

Senior citizens do not want this bill. The disabled do not want this bill. This bill is not a drug program for senior citizens. It is an attack on Medicare—and the Senate has the duty to reject it.

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

The PRESIDING OFFICER. The clerk will call the roll.

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

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

MORNING BUSINESS

Mr. Frist. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. Lott. Mr. President, in accordance with section 318 of Public Law 101-520 as amended by Public Law 103-283, I am submitting the frank mail allocations made to each Senator from the appropriation for official mail expenses and the quarterly summary tabulations of Senate mass mail costs for fiscal year 2003 to be printed in the RECORD. The official mail allocations are available for franked mail costs, as stipulated in Public Law 108-7, the Omnibus Appropriations Act 2003.

I ask unanimous consent that the materials be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:
## Fiscal Year 2003 - First Quarter

<table>
<thead>
<tr>
<th>Senator</th>
<th>FY2003 Official Mail Allocation</th>
<th>Senate quarterly mail volumes and costs for the quarter ending 12/31/02</th>
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**Totals**: $7,563,070.00  19,583  0.00911  $16,643.18  0.00844
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Totals: $7,563,070.00 | 292,552 | 0.21651 | $80,848.35 | $0.06936 |
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**Totals**

$7,563,070.00  29,506  0.02289  $23,821.33  0.01734
Fiscal Year 2003 - Third Quarter

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<tr>
<th>Other Offices</th>
<th>Committee mass mail totals for the quarter ending 6/30/03</th>
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### Fiscal Year 2003 - Fourth Quarter

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<th>Senate quarterly mass mail volumes and costs for the quarter ending 9/30/03</th>
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<td><strong>Totals</strong></td>
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### Fiscal Year 2003 - Fourth Quarter

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<th>Other Offices</th>
<th>Committee mass mail totals for the quarter ending 9/30/03</th>
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<td>Narcotics Caucus</td>
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<td><strong>Total</strong></td>
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</table>
Mr. LOTT. Mr. President, in accordance with section 318 of Public Law 101–520 as amended by Public Law 103–283, I am submitting the frank mail allocations made to each Senator from the appropriation for official mail expenses and summary tabulations of Senate mass mail costs for the third and fourth quarters of fiscal year 2001 to be printed in the RECORD. The third quarter of fiscal year 2001 covers the period of April 1, 2001, through June 30, 2001. The fourth quarter of fiscal year 2001 covers the period of July 1, 2001, through September 30, 2001. The official mail allocations are available for franked mail costs, as stipulated in Public Law 106–554, the Consolidated Appropriations Act 2001.

I ask unanimous consent that the materials be printed in the RECORD. There being no objection, the material was ordered to be printed in the RECORD, as follows:
## Fiscal Year 2001 - Third Quarter

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<th>Senator</th>
<th>FY2001 Official Mail Allocation</th>
<th>Senate quarterly mass mail volumes and costs for the quarter ending 8/30/01</th>
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<td>Pieces Per Capita</td>
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### Fiscal Year 2001 - Fourth Quarter

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<td>Secretary of the Senate</td>
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Mr. LOTT. Mr. President, in accordance with section 318 of Public Law 101–520 as amended by Public Law 103–283, I am submitting the frank mail allocations made to each Senator from the appropriation for official mail expenses and the quarterly summary tabulations of Senate mass mail costs for fiscal year 2002 to be printed in the Record. The official mail allocations are available for franked mail costs, as stipulated in Public Law 107–68, the Legislative Branch Appropriations Act of 2002.

I ask unanimous consent that the materials be printed in the Record. There being no objection, the material was ordered to be printed in the Record, as follows:
### Fiscal Year 2002 - First Quarter

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### Fiscal Year 2002 - First Quarter

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## Fiscal Year 2002 - Fourth Quarter

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Mr. SCHUMER. Mr. President, I am deeply disappointed by the President’s choice of James Oberwetter to be the next U.S. Ambassador to Saudi Arabia. My disappointment does not stem from any doubt about Mr. Oberwetter’s integrity or professional accomplishment. Indeed, in both categories he has my respect and admiration. However, I simply do not believe that Mr. Oberwetter possesses the proper experience or knowledge that has become one of the most important posts in our Nation’s fight against terrorism. And while I will not stand in the way of Mr. Oberwetter’s appointment, I believe it is important that the record show that the President’s choice could certainly have been better.

Saudi Arabia is one of the primary battlegrounds in the war on terror. This is not simply because 15 of the 19 hijackers from 9/11 were Saudi. Top anti-terror officials tell us that Saudi Arabia is also a hub for terrorist financing and extremist incitement. The inflammatory content of its educational textbooks promotes anti-American sentiment in the Kingdom and its support for extremist madrassas schools in Pakistan, southeast Asia and Africa gives life to institutions that are incubators for the next generation of terrorists abroad.

Given this sad state of affairs, there are several reasons why Mr. Oberwetter should not be our nation’s next Ambassador to the Kingdom of Saudi Arabia. First, he has absolutely no official diplomatic or anti-terror experience. As I have said before, in a post-9/11 world where the old rules simply do not apply. Given that Saudi Arabia is one of the most important fronts in the war on terror, our top representatives there can no longer be run-of-the-mill political appointees; rather, the American Ambassador to Saudi Arabia must be a seasoned diplomatic expert and someone with an extensive background in combating terrorist financing and religious extremism.

Mr. Oberwetter’s more than 25 years as an oil industry insider provide him with no background to assume this key position in the fight against terrorism. Indeed, his oil industry pedigree is another reason he is an inappropriate choice to serve as Ambassador. While I have no doubts about Mr. Oberwetter’s personal integrity, his proximity to the oil industry suggests that commercial rather than security interests appear to have taken precedence in the administration’s decision-making.

I simply do not understand this business-as-usual approach to diplomatic appointments when American lives are at stake. Surely there is someone more qualified than an oil executive that we could choose from the distinguished ranks of our Nation’s diplomatic and security corps to occupy this important post in the war on terror. Mr. Oberwetter’s nomination is a disappointment and does a disservice to our national security.

ON YESTERDAY’S ATTACK IN MOSUL

Mr. ALEXANDER. Mr. President, I express my outrage at events that transpired this weekend in Iraq. No one expects terrorists to follow the rules, but what they did to two soldiers from Fort Campbell this weekend in Mosul is beyond the pale. We have lost 431 men and women in the conflict in Iraq; my heart goes out to the families and friends of each and every one.

Here is how the Associated Press describes what happened, as reported in The Tennessean and a number of other papers across the country:

Iraqi teenagers dragged two bloodied 101st Airborne soldiers from a wrecked vehicle and pummeled them with concrete blocks yesterday, witnesses said . . . .

Witnesses to the Mosul attack said gunmen shot two soldiers driving through the city center, sent their vehicle crashing into a wall. The 101st Airborne Division said the soldiers were driving to another garrison.

About a dozen swarming teenagers dragged the soldiers out of the wreckage and beat them with concrete blocks, the witnesses said.

"They lifted a block and hit them with it on the face," Yonis Mahmoud, 19, said. It was unknown whether the soldiers were alive or dead when pulled from the wreckage.

That is what the Associated Press wrote. I ask unanimous consent the article be printed in full in the RECORD following my remarks.

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

Mr. ALEXANDER. One can’t help but feel a sense of anger when reading a story like that. Jerry Wilson and SP Rel Ravago were on their way from one garrison to another. The terrorists laid waiting for the soldiers to drive by, and ambushed them. Even worse, they made every effort to be as brutal and bloody as possible. It makes me sick to my stomach.

At the same time, we also remember how many of our troops have lost their lives in this struggle. 431 men and women from our Armed Forces have given their lives since Operation Iraqi Freedom commenced. Forty-eight of them were from the 101st Airborne, based in Fort Campbell on the border of Kentucky and Tennessee. 2,067 have gone. The people of Iraq, by and large, are sympathetic Iraqis. Their sacrifice will never be forgotten.

In a few days, we will celebrate Thanksgiving. In the first Thanksgiving proclamation, President George Washington recommended [ed] to the people of the United States a day of public thanksgiving and prayer, to be observed by acknowledging with grateful hearts the many and signal favors of Almighty God, as a people, with devout reverence and affectionate gratitude.

Ours is a blessed nation, and we have much to be grateful for. This Thanksgiving we should be especially grateful for the men and women of our Armed Forces, fighting the terrorists over there so fewer can attack us here, actually. Whether helping to open a new school in Kirkuk or securing the area around Baghdad International Airport; our troops are standing in harms way. They are doing it for us.

For thousands of families, the Thanksgiving table will have an empty space this year. It will be hard. We should all save a place in our hearts for those military families this Thanksgiving. We give thanks for their courage, too.

So today, I say thank you to the men and women of our Armed Forces. We are humbled by your sacrifice. We are grateful for your courage.

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

[From the Tennessean, Nov. 24, 2003]

TWO 101ST SOLDIERS DIE IN AMBUSH

Mosul, Iraq—Iraqi teenagers dragged two bloodied 101st Airborne soldiers from a wrecked vehicle and pummeled them with concrete blocks yesterday, witnesses said, describing the killings as a burst of savagery in a city once safe for Americans.
Another soldier was killed by a bomb, and a U.S.-allied police chief was assassinated. The U.S.-led coalition also said it grounded commercial flights after the military confirmed a roadside bomb struck a DHL cargo plane that landed Saturday at Baghdad International Airport with its wing aflame.

Nevertheless, American officers insisted they were in progress in an area of the city with a high concentration of weapons, and American officers said.

Witnesses to the Mosul attack said gunmen shot two soldiers driving through the city center, sending their vehicle crashing into a wall. The 101st Airborne Division said the soldiers were driving to another garment.

About a dozen swirling teenagers dragged the soldiers out of the wreckage and beat them with concrete blocks, the witnesses said. "They lifted a block and hit them with it on the face," Younis Mahmoud, 19, said. It was unknown whether the soldiers were alive when they were pulled from the wreckage.

Initial reports said the soldiers' throats were cut. But another witness, teenager Bahaa Jassim, said the wounds appeared to have been inflicted with a gun. "One of the soldiers was shot under the chin, and the bullet came out of his head. I saw the hole in his helmet. The other was shot in the throat," Jassim said.

Some people looted the vehicle of weapons, CDs and a backpack, Jassim said. "They remained there for over an hour without the Americans saying anything about it," he said, "I... went and told other troops."

Television footage showed the soldiers' bodies looted and pillaged as U.S. troops secured the area. One victim's foot appeared to have been severed.

The frenzy recalled the October 1993 scene in Somalia, when locals dragged the bodies of Marines killed in fighting with warlords through the streets.

In Baqouba, just north of Baghdad, insurgents detonated a roadside bomb as a 4th Infantry Division convoy passed, killing one soldier and wounding two others, the military said.

In Baghdad, Brig. Gen. Mark Kimmitt confirmed the Mosul deaths but would not provide details. "We're not going to ghoulish about it," he said.

The savagery of the attack was unusual for Iraqis considered to be supporting Americans, he said.

In Kirkuk, 150 miles north of Baghdad, a bomb exploded at an oil compound, injuring three American civilian contractors from the U.S. firm Kellog Brown & Root. The explosion left three soldiers, including U.S. Lt. Col. Matt Croke said. KBR, a subsidiary of Halliburton, also has a significant presence at Baghdad's Palestine Hotel, which was attacked Thursday, wounds one civilian. "We all know that Americans are being threatened," Croke said.

Kimmitt told reporters in Baghdad that witnesses saw two surface-to-air missiles fired Saturday at a cargo plane operated by the Belgium-based package service DHL as it left for Bahrain. The plane was the first civilian airliner to be hit in Iraq since the war, killing down many military helicopters with shoulder-fired rockets. The coalition authority ordered DHL and Royal Jordanian, the only commercial passenger airline flying into Baghdad, to suspend flights.

Despite the ongoing violence, U.S. officials said the occupation was going well. "If you look at the accomplishments of the coalition since March of this year, it has been enormous," Marine Gen. Peter Pace, vice chairman of the Joint Chiefs of Staff, said in Tikrit, 100 miles south of Baghdad. Despite the surge in the scope and ferocity of the attacks, Kimmitt dismissed any threat posed by the guerrillas, whom he described asOccipendums as just another cost of doing business.

America's workers deserve better. American democracy deserves better. That is why we are here today to introduce the Employee Free Choice Act.

Our bill recognizes a specific right of workers to choose a union through a process called a card check. If a majority of employees sign a card asking for representation by a union, the employer must comply.

The bill also requires employers to come to the table to negotiate a first contract. And it levels the playing field for employees who are attempting to organize a union or obtain a first contract. It provides for court orders to stop employers from firing or threatening these workers. The bill also puts real teeth in the law by strengthening the penalties in current law for workers that support a union.

These protections are long overdue. For too long, we have acquiesced in the anti-labor, anti-worker, anti-union tactics that are far too prevalent in the workplace. We like to think that workers are free to join a union, but too oftentimes their basic freedom is denied in our modern society, because hard-line corporate managers succeed in denying a fair choice by workers.

At a critical time like this when we are fighting for the basic freedoms of our people in Iraq and the war on terror, we cannot fail to take a stand for the basic freedoms of the millions of American workers who depend on us to protect their rights at home.

Mr. KENNEDY. Mr. President, on Friday, I was pleased to introduce the Employee Free Choice Act, which is sponsored by 24 Members of the Senate.

For decades, labor unions have led the fight for the 8-hour day, and the 40-hour week, for overtime pay, for the minimum wage, for safe and healthy workplaces, for health insurance, for retirement security, and many other basic rights. Millions of union members in communities across America benefit today from the long hard battles of the past.

Union workers earn wages 25 percent higher than nonunion workers. Union workers are more than four times as likely to have a secure pension plan. Union workers are 40 percent more likely to have health insurance coverage.

These and many other longstanding benefits of union membership are undisputed. But too many workers who want to be members of a union are unable to do so. The reason is clear. Too often, employers discourage it in any way they can.

For years, illegal employer tactics have been common whenever employees attempt to form a union. Each year, employers are charged with over 20,000 instances of violating workplace labor rights. In over half of these claims, a worker was punished or even fired for union activity. A recent survey found that employees illegally fire employees in one quarter of all union organizing drives.

Even employees who manage to form a union often can't get a contract, because employers refuse to bargain. Only half of the unions who win an election are able to get a first contract. These companies hire outside consultants and launch campaigns to intimidate workers and keep them from supporting a union.

Anti-union companies often give their managers pamphlets with titles like "A Manager's Toolbox to Remaining Union Free."

They close down departments that succeed in unionizing. Employers spy on workers and use one-on-one confrontations to intimidate workers or break up unions.

Too often, Federal labor laws intended to protect workers from coercion have no teeth. If workers are fired, they may not get their jobs back for years. At most, the employer will owe back wages. Companies treat such payments as just another cost of doing business.

America's workers deserve better. American democracy deserves better. That is why we are here today to introduce the Employee Free Choice Act.

Free Choice means: the freedom to associate freely in the workplace; the freedom to choose your own labor representative; and the freedom to bargain for better wages, better health care, and other benefits.

Our bill recognizes a specific right of workers to choose a union through a process called a card check. If a majority of employees sign a card asking for representation by a union, the employer must comply.

The bill also requires employers to come to the table to negotiate a first contract. And it levels the playing field for employees who are attempting to organize a union or obtain a first contract. It provides for court orders to stop employers from firing or threatening these workers. The bill also puts real teeth in the law by strengthening the penalties in current law for workers that support a union.

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EXTENSION OF TEMPORARY UNEMPLOYMENT COMPENSATION PROGRAM

Mr. VOINOVICH. Mr. President, I rise to express my support for extending the Temporary Unemployment Compensation Program.

As we approach the holiday season, many unemployed workers are approaching the end of their eligibility for unemployment insurance. Unemployed workers who exhaust their benefits between now and the end of the year will be eligible for 13 weeks of extended benefits but those who exhaust their eligibility after December 31 will be out of luck. The program will have terminated and they will not be eligible for extended benefits.

According to the most recent reports from the Department of Labor, there are 337,000 people unemployed in Ohio, an increase of 39 percent from November 1999. In Michigan, 379,000 are unemployed, up 105 percent from November 1999. Another 177,000 are looking for work in Wisconsin, an increase of 90 percent. To put these numbers in perspective, during the last recession from November 1987 to November 1992, unemployment in Ohio increased by 167 percent. In Michigan, unemployment increased by 17 percent and in Wisconsin, unemployment actually fell by 7 percent.

Even these numbers do not fully describe the challenges facing low and semi-skilled workers in the Midwest. Although the Labor Department’s household survey indicates more than 337,000 individuals are unemployed in Ohio, our state Department of Jobs and Family Services reports that only about 130,000 are collecting unemployment insurance benefits. The remaining 200,000 workers have either exhausted their benefits or never qualified for them in the first place because they have been existing on a series of part time and temporary jobs that do not count toward unemployment compensation. DJFS reports also indicate that 2,000 to 4,000 individuals per week exhaust their state unemployment benefits just when they need them the most. We need to address this issue before Congress adjourns to ensure that people receive the help they need.

FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003

Mr. SARBANES. Mr. President, Saturday evening the Senate passed by voice vote the Fair and Accurate Credit Transactions Act of 2003. I want to congratulate Chairman SHELBY, Chairman OXLEY and Congressman FRANK and all the conferees on the successful compromise reached on this bill. This is an important piece of legislation and, as I have previously done, I want to acknowledge the thorough examination of these important issues provided by the comprehensive series of six hearings on this subject that Chairman SHELBY held in the Banking Committee. The bill passed unanimously out of the Banking Committee on a voice vote on September 23, 2003 and was adopted 95-2 on the floor on November 5, 2003. These votes, I believe, reflect a testament to our chairman’s willingness to work on a bipartisan basis.

I believe the same can be said of Chairman OXLEY and Congressman FRANK. Their bill was voted out of the House Financial Services Committee by 63-3 on July 24, 2003, and was passed overwhelmingly on the floor 392-20 on September 10, 2003. The conference report was passed on the floor of the House on Friday night on a vote of 379-49.

While there were a number of differences between the Senate and House passed versions, I think the conference successfully took many of the best provisions from each bill. Although I would have liked to have gone further in a few areas—such as the affiliate sharing section to provide more protection for the financial privacy of consumers, and also in preserving the rights of States to act—I believe a good compromise was reached on all of these things. This legislation provides consumers with free credit reports annually from the national credit bureaus and provides consumers with an easy method to obtain their free credit reports, and easier access to their credit scores; requires that consumers be given a summary of their right to opt out of prescreened offers; provides for accuracy guidelines; requires financial institutions to send consumers written notice prior to submitting negative information about them to a national consumer reporting agency; lengthens the statute of limitations for all Fair Credit Reporting Act violations; extends the time in which consumers are notified when adverse actions have been taken against them; prohibits the sale, transfer, or collection of identity theft debt, so that such bad debt will not be perpetuated in the credit system; limits the sharing of medical information in the financial system; with certain limitations, provides consumers with the right to opt out of solicitations for marketing purposes that result from affiliate information sharing; and helps enhance the financial literacy of consumers.

This legislation contains a number of important consumer protections, and I want to address some of these provisions more thoroughly.

We would like to note a significant consumer right contained in the legislation—the right to obtain a free credit report annually. This legislation will, for the first time, allow consumers to make one request, and obtain the credit report usually from each of the national credit bureaus. Financial institutions rely heavily on credit report information to make credit decisions, and it is extremely important that consumers be aware of the information contained in their credit reports. Providing consumers with the right to obtain this important information free is a major step forward in ensuring consumers' knowledge of, and control over, their financial information.

In addition to obtaining free reports, under this legislation consumers will be informed when negative information is added to their credit reports. This important provision, combined with the consumer’s right to a free report, will help improve Americans’ access to and understanding of information contained in their credit reports. This legislation will also help ensure that consumers are aware of how to opt out of the prescreening process which results in many of the unsolicited offers of credit that consumers receive in the mail. Under the FCRA, credit reporting agencies may generate for creditors prescreened lists of individuals with certain characteristics to be targeted to receive a direct mailing. The success of the FTC’s “Do-Not-Call” Registry has highlighted Americans’ frustration with unsolicited telephone offers. Under this legislation, creditors making such unsolicited offers of credit to consumers by mail will be required to include a summary of consumers’ right to opt-out of prescreening in their offers to consumers. The FTC, in consultation with...
the banking agencies and the National Credit Union Association will be required to write rules on the size and prominence of the disclosure of the opt-out telephone number that is included with offers of credit to consumers.

In order to ensure that consumers are aware of the many rights provided for them under the Fair Credit Reporting Act, this bill directs the FTC to undertakc an educational campaign. The FTC is directed to actively publicize, and conspicuously post on its website, a number of important FCRA consumer rights. Among these are the right to obtain free credit reports annually, and other circumstances in which consumers may obtain free credit reports; the right of a consumer to dispute information in his or her credit report; the consumer's right to obtain a credit score from a consumer reporting agency, and a description of how to obtain a credit score; and the consumer's right to opt out of prescreened lists, and the toll-free telephone number maintained by the national credit bureaus by which consumers may opt out. This FTC campaign will help ensure that consumers are informed of their rights under the FCRA, including the new rights afforded to them by this Act.

This legislation will also add a new provision to the FCRA that would provide consumers by requiring Federal agencies to provide greater oversight of the accuracy and integrity of credit reports. Under this act, Federal banking regulators and the Federal Trade Commission will, for the first time, establish and maintain procedures regarding the accuracy and integrity of information provided by data furnishers to credit reporting agencies. The Act also requires these agencies to prescribe regulations requiring creditors and other furnishing information to credit bureaus to establish reasonable policies and procedures for implementing these guidelines. For the purposes of this section, "accuracy" relates to whether the information that is provided by data furnishers to credit reporting agencies is factually correct. The term "integrity" relates to whether all relevant information is used to assess credit risk and to grant credit accurately provided. Integrity of information is not achieved when furnishers do not fully provide data that, by its absence, could have a positive or negative effect on a consumer's credit score, or on his or her ability to obtain credit under favorable terms for which he or she qualifies.

The bill also contains important provisions relating to financial companies' ability to market to their customers based on private financial information that the customers has shared with them among affiliates. For the first time, the bill will require affiliates who share customer information to make solicitations for marketing purposes to disclose this sharing to consumers, and to provide consumers with an opportunity to opt out of marketing resulting from such sharing. Exceptions are provided for pre-existing customers, solicitations based on existing shared data, solicitations contracted for by employers, compliance with State insurance laws, and responding to consumer requests.

In addition to providing an opt-out of marketing based on affiliate sharing, this legislation helps protect consumers' private financial information by including a number of important identity theft prevention and protection provisions. I want particularly to note Senator Cantwell's leadership in the area of identity theft. Senator Cantwell's legislation on identity theft passed on the floor of the Senate last year, and several of the provisions from her bill have been incorporated in the FACT Act, including an extension of the statute of limitations, provisions allowing consumers to block identity theft information from appearing on their credit reports, and a provision allowing consumers to obtain copies of business records reflecting any transactions that have been carried out in their name by identity thieves. I believe that these provisions will be beneficial to identity theft victims, and I want to commend Senator Cantwell's leadership in this area along with that of Senators Enzi and Feinstein.

After careful consideration by the conferees, the conference report provides for preemption of the States with respect to conduct required by specific listed provisions of the Act on identity theft. This narrowly focused preemption will leave States free to supplement these protections and to develop additional approaches and solutions to identity theft.

I would also like to highlight the important steps this legislation takes to improve the financial literacy of consumers by establishing the Financial Literacy and Education Commission which will coordinate promotion of Federal financial literacy efforts, and will develop a national strategy to promote financial literacy and education. I want to commend Senators Enzi and Stabenow, with Senators Corzine, Akaka and others, for their leadership in the Senate in this area. The House had a strong interest in the development of this title, and added, among other provisions, an authorization of $3 million dollars for the development of a national public service multimedia campaign that will be consistent with the national strategy.

In closing, I would like to take a moment to acknowledge the outstanding work done by the staff of the Committee on this legislation. On my staff, I would like to express my deep appreciation for the work done by Lynsey Graham as well as Dean Shahinian, Aunt Klein, Marty Gruenberg and Steve Harris.

It was a pleasure working with the staff of Chairman Shelby who are to be congratulated for their outstanding work. I particularly want to acknowledge the work of Mark Oosterlee, Doug Nappi and Chairman Shelby's staff director, Kathy Casey.

I would also like to thank Laura Ayoud from Senate Legislative Counsel, who has worked tirelessly and, as effectively, to put this package together.

I would also like to acknowledge the vital role played in developing this legislation by all of our Senate conferees: Senators Bennett, Allard, Enzi, Dodd and Johnson, and in particular by the Chairman, Senator Shelby.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator Kennedy and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred in Naples, FL in May of 2003, a 17-year-old reportedly drove around the parking lot of a downtown bar, yelling homosexual epithets while attempting to run one man down and to attack another. Michael R. Schmaeling was later arrested and charged with two counts of aggravated assault and one count of evidencing prejudice during an offense.

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 is 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.

REMEMBERING BILL SIMPSON

Mr. COCHRAN. Mr. President, the death of Bill Simpson on November 20 at the Veterans Medical Center here in Washington was very much like having a son in the family in the Senate. Bill was known to many of us as the well-respected and effective Administrative Assistant of former Senator James O. Eastland of Mississippi. He

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served for 10 years on Senator Eastland's staff and was widely known in Mississippi as the person to call to get things done in our State.

I first met him when he became a member of the staff of Governor Paul B. Johnson, Jr. I was a high school speech writer as well as an astute political tactician for Governor Johnson. They accomplished a great deal in that 4-year term because of the thoughtful leadership of Governor Johnson and the able assistance of Bill Simpson. The “School” of Bill was the future talent built by Litton Industries at Pascagoula and the Mississippi Research and Development Center was established in Jackson.

When I was elected to the Senate in 1978 to replace Senator Eastland, I tried to talk Bill Simpson into staying on as a member of my staff, but President Carter was more persuasive, and Bill left the Senate to serve as an assistant to Hamilton Jordan, the Chief of Staff for the House.

Bill Simpson grew up on the Mississippi Gulf Coast and graduated from St. Stanislaus College in Bay St. Louis and the U.S. Merchant Marine Academy at Kings Point, NY. His father served as Mayor of Pass Christian and his brother, Jim Simpson, Sr. was a 7-term member of the Mississippi House of Representatives.

Bill’s nephew, Jim Simpson, Jr., carries on the family tradition in Mississippi politics as a respected member of the House of Representatives from Harrison County, and his son, Bill Simpson, Jr., serves on the staff of the Senate Appropriations Committee.

Bill enjoyed the love and support of a devoted family and the camaraderie of countless friends. As chairman of the board of the 116 Club he would hold court and tell stories about the Senate and our State of Mississippi with a twinkle in his eye and love in his heart.

We extend to his wife, Evelyn, and his children, Bill, J. R., and Ellen, and his three grandchildren, our sincerest condolences.

HONORING THE ARMED FORCES

SERGEANT MAJOR CORNELL W. GILMORE

Mr. WARNER. Mr. President, I seek recognition to honor a Virginia Soldier, Sergeant Major Cornell W. Gilmore, who was tragically killed in action in Iraq on Friday, November 7th, 2003. I want to express gratitude, on behalf of the Senate, for his service to our Nation. The American people, I am certain, join me in expressing their prayers and compassion to his family.

As the Sergeant Major of the Army’s Judge Advocate General Corps, he served as the primary adviser to the judge advocate general on all matters concerning the health and welfare of all the enlisted soldiers within that command. He was a consummate legal officer who bore freely and he served with great effect. He accompanied his commanding general, Major General Thomas A. Romig, to Iraq to ensure the soldiers legal needs were being met while away from home. Major General Romig stated that he was “one of the most dynamic leaders I ever met.”

Sergeant Major Gilmore leaves behind his wife, Donna; his daughter, Dawn; his sons, Cornwall, J. R. his father William; and his sister, Louise. Sergeant Major Gilmore was both an exceptional soldier and a caring citizen, giving his time freely to community and his church. At every post throughout his career he has been a mentor to young people, teaching them love of God and music, most recently serving as the music minister at the Shiloh Christian Church in Stafford, VA. The local media reported that 100 former pupils served in the choir during his funeral service with more than 130 mourners present.

His family members are brave Americans who have sacrificed so much for this Nation. We owe them and the other families who have lost their loved ones a debt of gratitude. Sergeant Major Gilmore exemplified the best of our military service and he served with great distinction.

NOBEL PEACE PRIZE WINNER RALPH BUNCHE

Mr. TALENT. I am pleased that the Senate unanimously approved a resolution to recognize the importance of Ralph Bunche as one of the great leaders of the United States. Mr. Bunche was the first African-American Nobel Peace Prize winner, an accomplished scholar, a distinguished diplomat, and a tireless campaigner for civil rights for people throughout the world.

He was of that generation of African-American leaders whose life and character broke the back of generations of prejudice, awoke the American conscience, and opened up opportunity for millions of people. This measure is an appropriate and fitting celebration of the 200th anniversary of his birth.

ACCESS TO JUSTICE IN FEDERAL COURTS

Mr. CORNYN. Mr. President, I am pleased to report that, last Friday, S. 1720 was presented to the President for his consideration, after receiving the unanimous approval of both the House and Senate. I sponsored S. 1720, joined in the House by Representative David Obey (D-WI), and the House Committee by Mr. Schell worked closely with my office in this effort, and I am grateful to each and every one of them for working with me to ensure that the people of North Texas enjoy adequate access to justice in the Federal courts.

The judges of the Eastern District firmly believe that this legislation is good for the citizens of Sherman as well as Plano. On June 13, 2003, I wrote a letter to all the judges of the Eastern District, Chief Judge Hannah issued General Order No. 03-15, which resolves, “if pending legislation passes that authorizes Plano as a place of holding court, to have half the Sherman Division caseload docketed and tried in Sherman, and the other half of the caseload docketed and tried in Plano. If Judge Brown ceases holding court in Sherman, a new resident judge shall be designated to hold court in Sherman as soon as possible.” Furthermore, the Eastern District is the only judicial district in the United States and the Eastern District, of all 93 judicial districts across the United States, the only judicial district in which its largest city cannot hold Federal court. The nearest Federal court of the city of Dallas is located 100 miles away. The distance to the nearest Federal court of Sherman is 100 miles away. The nearest Federal court of Dallas is 100 miles away.

The people of the Eastern District of Texas are woefully underserved as a result.

S. 1720 enjoys strong support among officials across the State of Texas. Most notably, U.S. Attorney Matthew D. Myers, Jr. of Sherman, U.S. Attorney Rebecca Gregory, Chief Judge John Hannah, Jr., and Judge Richard A. Schell worked closely with my office in this effort, and I am grateful to each and every one of them for working with me to ensure that the people of North Texas enjoy adequate access to justice in the Federal courts.

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Edith followed her own words; as a poet, mother, philanthropist, academic, and businesswoman, she was no chip in the ocean. And even in her ninth decade, she continued to work hard and inspire new generations. Her work and dedication, in both the private sector and her success in the public sector, are evident in both her dedication to the arts and her success in the private sector.

Edith Nash's death is a great loss to all of us who knew her, and all those whose lives were touched by her many good works. I am deeply saddened by her passing, but I know that her leadership, creativity and generosity have left a lasting mark on our State and our country.

HONORING JACK K. NORTIS AND THE LATE JEAN DONKERS NORRIS

Mr. CRAPO. Mr. President, I rise today to honor an Idahoan who will soon celebrate his 88th birthday, Payette native Jack K. Norris. Jack is a hero, not only for Idaho, but for the entire Nation. Jack was born in Payette, ID, on November 30, 1915, but he has spent much of his life in service to our country. He was a member of the Class of 1939, U.S. Military Academy at West Point, and served throughout World War II. His numerous awards include: a Purple Heart, Silver Star with Oak Leaf Cluster and a V for Valor, Legion of Merit with Oak Leaf Cluster, Bronze Star with Oak Leaf Cluster, Combat Infantry Badge, Meritorious Service Medal, Presidential Unit Citation, French Croix de Guerre, Belgian Order of the Crown, Belgian Croix de Guerre, and five European Tour of Duty campaign stars. These many honors speak to his exceptional service to country, and his outstanding military knowledge. This knowledge was cultivated and expanded through years of military courses and training including graduation from the Battalion Commander's Course, Command and General Staff College, British Staff College, Army War College, and Army Aviation School-Senior Officers Course, fixed and rotary wing qualification, and Senior Officers Aircraft Maintenance and Logistics course. In his own words, Jack describes his decision to enlist in the Army as: "probably the best thing that ever happened to me."

After many years in the Armed Forces, Jack retired from the service. Unable to slow down, he began teaching at North Georgia College, where he was named Commandant of Cadets in 1983. Jack did all of these things while caring for the most important individuals in his life: his wife and three children. His tree sons have all made service to country a part of their lives, presumably as a result of their father's influence.

I also want to pay tribute to Jack's wife, Jean Donkers Norris, who passed away in 1983. Much of their lives together revolved around the military.

She met her sweetheart at the Walter Reed Army Medical Center and married him at the Main Post Chapel in San Antonio, TX. She kept the home fires burning while Jack was away at war. She was the model military wife and a wonderful example of true benevolence. She always ready to serve—whether it be a meal to a visiting officer or thirty, or to support her husband's military career, and that required many sacrifices on her part. She was always ready to support other military spouses. I wanted to tell you a story about Jean. Once she had to shovel coal for heat in the family's temporary quarters, and commented that she was grateful white gloves were in fashion so she could hide the coal stains on her hands when she had to go out.

When Jack was a post commander, he and Jean visited every soldier who was in the hospital or in jail on Christmas Day and brought some of her homemade cookies. She was known for her compassion and dedication to her own family as well as the U.S. Army family.

Jack and Jean had a true partnership and were exceptional role models for their children and their children-in-law. In today's world, as we again see the necessity of American troops deployed and in action, people like Jack and Jean bring home to us the importance of dedication to family and country. Even during trying, testing times, Jack and Jean showed their commitment to a cause and their commitment to each other. Their exceptional example is worthy of praise. I am profoundly grateful for their service to our country. I send Jack and Jean my best for a very Happy Birthday.

SERVICE LEADERS SUMMIT

Mr. BAYH. Mr. President, I rise today to tell you about the extraordinary young Hoosiers I recently had the privilege to meet. Last month, I hosted my first annual Service Leaders Summit to honor high school students from across Indiana for their service and dedication to their communities and hopefully to inspire them to continue serving throughout their lives.

The young men and women I met last month have answered the call to service. Some of them have helped build homes, some tutored and mentored younger students, and others have raised money for cancer research and to feed the hungry. Several of the young men and women started service clubs to address the problems in their schools and communities. Each one of the students I met spent hours making a difference in their hometowns and together they impacted the lives of thousands of others.

The student leaders heard from Hooisers of all backgrounds who have chosen to dedicate their lives to serving others. The speakers focused on the different aspects that go into a successful service project: inspiration, organization, dedication, evaluation and reflection. Following the speeches, the students broke up into different groups...
and participated in service projects throughout Indianapolis. Some students distributed coats to children of needy families, while others planted trees in the rain, cleaned up a park and beautified a neighborhood. Through their work together, the leaders were able to experience the dramatic results of the power of service.

Robert F. Kennedy once said that "Some men see things as they are and say 'Why?' I dream of things that never were and say 'Why not?'" Each day, the leaders were and say, and have worked to make positive changes in their communities. These students represent a new generation of promise with the potential to make a real difference across Indiana and the nation.

I would like to thank each one of the following individuals for participating in the summit and for their service to their communities: Ruchika Agarwal, Brooke Allen, Santiago Alvarez, Ricky Anderson, Tracy Anderson, Mary Anderson-Clark, Todd William Ault, Audrey Ballinger, Katherine Ban Wyk, Brenda Banks, Meghan Beeman, Nicole Blaunke, Stacey Blystone, Jason Bond, Thomas Borders, J. Jason Born, Samantha Brown, Brittany Brunfield, Michael Brunsmans, Jordan Bruse, Jeremy Burton, Danielle Cava, Brett Claxton, Erin Clifford, Heather Coffman, Donald Donenport, Adrienne Davis, Matthew J. Day, Emily DeCamp, Todd Dellendorf, Laura Nicholson, Carrie D. Doherty, Megan Drudy, Brenten Xu, and Erin Youst.

HONORING OF MATT KENSETH
- Mr. FEINGOLD. Mr. President, I rise today with great admiration, to recognize the 2003 Winston Cup Champion, Matt Kenseth. On November 16, Kenseth was crowned champion of NASCAR's 2003 Winston Cup Series. Kenseth was born on March 10, 1972, in Cambridge, WI. For Kenseth, racing is a family tradition. When he was 13, his father, Roy purchased a race car and made Matt a deal. Roy would drive the car if Matt would work on it. When Matt turned 16, he could get in the driver's seat.

Kenseth started his stock car racing career at the young age of 16, winning his first event in only his third race. Within his first three seasons, Kenseth racked up 10 racing victories from around Wisconsin. His name recognition grew in Wisconsin racing hotbeds like Slinger and Lake Geneva. In 1995, Kenseth took his racing skills to the South, the heart of American stock car racing. It didn't take long before Kenseth became noticed throughout the racing world. Kenseth had great success while racing in the Busch Grand National Series. In 1998, just his first full Busch Series season, Kenseth finished second in the standings. He followed that success with a third place finish in 1999 while also making five Winston Cup starts. Kenseth's arrival to the Winston Cup Series was heard loud and clear as he won Rookie of the Year honors in 2000. But the 2003 season was simply magical. Kenseth finished the season with 25 top 10 finishes, more than any other driver. He also set a record spending 33 straight weeks in the Winston Cup Standings No. 1 position, breaking the record of racing legend Dale Earnhardt. Kenseth's success is one of Matt's accomplishments and we wish him the best of luck next season as he defends his championship.

DR. TOM GOODMAN
- Mr. PRYOR. Mr. President, I rise today to pay tribute to one of Arkansas's and America's preeminent educators, Dr. Tom Goodwin of Hendrix College. Dr. Goodwin earned his Ph.D. at Harvard University and spent the last week with a United States Professor of the Year Award as the Outstanding Baccalaureate College Professor of the Year by the Council for the Advancement and Support of Education and the Carnegie Foundation for the Advancement of Teaching. He was one of four, in the entire Nation to be honored for their dedication to undergraduate education and teaching and their commitment to students.

It is not often, that one gets recognized for one's life's work. It is even rarer often that the recognition comes when the recipient is still at the height of his career. I wish to congratulate Dr. Goodwin on behalf of all Arkansans for this wonderful accomplishment. Dr. Goodwin has dedicated his entire professional life, over 25 years, to the education of young people. During a time when many are concerned with publishing, research, and the advancement of their own careers, Dr. Goodwin has remained focused on the reasons he entered academia—the fostering and development of the leaders and great thinkers of the next generation, and I, for one, agree with him. He has done what so many teachers try to do. Some are more successful than others. Some are outstanding researchers who make wonderful discoveries that further the knowledge of mankind. Some are great administrators who manage the machinery from which these great discoveries are churned. Still, Dr. Goodwin has made the greatest discovery of all. He has discovered that all of the advancements of the human race are dependent on the advancement from which these advancements come mean nothing without the continuity of people teaching other people. Knowledge in a vacuum, doesn't further the human condition. For the human condition to move forward, to change for the betterment of all, we must learn. We must teach. "For the end of man is to know." That's one of my favorite literary quotes, from Robert Penn Warren's All The King's Men. The end of man keeps moving farther, just beyond the outstretched reaches. To reach the ends, man must continue to know. Dr. Goodwin has found the best way to accomplish this; the best way to achieve the end is through a partnership between teacher and student. The disbursement of knowledge; what it is, how to get it, where to find it, becomes the primary objective for a multigenerational team working together. Dr. Goodwin has achieved this elusive goal. A seamless partnership between professor and student, with both benefiting from the contributions of the other, both contributing toward the end of man.

But don't take it from me. His colleagues and his students realize the impact Dr. Goodwin has had on the minds and motivations of young people. They refer to him not only as teacher and scholar, but also as mentor and friend. Since all of the great secretaries are Phi Beta Kappa Society and former Dean of Hendrix College notes, "To see Tom Goodwin with students is to feel the power of his expectations. It is also
to feel the warm, personal support, extended toward their efforts. He epitomizes the tension of the best undergraduate liberal arts professors: demanding rigor and providing support. He takes a wide-ranging interest in his students. He helps them grow into well-rounded intellects. His colleagues in the Chemistry Department at Hendrix College, Dr. Liz Gron, testifies to the amount of time and attention Dr. Goodwin gives his work. “He wants every student to succeed and he uses a number of different venues in order to support different learning styles. Tom schedules four help sessions a week, as well as time-independent exams to accommodate students that synthesize concepts more slowly.” His students agree. “Dr. Goodwin offered many, many hours of his personal time, both in the laboratory and the classroom, to help me conquer the very difficult subjects I was studying,” says Daniel Mwanza, a former student at Hendrix. Many other former students agreed and wrote statements similar to Mr. Mwanza’s in support of his nomination for this award. So you see, this man is important to his students, important to his colleagues and institution, and important to education across this country. I am proud to serve him and I am proud he is my constituent. Dr. Goodwin represents the highest tradition of education in this country. He inspires his students to achieve more than they would alone. He is the living embodiment of this award, and I wish to congratulate him for this monumental achievement.

CHARLES “CHARLIE” EDWARD BYRD: IN MEMORIAM

Mrs. BOXER. Mr. President, I share with my colleagues the memory of former Siskiyou County Sheriff Charles Edward Byrd who passed away on September 23, 2003 in Weed, CA. Charles Byrd had a remarkable career in law enforcement in Siskiyou County, and will be remembered as the first black sheriff in California.

A native and lifetime resident of Weed, Charles Byrd was born on July 6, 1947. He attended local schools and was a standout football player earning the “Lineman of the Year” honor from Weed High School in 1965. In 1967, while attending the College of the Siskiyous, Charles Byrd began his career in law enforcement as a reserve police officer with the Weed Police Department and became a full-time officer the following year. In April of 1975 he was promoted to Police Chief, and in 1980 he was elected Sheriff of Siskiyou County.

Charles Byrd’s career in law enforcement broke color barriers as he was both the first black police officer in the town of Weed, and the first black sheriff in California. During his 16 years as Sheriff, Charlie Byrd's motto for the department was “We Can.” This motto led to countless improvements for Siskiyou County, including the development of the Siskiyou County Inter-Agency Narcotics Task Force, expansion of public safety programs, establishment of the Domestic Violence Response Team and Advisory Committee, formation of a detective bureau and expansion of technology and training within the department.

Dedication to his community was also a top priority for Charles Byrd. In addition to making the Sheriff’s Department accessible to the community at public events, he was a member of several regional and community organizations. Among the many associations to which Sheriff Byrd devoted his time were: the California Peace Officers’ Association, California Police Chiefs’ Association, Weed Chamber of Commerce, Weed Rotary Club, Habitat for Humanity, Weed Baptist Church, College of the Siskiyou’s Auxiliary Foundation Board of Directors, California State Sheriffs’ Association and Western States Sheriffs’ Association.

Siskiyou County Supervisor Lavada Erickson commented, “Sheriff Byrd looked upon Siskiyou County as an extension of his personal family, and we were treated as such. Law enforcement was his first pledge and commitment. He was aware of our at-risk youth and was committed to encouraging the continuation of education for the enhancement it would bring to their lives. He was a quiet giant of a man with a heart that contained only the best for Siskiyou County.

Charles Byrd is survived by his mother, Eddie Byrd; sisters Ella Byrd, Charlene Byrd, Rose Applewhite; and brothers Larry Byrd, Arnold Byrd and Al Bearden.

Sheriff Charles Byrd will always be remembered for his many contributions to law enforcement and to the betterment of Siskiyou County. His legacy will be cherished by his community for years to come.

33RD ANNIVERSARY OF THE FRENO METRO MINISTRY IN FRESNO, CA

Mrs. BOXER. Mr. President, I am pleased to recognize the 33rd anniversary of the Fresno Metro Ministry in Fresno, CA.

More than three decades ago, Fresno Metro Ministry began tackling some of Fresno’s most difficult social problems. By the mid-1980s, a coalition of religious and secular organizations that worked to alleviate the hardships caused by racism through a variety of efforts, ranging from empowerment programs to community projects. Through its youth task force the ministry became the alternative sentencing program that provided young individuals with alternative punishments that worked to redirect their lives in a positive direction.

Understanding that a good home breeds a successful child, the ministry developed “Parenting With Justice” training that helped minority parents teach their children to deal with challenges in their lives, thereby empowering the entire family.

As the ministry grew, so did its vision. With its success came a broader focus. In the 1980s the Fresno Metro Ministry began to focus on city wide issues. The ministry led in the creation of a City of Fresno Human Relations Commission that celebrates the rich cultural and religious diversity in the Fresno area and mediates differences between and among groups. The commission has worked to identify and address patterns of discrimination.

In the last decade, Fresno Metro Ministry became a leader in the community hunger coalition. It also helped break a log-jam that slowed progress on the construction of the new Regional Medical Center campus in downtown Fresno.

When Fresno and the Central Valley were suffering the effects of the 1998 freeze, the Fresno Metro Ministry coordinated with other groups to provide relief to people who had lost their jobs during this difficult time.

I also want to give special recognition to the leadership of the Reverend Walt Parry. For the last 38 years, under Reverend Parry’s direction, the ministry has made a great difference in the lives of many people. He and the Fresno Metro Ministry deserve the recognition they are receiving during this 33rd anniversary observance.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting a nomination and a treaty which were referred to the appropriate committees.

ENROLLED JOINT RESOLUTION SIGNED

The following enrolled joint resolution was signed on Friday, November 21, 2003 by the President pro tempore (Mr. STEVENS). H.J. Res. 79. Joint resolution making further continuing appropriations for the fiscal year 2004, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, without amendment:

S. 1940. An original bill to reauthorize the Head Start Act, and for other purposes (Rept. No. 108-206). By Mr. HATCH, from the Committee on the Judiciary:
Report to accompany S. 710, a bill to amend the Immigration and Nationality Act to provide that aliens who commit acts of torture, extrajudicial killings, or other specified atrocities abroad are inadmissible and removable and to establish within the Criminal Division of the Department of Justice an Office of Special Investigations having responsibility for investigating, for all purposes, all alien participants in war crimes, genocide, and the commission of acts of torture and extrajudicial killings abroad (Rept. No. 108-206).

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:


S. 573. A bill to amend the Public Health Service Act to promote organ donation, and for other purposes.

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, without amendment:

S. 1895. A bill to provide collective bargaining rights for police safety officers employed by States or their political subdivisions.

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 1881. A bill to amend the Federal Food, Drug, and Cosmetic Act to make technical corrections relating to the amendments by the Medical Device User Fee and Modernization Act of 2002, and for other purposes.

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. BAUCUS (for himself, Mr. INHOFE, Mrs. DOLE, and Mr. ROCKESELLER):

S. 1937. A bill to amend the Internal Revenue Code of 1986 to exclude from unrelated business taxable income the gain or loss on the sale of certain brownfield sites, and for other purposes; to the Committee on Finance.

By Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. DASCHLE, Mr. CONRAD, and Mr. GRAHAM of Florida):

S. 1938. A bill to amend the Forest and Rangeland Renewable Resources Planning Act of 1974 and related laws to strengthen the protection of native biodiversity and ban clearcutting on Federal land, and to designate certain Federal land as Ancient forests, roadless areas, watershed protection areas, and special areas where logging and other intrusive activities are prohibited; to the Committee on Energy and Natural Resources.

By Mr. LEAHY:

S. 1939. A bill to require the Secretary of Health and Human Services to ensure that the public is provided adequate notice and education of the risks of exposure to mercury through the development of health advisories and by requiring that such appropriate advisories be posted, or made readily available, at all businesses that sell fresh, frozen, and canned fish and seafood where the potential for mercury exposure exists; to the Committee on Health, Education, Labor, and Pensions.

By Mr. GREGG:

S. 1940. An amendment to reauthorize the Head Start Act, and for other purposes; from the Committee on Health, Education, Labor, and Pensions; placed on the calendar.

By Mr. DASCHLE:

S. 1941. A bill to establish the Abraham Lincoln National Heritage Area, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. CORZINE:

S. 1942. A bill to require the President to submit to Congress a report on the projected total cost of United States operations in Iraq, including military operations and reconstruction efforts, through fiscal year 2008; to the Committee on Armed Services.

By Mr. LEVIN:

S. 1943. A bill to provide extended unemployment benefits to displaced workers; to the Committee on Finance.

By Mr. ENSIGN (for himself, Mr. NELSON of Florida, Mr. COLEMAN, Mr. GRAHAM of South Carolina, Mr. CRAPO, Mr. REID, Mr. BAYH, Mr. EDWARDS, Mr. ALLARD, Mr. SMITH, Mr. ALLEN, and Mr. BOXER):

S. 1944. A bill to enhance peace between the Israelis and Palestinians; to the Committee on Foreign Relations.

By Mr. MCCAIN (for himself, Mr. EDWARDS, and Mr. KENNEDY):


By Mr. GRAHAM:

S. 1946. A bill to establish an independent national commission to examine and evaluate the collection, analysis, reporting, use, and dissemination of intelligence related to Iraq and Operation Iraqi Freedom; to the Select Committee on Intelligence.

By Mr. LEAHY (for himself and Mr. HATCH):

S. 1947. A bill to prohibit the offer of credit by a financial institution to a financial institution examined and referred for other purposes; considered and passed.

By Mr. REID (for himself and Mr. DASCHLE):

S. 1948. A bill to provide that service of the members of the organization known as the United States Cadet Nurse Corps during World War II constituted active military service for purposes of laws administered by the Secretary of Veterans Affairs; to the Committee on Veterans’ Affairs.

By Mr. BIDEN:

S. 1949. A bill to establish The Return of Talent Program to allow aliens who are legally present in the United States to return temporarily to the country of citizenship of the alien if that country is engaged in post-conflict reconstruction, and for other purposes; to the Committee on the Judiciary.

By Mr. MCCAIN:

S. 1950. A bill to amend title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under the Medicare program; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. BROWNBACK (for himself and Mr. BIDEN):

S. Res. 273. A resolution condemning the terrorist attacks in Istanbul, Turkey, on November 15 and 20, 2003, expressing condolences to the families of the individuals murdered in the attacks, expressing sympathies to the individuals injured in the attacks, and expressing solidarity with the Republic of Turkey and the United Kingdom in the fight against terrorism; to the Committee on Foreign Relations.

By Mr. FRIST (for himself and Mr. DASCHLE):

S. Res. 274. A resolution to authorize the production of records by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs; considered and agreed to.

ADDITIONAL COSPONSORS

S. 19. S. Res. 73.

At the request of Ms. SNOWE, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 68, a bill to amend title 38, United States Code, to improve benefits for Filipino veterans of World War II, and for other purposes.

S. 401. At the request of Ms. LANDRIEU, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 401, a bill to amend title 10, United States Code, to increase parity with other surviving spouses the basic annuity that is provided under the uniformed services Survivor Benefit Plan for surviving spouses who are at least 62 years of age; and for other purposes.

S. 427. At the request of Mr. AKAKA, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 427, a bill to amend the Homeland Security Act of 2002 to assist States and communities in preparing for and responding to threats to agriculture of the United States.

S. 430. At the request of Mr. AKAKA, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 430, a bill to amend the Homeland Security Act of 2002 to enhance agricultural biosecurity in the United States through increased prevention, preparation, and response planning.

S. 453. At the request of Ms. SNOWE, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 453, a bill to amend title 10, United States Code, to increase the minimum Survivor Benefit Plan basic annuity for surviving spouses age 62...
and older, under that plan, and for other purposes.

S. 460

At the request of Mrs. Feinstein, the name of the Senator from Idaho (Mr. Crapo) was added as a cosponsor of S. 460, a bill to amend the Immigration and Nationality Act to authorize appropriations for fiscal years 2004 through 2010 to carry out the State Criminal Alien Assistance Program.

S. 1109

At the request of Mr. Talent, the names of the Senator from South Carolina (Mr. Graham), the Senator from Georgia (Mr. Chambliss), the Senator from Virginia (Mr. Allen) and the Senator from Maine (Ms. Collins) were added as cosponsors of S. 1109, a bill to provide $50,000,000,000 in new transportation infrastructure funding through Federal bonding to empower States and local governments to complete significant infrastructure projects across all modes of transportation, including roads, rail, transit, aviation, and water, and for other purposes.

S. 1129

At the request of Mrs. Feinstein, the name of the Senator from Wisconsin (Mr. Kohl) was added as a cosponsor of S. 1129, a bill to provide for the protection of unaccompanied alien children, and for other purposes.

S. 1157

At the request of Mr. Brownback, the name of the Senator from Tennessee (Mr. Alexander) was added as a cosponsor of S. 1157, a bill to establish within the Smithsonian Institution the National Museum of African American History and Culture, and for other purposes.

S. 1198

At the request of Mr. DeWine, the name of the Senator from Indiana (Mr. Lugar) was added as a cosponsor of S. 1198, a bill to provide for the environmental restoration of the Great Lakes.

S. 1244

At the request of Mr. Hatch, the name of the Senator from Alaska (Ms. Murkowski) was added as a cosponsor of S. 1244, a bill to restore second amendment rights in the District of Columbia.

S. 1257

At the request of Mr. McConnell, the name of the Senator from North Carolina (Mrs. Dole) was added as a cosponsor of S. 1257, a bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Armenia.

S. 1276

At the request of Mr. Alexander, the names of the Senator from Missouri (Mr. Bond) and the Senator from Hawaii (Mr. Inouye) were added as cosponsors of S. 1276, a bill to reduce the preterm labor and delivery and the risk of pregnancy-related deaths and complications due to pregnancy, and to reduce infant mortality caused by prematurity.

S. 1741

At the request of Mrs. Dole, her name was added as a cosponsor of S. 1741, a bill to provide a site for the National Women’s History Museum in the District of Columbia.

S. 1755

At the request of Mr. Leahy, the name of the Senator from New York (Ms. Clinton) was added as a cosponsor of S. 1755, a bill to amend the Richard B. Russell National School Lunch Act to provide grants to support farm-to-cafeteria projects.

S. 1774

At the request of Mr. Kennedy, the name of the Senator from California (Mrs. Boxer) was added as a cosponsor of S. 1774, a bill to repeal the sunset provisions in the Undetectable Firearms Act of 1988.

S. 1786

At the request of Mr. Alexander, the names of the Senator from New Hampshire (Mr. Gregg), the Senator from New Mexico (Mr. Bingaman), the Senator from Illinois (Mr. Durbin), the Senator from Massachusetts (Mr. Kerry), the Senator from Connecticut (Mr. Lieberman), the Senator from Arkansas (Mr. Pryor), the Senator from Michigan (Ms. Stabenow), the Senator from Maine (Ms. Collins) and the Senator from Ohio (Mr. Voinovich) were added as cosponsors of S. 1786, a bill to revise and extend the Community Services Block Grant Act, the Low-Income Home Energy Assistance Act of 1981, and the Assets for Independence Act.

S. 1839

At the request of Mr. Smith, the name of the Senator from New York (Ms. Clinton) was added as a cosponsor of S. 1839, a bill to extend the Temporary Extended Unemployment Compensation Act of 2002.

S. 1858

At the request of Mr. Cochran, the name of the Senator from Montana (Mr. Baucus) was added as a cosponsor of S. 1858, a bill to authorize the Secretary of Agriculture to conduct a loan repayment program to encourage the provision of veterinary services in shortage and emergency situations.

S. 1898

At the request of Ms. Mikulski, the name of the Senator from Louisiana (Ms. Landrieu) was added as a cosponsor of S. 1879, a bill to amend the Public Health Service Act to revise and extend provisions relating to mammography quality standards.

S. 1903

At the request of Mr. Leahy, the name of the Senator from California (Mrs. Feinstein) was added as a cosponsor of S. 1903, a bill to extend for 6 months the period for which chapter 12 of title 11 of the United States Code is reenacted.

S. 1925

At the request of Mr. Kennedy, the name of the Senator from Michigan (Ms. Stabenow) was added as a cosponsor of S. 1925, a bill to amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.

S. 1936

At the request of Ms. Stabenow, the names of the Senator from South Dakota (Mr. Johnson), the Senator from Minnesota (Mr. Dayton) and the Senator from New Mexico (Mr. Franklin) were added as cosponsors of S. 1936, a bill to amend title XVIII of the Social Security Act to restore the medicare program and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. Baucus (for himself, Mr. Inhofe, Mrs. Dole, and Mr. Rockefeller).

S. 1938

A bill to amend the Internal Revenue Code of 1986 to exclude from unrelated business taxable income the gain or loss on the sale or exchange of certain brownfield sites, and for other purposes; to the Committee on Finance.

Mr. Baucus. Mr. President, I am pleased to join my colleague Senator Inhofe, and my other Senate colleagues in introducing the Brownfield Revitalization Act of 2003. Given the nature of this legislation—establishing tax incentives to encourage cleanup of environmentally contaminated property across the country—it is appropriate that this be a joint introduction between the Chairman of the Senate Environment and Public Works Committee and the Ranking Member of the Senate Finance Committee. This legislation is bipartisan, but it is also bicameral. A companion bill was introduced earlier this week in the House of Representatives by Congresswoman Nancy Johnson and Congressman Xavier Becerra.

Across the United States, environmentally contaminated sites endanger public health, impede economic development, and negatively impact tax rolls. The United States has an estimated 1,000,000 such properties scattered across our inner cities and rural areas alike.

In my own State of Montana, there are well over 5,000 such sites. This may seem surprising for a state like Montana that is relatively undeveloped and pristine. But we are not unaffected by the scourge of environmental contamination. In addition to contamination caused by leaking underground storage tanks and contamination caused by other light industries, Montana has also been impacted by significant contamination left behind by some of the very industries that built our great state.

Contaminated sediments can be found along the Clark Fork River from Butte, MT, downstream for 140 miles to Missoula and on into Idaho—a legacy of the copper mining and smelting operations at Butte and Anaconda.
Tremolite asbestos contamination is prevalent at numerous sites around Libby, MT, including the local high school and middle school tracks—a legacy from the Zonlite Mine that began operating in the 1920s and produced 80 percent of the world’s supply of vermiculite. These industries created wealth and jobs for generations of Montanans. Today, however, contamination from wood processing facilities, abandoned mines, and numerous other activities has harmed human health and the environment and continues to stifle the development of new business in Montana. These sites are well known to Montanans: Sites such as Missoula Sawmill site and the White Pine Sash site in Missoula, the Missouri River Corridor site in Great Falls, and sites in Helena, Bozeman, Billings and numerous other communities all across Montana. We can and must do more to help revitalize these important areas.

Congress has undertaken a number of initiatives to address the complex problem in this country. I am proud to have been able to play a leadership role in passing the Brownfields Revitalization and Reinvestment Act of 2001. That bill has helped provide new federal funds for evaluation and remediation of brownfield sites and has helped to resolve some of the liability issues that were inhibiting remediation of these contaminated properties.

But, we must do more. The U.S. Chamber of Commerce has estimated that at the current rate of cleanup, it will take 10,000 years for us to remediate all of the contaminated sites in America. The United States Environmental Protection Agency, in an analysis conducted with George Washington University, concluded that the remediation “costs for all of the brownfields located within the United States have been estimated to exceed $600 billion,” and that, consequently, “it is imperative that private capital be attracted to the redevelopment of brownfields.”

Late last year, Senator Grassley and I entered a colloquy in the Congressional Record expressing our concern that certain provisions in the tax code are having the unintended consequence of discouraging investment in the remediation and redevelopment of our nation’s polluted sites. In that colloquy, we pledged to get our arms around this issue and to draft legislation in order to correct this problem. I am pleased that we are standing here today to introduce legislation to do just that.

Let me briefly describe the basis for this bill and the manner by which this legislation will dramatically accelerate the remediation of contaminated lands in America.

Today, tax-exempt investors such as university endowments, private pension funds, and charitable foundations can no longer use their capital in the stock market and certain real estate transactions that do not clean the environment without fear of incurring an unrelated Business Income Tax, or UBIT, on any gains they make from their investments.

Because UBIT-sensitive entities hold over $6 trillion dollars in financial assets and routinely deploy more capital in real estate than any other category of investor, the unintended consequence of UBIT has been to drive our nation’s biggest and most active real estate investors away from projects focused on the remediation and redevelopment of polluted properties.

This bill seeks to address this problem by allowing eligible tax-exempt entities to invest in the cleanup and redevelopment of contaminated properties without incurring unrelated business income tax at the time they sell the property.

The legislation accomplishes this goal by concentrating on three basic tasks: 1. its investment on moderately and heavily polluted properties. 2. require taxpayers to work with the State authorities and the public to ensure adequate clean up, and 3. ensure that the legislation is tightly crafted to prevent abuse.

First, this bill focuses on moderately and heavily polluted properties. Section 196 of the tax code contains a structure under which designated state environmental agencies certify contaminated property that is eligible for special rules concerning deductions of remediation costs. This bill uses this existing structure to identify and certify contaminated sites that are eligible for tax protection under this bill. Prior to requesting certification from a state agency, the taxpayer is required to provide the agency with site characterizations, assessments and other documentation illustrating the scope and character of the pollution problem at the target site.

The legislation maintains its focus on moderately and heavily contaminated properties by requiring tax payers to expend on remediation of each site the greater of $500,000 or 12 percent of the fair market value of the site, assessed as though the site were not contaminated. These remediation thresholds have intentionally been set higher than the typical range of costs reported to the Environmental Protection Agency to clean up brownfield sites nationwide. By establishing such high remediation thresholds, the legislation excludes incidentally or trivially contaminated property and focuses new capital on those sites most in need of additional assistance.

Second, this bill requires taxpayers to work with affected states and the public to determine the need for remediation. In addition to requiring high levels of remediation expenditures on each site, the legislation contains numerous other safeguards designed to ensure that remediation of each site is performed to state specifications and with full public involvement.

Similar to the front-end certification that is required to classify properties as truly contaminated, the legislation requires the taxpayer to obtain a tail-end certification from the state agency indicating that the site has been cleaned up and is no longer considered a brownfield. Prior to appealing for this certification, the taxpayer must provide the state agency with sufficient information and documentation to allow the state agency to make this determination. In particular, the taxpayer must certify and provide documentation that: there are no longer hazardous substances, pollutants or contaminants on the property that are complicating the redevelopment or reuse of the site, environmental remediation is complete or substantially complete in conformance with all applicable federal, state and local environmental laws and regulations, the property is suitable for more economically productive or environmentally beneficial uses than at the time of acquisition, if additional activities are required to complete the remediation, sufficient financial assurances and institutional controls are in place to complete the remediation in as short a time as possible, and the public was notified and given the opportunity to purchase the property before the decisions taken to clean up the property and, if necessary, on any longer-term remediation activities.

The provisions in this legislation are designed to create substantive thresholds that the tax-exempt entity must meet in order to qualify for the exemption from UBIT. This legislation does not alter the complex web of existing federal, state or local environmental laws, regulations or standards.

Third, this bill ensures that the legislation is tightly crafted to prevent abuse. It is worth noting that this legislation has been drafted to contain numerous safeguards to prevent abuse of this program. The anti-abuse examples include the following. The taxpayer cannot be the party that has caused the pollution and cannot be otherwise related to the polluter. Also, all transactions, purchase of the property, sale of the property, expenditure of remediation funds, etc., must be arms-length transactions with parties unrelated to the taxpayer. Further, the taxpayer is not allowed to count any Federal funds, e.g., grants, etc., or other types of government payments and benefits toward and required remediation thresholds. There are also restrictions on how the taxpayer may treat costs across multiple properties, requiring that an election be made specifying when and which properties are considered for such purposes; this is intended to prevent cherry-picking among different properties once the election has been made. Moreover, the legislation contains special restrictions addressing the use of the legislation’s provisions to benefit public bodies or other public entities including requiring that all partnerships under the bill be fractions-rule compliant.
Because this legislation is narrowly crafted, and because tax-exempt entities are not currently investing in these sites, and thus are not paying UBIT, the Joint Committee on Taxation has concluded that this legislation would actually generate revenue for the Federal treasury during the first three years after enactment and that it will cost $10 million over five years and $192 million over ten years.

Further, because the legislation will accelerate the cleanup of brownfield sites, create jobs, stimulate the economy, reduce blight and public health concerns, and because the bill has an acceptable fiscal impact, this legislative approach has been endorsed by Environmental Defense, the U.S. Chamber of Commerce, the National Taxpayers Union, and the U.S. Conference of Mayors, as well as numerous local, state and regional organizations and municipalities.

Passage of this bill will dramatically increase the speed at which our country’s contaminated properties are remediated and brought back into productive taxable use. This narrowly crafted legislation will create jobs, increase tax revenues, and protect the environment.

I am pleased to introduce this legislation with my colleagues from Oklahoma. I look forward to working together to enact this legislation into law.

I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 1936

Bill enacted by the Senate and House of Representatives, for the United States of America in Congress assembled.

SEC. 1. EXCLUSION OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES, EXCITED OR INCURRED BY ELIGIBLE TAXPAYERS.

(a) IN GENERAL.—Subsection (b) of section 512 of the Internal Revenue Code of 1986 (relating to unrelated business taxable income) is amended by adding at the end the following new paragraph:

"(b) TREATMENT OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES.—

"(A) IN GENERAL.—Notwithstanding paragraph (5)(B), there shall be excluded any gain or loss from the qualified sale, exchange, or other disposition of any qualifying brownfield property by an eligible taxpayer.

"(B) ELIGIBLE TAXPAYER.—For purposes of this paragraph—

"(i) acquires from an unrelated person a qualifying brownfield property, and

"(ii) requests a remediation expenditures with respect to such property in an amount which exceeds the greater of $550,000 or 12 percent of the fair market value of the property at the time such property was acquired by the eligible taxpayer, determined as if there was not a presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property;"
regulatory action coverage, or similar coverage under environmental insurance policies, or financial guarantees required to manage such remediation and monitoring.

(ii) EXCEPTIONS.—Such term shall not include—

"(i) any portion of the purchase price paid or incurred by the eligible taxpayer to acquire, renovate, or refinance a brownfield property;

(ii) environmental insurance costs paid or incurred to obtain legal defense coverage, owner/operator liability coverage, lender liability coverage, professional liability coverage, or similar types of coverage;

(iii) any amount paid or incurred to the extent reimbursed, funded, or otherwise subsidized by grants provided by the United States, a State, or a political subdivision of a State for use in connection with the property, proceeds of an issuance of State or local governmental obligations used to provide financing for the property the interest of which is exempt from tax under section 103, or subsidized financing provided (directly or indirectly) under a Federal, State, or local program provided in connection with the property; or

(iv) any expenditure paid or incurred before the date of the enactment of this paragraph.

For purposes of subparagraph (iii), the Secretary may disregard the payment of government-provided funds for purposes of determining eligible remediation expenditures.

(2) DETERMINATION OF GAIN OR LOSS.—For purposes of this paragraph, the determination of gain or loss shall not include an amount treated as gain which is ordinary in nature under section 1245 or section 1250 property, including amounts deducted as environmental insurance costs paid or otherwise incurred by the eligible taxpayer to acquire, renovate, or refinance a brownfield property, or any amount paid or incurred to the extent reimbursed, funded, or otherwise subsidized by grants provided by the United States, a State, or a political subdivision of a State for use in connection with the property, proceeds of an issuance of State or local governmental obligations used to provide financing for the property the interest of which is exempt from tax under section 103, or subsidized financing provided (directly or indirectly) under a Federal, State, or local program provided in connection with the property.

(3) SPECIAL RULES FOR PARTNERSHIPS.—

(I) IN GENERAL.—The term ‘qualified partnership means a partnership which—

(i) has a partnership agreement which satisfies the requirements of section 518(c)(9)(B)(vi) at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(ii);

(ii) satisfies the requirements of subparagraphs (B)(i), (C), (D), and (E), if ‘qualified partnership’ each place it appears therein (except subparagraph (D)(iii)), and

(iii) agrees in an agreement which would be prevented from constituting an eligible taxpayer by reason of subparagraph (B)(i).

(II) REQUIREMENT THAT TAX-EXEMPT PARTNER IS A PARTNER SINCE FIRST CERTIFICATION.—This paragraph shall apply with respect to any eligible taxpayer which is a partner of a partnership which acquires, renovates, sells, exchanges, or otherwise disposes of a qualified brownfield property only if such eligible taxpayer was a partner of the qualifying partnership at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(ii) and ending on the date of the sale, exchange, or other disposition of the property.

(IV) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to prevent abuse of the requirements of this subparagraph, including abuse through—

"(i) the use of special allocations of gains or losses, or

(ii) changes in ownership of partnership interests held by eligible taxpayers.

(4) SPECIAL RULES FOR MULTIPLE PROPERTIES.—

(I) IN GENERAL.—An eligible taxpayer or a qualifying partnership of which the eligible taxpayer is a partner may make a 1-time election to apply this paragraph to more than 1 qualifying brownfield property by averaging the eligible remediation expenditures for all such properties acquired during the election period. If the eligible taxpayer or qualifying partnership makes such an election, the election shall apply to all qualified sales, exchanges, or other dispositions of qualifying brownfield properties the acquisition and transfer of which occur during the period for which the election remains in effect.

(II) ELECTION.—An election under clause (i) shall be made with the eligible taxpayer’s or qualifying partnership’s timely filed tax return (including extensions) for the first taxable year for which the taxpayer or qualifying partnership intends to have the election apply. Any election under clause (i) is effective for the period—

"(i) beginning on the date which is the first day of the taxable year in which the election is included or a later date in such taxable year selected by the eligible taxpayer or qualifying partnership, and

(ii) ending on the date which is the earliest of a date of revocation selected by the eligible taxpayer or qualifying partnership, the date which is 8 years after the date described in clause (i), or, in the case of an election by a qualifying partnership of which the eligible taxpayer is a partner, the date of the termination of the qualifying partnership.

(III) REVOCATION.—An eligible taxpayer or qualifying partnership may revoke an election under clause (i)(i) by filing a statement of revocation with the timely filed tax return (including extensions). A revocation is effective as of the first day of the taxable year of the return in which the revocation is included or a later date in such taxable year selected by the eligible taxpayer or qualifying partnership. Once an eligible taxpayer or qualifying partnership revokes the election, the eligible taxpayer or qualifying partnership is ineligible to make another election under clause (i) with respect to any qualifying brownfield property subject to the revoked election.

(IV) RECAPTURE.—If an eligible taxpayer excludes gain or loss from a sale, exchange, or other disposition of property to which an election under subparagraph (D) the following new paragraph applies, and such property fails to satisfy the requirements of paragraph (3), the unrecaptured business taxable income of the eligible taxpayer for the taxable year in which such failure occurs shall be determined by including any previously excluded gain or loss from such sale, exchange, or other disposition allocable to such property, and interest shall be determined at the overpayment rate established under section 6621 on any resulting tax for the period beginning with the due date of the return for the taxable year during which such sale, exchange, or other disposition occurred, and ending on the date of payment of the tax.

(5) RELATED PERSONS.—For purposes of this paragraph, a person shall be treated as related to another person if—

"(i) such person bears a relationship to such other person as described in section 267(b) (determined without regard to paragraph (9) thereof), or section 707(b), determined by substituting ‘25 percent’ for ‘50 percent’ each place it appears therein, and

(ii) in the case such other person is a non-profit organization, if such person controls directly or indirectly more than 25 percent of the governing body of such organization.

(B) EXCLUSION FROM DEFINITION OF DEBT-FINANCED PROPERTY.—Section 1211(b) of the Internal Revenue Code of 1986 (defining debt-financed property) is amended by striking "or" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting "", and by inserting after subparagraph (D) the following new subparagraph:

"(II) property the gain or loss from the sale, exchange, or other disposition of which would be excluded by reason of the provisions of section 512(b)(18) in computing the unrelated business income of any unrelated trade or business.

(C) EFFECTIVE DATE.—The amendments made by this section shall apply to any gain from the sale, exchange, or other disposition of any property acquired by the taxpayer after the date of the enactment of this Act.
sale and marketing of shelters. Regulatory action to clamp down on illicit activity. And steps to better identify and pursue abusive transactions.

The current Administration has added to the list of identified tax shelters and supported legislative proposals to ensure greater disclosure.

This is not—and should not be—a partisan issue.

The proliferation of abusive tax shelters is out of control. And how purportedly reputable companies and professional advisors are participating in a disturbing race to the bottom.

First, what are these tax shelters?

Let me give you just one example of a tax shelter.

On October 20th, the Finance Committee held a hearing on tax shelters. This hearing was a follow-up to a hearing earlier this year to review the Committee’s investigative report on the collapse of Enron.

At our hearing last month, we heard how some American corporations are purportedly buying and then leasing bridges, dams, subway systems, and other infrastructure through corporate tax shelters.

It’s like the old line: If you think these tax shelter transactions are legitimate—or what Congress intended—have I got a bridge to sell you.

A former leasing industry executive, who testified before the Finance Committee, described complex transactions where U.S. companies make a single payment to a municipality to lease a bridge or other public infrastructure. These companies then lease the infrastructure back to the city. All along, the company takes a deduction on its U.S. taxes for the depreciation of the high valued asset.

The companies never pay any real lease payments to the cities. And the cities never pay any lease payments to the companies. The cities never risk losing control of the bridge, dam, or subway system.

But these companies—who include major banks and Fortune 500 companies—take millions and millions of dollars in deductions for what is essentially a paper transaction. And the American taxpayer is left holding the bill.

The witness testified: “[M]uch of the old and new infrastructure throughout Europe has been leased to, and leased back from, American corporations.”

In essence, in these transactions, the American people, through their tax dollars, are providing these companies a subsidy, part of which the companies pocket, and part of which they transfer to these cities.

As Yale law school Professor Michael Graetz once said, a tax shelter is a “deal done by very smart people, that, absent tax considerations, would be very stupid.”

This is nothing more than an unwarranted tax subsidy to U.S. companies courtesy of honest taxpayers. It is simply wrong. It rewards a transaction with no real economic substance.

This has got to stop. And it is up to Congress and the President to put an end to this kind of abuse.

So how did this tax shelter industry develop?

If there is one thing that we should have learned from the Enron scandal, it is the pervasive role of lawyers and accountants.

Why did some of the country’s leading professional firms devote so much effort to spinning reported earnings out of things, or what does that say about the ethics of professional standards for accountants and lawyers?

In 1908, the American Bar Association adopted its first code of ethics.

The preamble to their Model Rules states that a lawyer serves his client, but is also “an officer of the legal system and a public citizen having special responsibility for the quality of justice.”

It also states that a lawyer should “further the public’s understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.”

In 1946, the Executive Director of the American Institute of Accountants—the predecessor to the American Institute of Certified Public Accountants—stated that:

The very existence of the accounting profession depends on public confidence in the determination of certified public accountants to safeguard the public interest. This confidence can be preserved only by evidence of both technical competence and moral obligation. One item of evidence is promulgation and enforcement of rules of professional conduct.

So, why did the legal and accounting profession fail to follow their own principles. And, why did they fail to police themselves?

Part of the problem stems from the 1990s practices of investment bankers and venture capitalists—taking a piece of the deal or a piece of the upside performance. This behavior spread into almost every public company.

And, following their clients, accountants and lawyers also began adopting these practices. Add to this an enormous pressure on company executives to hit revenue and earnings targets on a quarterly basis.

Amidst this obsession with short-term results, no one was left to look after the company’s long-term survival.

At the same time, lawyers and accountants faced their own profit pressures as their compensation was tied to their “book of business” and their success in cross-selling different services to their clients.

Cultural conflicts presented a threat to professional values.

For auditing firms, traditional professional values mean attesting to investors and lenders that the company’s financial statements are properly prepared and reflect all material issues.

In business culture, however, encouraged the auditor to serve company executives—not only to refrain from pushing back, but also to affirmatively help them achieve their personal goals.

Furthermore, audit services themselves became more and more of a low-profit business, as audit firms battled each other to gain the inside audit position—which could help them market high-profit services. The big money was in selling tax-engineered products.

Finally, the private interests of the accounting professional and the corporate executive converged on one kind of activity that has proved particularly toxic—the proprietary financial maneuver that boosted reported earnings. That means, manipulate the bottom line of the financial statements.

Such maneuvers satisfied the executives’ need to feed the markets and keep stock prices afloat.

They also satisfied the accountant’s need for generating large profits for their firm and for their own bonus formula.

Similarly, for law firms, the traditional professional values are associated with loyalty to the client and advocacy of the client’s interests within the bounds of the law.

Yet, loyalty to the corporate client and attention to corporate risks came to be sorely tested in many instances.

A company executive could well be more interested in getting the deal done—and getting the legal opinion needed to support the accounting analysis—than in gaining an accurate understanding of the legal merits of the issue and the associated risks to the company.

A law firm might even have its own stake in getting the deal done—because of a bonus or contingency fee associated with completing the deal—or because of having assisted a promoter in designing the deal.

In many accounting and tax schemes, executives simply did not want a frank assessment of legal merits and risks.

Instead, what they sought was a professional opinion that would justify hiding the true nature of a transaction from readers of financial reports and tax returns.

This was not legal advice on the merits—it was advice that was needed to justify hiding the ball.

Clearly, some accounting firms and law firms have abandoned ethics for the big dollar bonus.

As an extreme example, there were many people in the Arthur Andersen...
Professional firms also have been all too willing to let themselves be compartmentalized. This way, they could say “That wasn’t my job” when things went wrong.

Consider the case of prominent law firms that provided tax opinions for investment banks and other promoters to use in selling tax shelter products. These opinions described the consequences of complicated tax maneuvers—based on the assumption that the future tax shelter purchaser would have a valid business purpose. And on the assumption that the transaction would not be tweaked further to reduce financial risk to almost nothing.

It may have been true that these firms were asked to provide advice based on those implausible assumptions. But that does not justify allowing the firm’s professional reputation to be used to market tax shelters. The lawyers simply must have known that no purchaser could realistically be expected to supply the critical assumed facts.

The Enron case of using tax shelters to generate phantom financial earnings also seems to reflect a cycle of “That wasn’t my job” role-playing. The tax lawyers found a business purpose for the transaction because it generated financial earnings. The accountants found financial earnings because the transaction promised future tax reductions. It all seems a bit circular.

And it all assumes that creating misleading earnings reports is in the real business interest of the corporation. Again, the professionals appear to have lost track of who their real client was. Now, what do we need to do about this?

Congress and Federal regulators started to address these issues with the Sarbanes-Oxley Act of 2002. For example, Sarbanes-Oxley calls for lawyers practicing before the SEC to report evidence of securities violations “up the chain” of their corporate clients—ultimately to corporate boards.

And the Act calls for auditors to report directly to the corporate board’s audit committee. And, provide a number of safeguards to assure that audit committees have the independence and autonomy needed to represent corporate interests and not personal interests.

The Sarbanes-Oxley Act also addresses auditor independence in ways that respond to the business pressures that I described earlier.

Audit partners cannot be compensated based on cross-selling. Audit personnel must be rotated periodically. And a one-year cooling off period is required in the case of individuals moving between employment at an audit firm and employment at an audit client.

Public companies are prohibited from obtaining certain non-audit services from their auditor, and all other non-audit services require prior approval of the board’s audit committee. But these changes just nibble at the edges of the larger problem. We have to reign in these lawyers, accountants, and investment bankers who are out there manipulating the tax code to come up with tax shelter schemes.

The tax shelter legislation that Chairman Grassley and I introduced today goes to the heart of the tax schemes problem. For example, the bill ensures that transactions are done for legitimate business purposes. It means that transactions must have economic substance and are not done merely to avoid taxes.

It makes it explicit that achieving a particular kind of financial accounting treatment does not ordinate the needed “business purpose” to satisfy tax requirements.

The bill also provides for stiff penalties that are needed to back up Treasury’s new shelter disclosure requirements.

As a Treasury official pointed out, “[I]f a promoter is comfortable with selling a transaction, if a taxpayer is comfortable with advising that the transaction is proper. And if a taxpayer is comfortable with entering into that transaction. Then they should all be comfortable with the IRS knowing about the transaction.”

Our bill also broadens the IRS’s ability to enjoin tax shelter promoters and allows the agency to impose monetary penalties—in addition to suspension or disbarment—on disreputable tax advisors or their firms.

And more may be needed, from both government and the private sector.

For one thing, we need to also pass Senator Levin’s bill, S. 1767, the Auditor Independence and Tax Shelters Act. I am pleased to be an original co-sponsor of that legislation. The Auditor Independence and Tax Shelters Act compliments the legislation that I am introducing today.

Senator Levin’s legislation shuts down tax shelter promotion from the audit and financial statement side of the equation. Specifically, S. 1767 would strengthen auditor independence by prohibiting them from providing tax shelter services to their audit clients.

The legislation would also reduce potential auditor conflicts of interest by codifying a number of independence principles to guide the audit committees of the Board of Directors of a publicly traded company, when that committee is required by the Sarbanes-Oxley Act to decide whether the company needs to use non-audit services to the corporation.

Next, the SEC and the new Public Accounting Oversight Board should de-vote significant resources to considering ways to improve the clarity of the tax footnote in the company’s financial statements.

They should also undertake a comprehensive review of financial reporting. Some tax shelters have been abused, and agencies should also ensure that they have tax experts to ensure proper oversight investigations and reviews of the financial statement tax disclosures.

The IRS should improve the clarity of the Schedule M-1. And we need to have better communication and coordination between the various federal departments and agencies with oversight over lawyers, accountants and investment bankers. The Department of Treasury, the IRS, the Department of Justice, the SEC, and the Public Accounting Oversight Board should talk to each other and dig into the “it’s not my job” mindset.

The Sarbanes-Oxley Act also empowers the Public Company Accounting Oversight Board to describe new non-audit services that public companies cannot acquire from their auditors, even if they are not explicitly described in the statute as a prohibited service.

The Accounting Oversight Board should review the record of SEC rulings in this area, as well as ongoing business practices, and take action if it is needed to assure the public interest in auditor independence.

Finally, professional firms need to cultivate professional cultures. The Enron scandal should serve as a wake-up call to all of us, but particularly the professionals.

Law firms and accounting firms must be sure that their members and employees understand the nature of corporate representation and who the client is.

Everyone who works at the firm needs to understand that the firm is committed to integrity and quality. And to understand that the firm’s leaders will listen and react if legitimate questions arise.

Professionals should resist the tendency to avert their eyes to obvious issues on the grounds that they are technically someone else’s responsibility.

In the best traditions of both the accounting and legal professions, the work of the professional must be guided by commitments to professional duty, fair dealing, and honesty.

I hope that the leaders of the accounting and legal professions understand how important this is, and take the actions needed to give new vitality to these great traditions.

Every Spring, Americans sit down at the kitchen table, or at their home computer, and figure out their taxes.

With quiet patriotism, these Americans step up and pay their fair share. They are counting on us to make sure...
that sophisticated corporations pay their fair share as well.

I am simply unwilling to tell the school teacher in Montana that he needs to pony up a little more because Congress is unwilling to shut down a loophole that is costing tens of billions every year.

I look forward to continuing to work with the Chairman of the Finance Committee, Senator Grassley, to see the Tax Shelter Transparency and Enforcement Act enacted. I also urge all of my congressional colleagues—in the House and the Senate—to join forces to send tax shelter legislation to the President for his signature.

We need to act to close these tax shelters and restore professional ethics. And we need to act before the next big scandal comes. Congress cannot ignore the problem any longer.

I ask unanimous consent that the text of the bill be printed in the RECORD. There being no objection, the bill was ordered to be printed in the RECORD.

not be treated as having economic substance by reason of having a potential for profit unless—

(1) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

(2) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

(7) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-inifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. The transaction shall be treated as a borrowing, or an acquisition of financial capital, from a tax-inifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-inifferent parties.

(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-inifferent party shall not be respected if—

(i) it results in an allocation of income or gain from that party to a tax-inifferent party;

(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-inifferent party.

(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

(I) depreciation,

(II) any tax credit, or

(III) any other deduction as provided in section 167.

(E) ADJUSTMENTS.—For purposes of subparagraph (A)—

(i) the transaction originally entered into by reason of the tax-inifferent party;

(ii) the transaction originally entered into by reason of the tax-inifferent party.

(F) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(i).

(T) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-inifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. The transaction shall be treated as a borrowing, or an acquisition of financial capital, from a tax-inifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-inifferent parties.

(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-inifferent party shall not be respected if—

(i) it results in an allocation of income or gain from that party to a tax-inifferent party;

(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-inifferent party.

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(ii) the transaction originally entered into by reason of the tax-inifferent party.

(F) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(i).

(T) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-inifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. The transaction shall be treated as a borrowing, or an acquisition of financial capital, from a tax-inifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-inifferent parties.

(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-inifferent party shall not be respected if—

(i) it results in an allocation of income or gain from that party to a tax-inifferent party;

(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-inifferent party.

(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

(I) depreciation,

(II) any tax credit, or

(III) any other deduction as provided in section 167.

(E) ADJUSTMENTS.—For purposes of subparagraph (A)—

(i) the transaction originally entered into by reason of the tax-inifferent party;

(ii) the transaction originally entered into by reason of the tax-inifferent party.

(F) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(i).

(T) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-inifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. The transaction shall be treated as a borrowing, or an acquisition of financial capital, from a tax-inifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-inifferent parties.

(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-inifferent party shall not be respected if—

(i) it results in an allocation of income or gain from that party to a tax-inifferent party;

(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-inifferent party.

(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

(I) depreciation,

(II) any tax credit, or

(III) any other deduction as provided in section 167.

(E) ADJUSTMENTS.—For purposes of subparagraph (A)—

(i) the transaction originally entered into by reason of the tax-inifferent party;

(ii) the transaction originally entered into by reason of the tax-inifferent party.

(F) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(i).
requirements of this subsection shall be consti-
tuenced as being in addition to any such other
rule of law.

(5) REGULATIONS.—The Secretary shall
prescribe such regulations as he deems to be
necessary or appropriate to carry out the pur-
poses of this subsection. Such regulations may
include exemptions from the application of
this subsection.

(b) EFFECTIVE DATE.—The amendments
made by this section shall apply to trans-
actions entered into after the date of the en-
actment of this Act.

SEC. 102. PENALTY FOR FAILING TO DISCLOSE
REPORTABLE TRANSACTION.

(a) IN GENERAL.—Part I of subchapter B of
chapter 68 (relating to assessable penalties)
is amended by inserting after section 6707 the
following new section:

"SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE
REPORTABLE TRANSACTION INFORM-
ATION WITH RETURN OR STATE-
MENT.

"(a) IMPOSITION OF PENALTY.—Any person
who fails to include on any return or state-
ment any information with respect to a re-
portable transaction which is required by
section 6011 to be included with such return
or statement shall pay a penalty in the
amount determined under subsection (b).

"(b) AMOUNT OF PENALTY.—

"(1) IN GENERAL.—Except as provided in
paragraphs (2) and (3), the amount of the
penalty under subsection (a) shall be $50,000.

"(2) LARGE ENTITY.—The amount of
the penalty under subsection (a) with respect
to a listed transaction shall be $100,000.

"(3) INCREASE IN PENALTY FOR LARGE EN-
TITIES AND HIGH NET WORTH INDIVIDUALS.—

"(A) IN GENERAL.—In the case of a failure
under subsection (a) by—

(i) a large entity, or

(ii) a high net worth individual,
the penalty under paragraph (1) or (2) shall
be twice the amount determined without re-
gard to this paragraph.

"(B) LARGE ENTITY.—For purposes of sub-
paragraph (A), the term ‘large entity’ means,
with respect to any taxable year, a person
(other than a natural person) with gross re-
cipts in excess of $10,000,000 for the taxable
year in which the reportable transaction oc-
curs or the preceding taxable year. Rules
similar to the rules of paragraph (2) and sub-
paragraphs (B) and (C) of section 1505A(c)
and of paragraph (3) of section 482(c) shall apply
for purposes of this subparagraph.

"(C) HIGH NET WORTH INDIVIDUAL.—For pur-
poses of subparagraph (A), the term ‘high
net worth individual’ means, with respect to a
reportable transaction, a natural person
whose net worth exceeds $2,000,000 immi-
dently before the transaction.

"(c) DEFINITIONS.—For purposes of this sec-
tion—

"(1) REPORTABLE TRANSACTION.—The term
‘reportable transaction’ means any trans-
action the conduct of which with respect to
which information is required by section
6011 to be included in such return or state-
ment and which, if not included, the Secretary
determines as having a potential for tax
avoidance or evasion.

"(2) LISTED TRANSACTION.—Except as pro-
vided in the regulations, the term ‘listed trans-
action’ means a reportable transaction which
is the same as, or substantially simi-
lar to, a transaction specifically identified
by the Secretary as a tax avoidance trans-
action for purposes of section 6011.

"(d) AUTHORITY TO RESCIND PENALTY.—

"(1) IN GENERAL.—The Commissioner of In-
ternal Revenue may rescind all or any por-
tion of any penalty imposed by this section
with respect to any violation if—

"(A) the violation is with respect to a re-
portable transaction other than a listed
transaction,

"(B) the person on whom the penalty is
imposed has a history of complying with the re-
quirements of this title,

"(C) it is shown that the violation is due to
an unintentional mistake of fact;

"(D) imposing the penalty would be
against equity and good conscience, and

"(E) rescinding the penalty would promote
compliance with the requirements of this
chapter with respect to the determination,

"(2) DISCRETION.—The exercise of authority
under paragraph (1) shall be at the sole dis-
cussion of the Commissioner and may be del-
egated only by the Commissioner or the
Commissioner’s delegate.

"(d) EFFECTIVE DATE.—The amendments
made by this section shall apply to returns
and statements the due date for which is after
the date of the enactment of this Act.

SEC. 103. ACCURACY-RELATED PENALTY FOR
LISTED TRANSACTIONS.

(a) IN GENERAL.—Subchapter A of chapter
68 is amended by inserting after section 6662 the
following new section:

"SEC. 6662A. IMPOSITION OF ACCURACY-RE-
LATED PENALTY ON UNDERSTATE-
MENTS WITH RESPECT TO REPORT-
ABLE TRANSACTIONS.

"(a) IMPOSITION OF PENALTY.—If a tax-
payer has a reportable transaction understate-
ment for any taxable year, there shall be added
to the tax an amount equal to 20 percent of the
amount of such understatement.

"(b) REPORTABLE TRANSACTION UNDER-
STATEMENT.—For purposes of this section—

"(1) the term ‘reportable transaction un-
derstatement’ means the sum of—

"(A) the product of—

"(i) the amount of the increase (if any) in
taxable income which results from a dif-
fERENCE between the proper tax treatment of
an item to which this section applies and the
taxpayer’s treatment thereof as shown on
the taxpayer’s return of tax, and

"(B) the amount of the decrease (if any) in
the aggregate amount of credits determined
under subtitle A which results from a dif-
fence between the taxpayer’s treatment of
an item to which this section applies (as
shown on the taxpayer’s return of tax) and
the proper tax treatment of such item.

For purposes of subparagraph (A), any reduc-
tion of the excess deductions allowed for
the taxable year over gross income for such
year, and any reduction in the amount of
capital losses which would (without regard to
section 1221) be allowed for such year, shall be
treated as an increase in taxable in-
come.

"(2) ITEMS TO WHICH SECTION APPLIES.—This
section shall apply to any item which is at-
ttributable to—

"(A) any listed transaction, and

"(B) any reportable transaction (other than
a listed transaction) for which the Secre-
tary determines as having a potential for such transac-
tion the avoidance or evasion of Federal income
tax.

"(c) HIGHER PENALTIES FOR UNDISCLOSED
LISTED AND OTHER AVOIDANCE
TRANSACTIONS.—

"(1) IN GENERAL.—Subsection (a) shall be
applied by substitution of ‘20 percent’ for ‘10
percent’ with respect to the portion of any
reportable transaction understatement with
respect to which the requirement of section
6664(d)(2)(A) is not met.

"(2) RULES APPLICABLE TO ASSERTION AND
COMPROMISE OF PENALTY.—

"(a) IN GENERAL.—Only upon the approval
by the Chief Counsel of the Internal Rev-
ue Service or the Chief Counsel’s delegate at
the national office of the Internal Rev-
ue Service may a penalty to which para-
graph (1) applies be included in a 1st letter of
proposed deficiency which allows the tax-
payer an opportunity for administrative re-
view in the Internal Revenue Service Office
of Appeals. If such a letter is provided to the
taxpayer, only the Commissioner of Internal
Revenue may compromise all or any portion of
such penalty.

"(3) APPLICABLE RULES.—The rules of para-
graphs (2), (3), and (5) of section 6671(d) shall
apply for purposes of subparagraph (A).

"(d) DEFINITIONS OF REPORTABLE AND LIST-
ED TRANSACTIONS.—For purposes of this sec-
tion, the terms ‘reportable transaction’ and
‘listed transaction’ have the respective
meanings given to such terms by section 6707A(c).

'\(1\) \textsc{special rules.} — The terms ‘understatement’ and ‘significant purpose’ used in sections 6662(a) and (b) are defined with respect to any such term by section 6662B(c).

\(2\) The amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatement attributable to any non-economic substance transaction understatement for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(2), and

\(3\) the amount of such understatement is reduced under section 6707A(d).

\(4\) Rules relating to reasonable belief. — For purposes of section 6662B, the following rules apply:

\(A\) in general. — A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of any item only if such belief —

\(i\) is based on the facts and law that exist at the time the return is filed;

\(ii\) relates to the taxpayer’s chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited or examined and will not be reviewed, or such treatment will be resolved through settlement if it is raised;

\(B\) certain opinions may not be relied upon —

\(i\) in general. — An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if —

\(i\) the tax advisor is described in clause \(ii\), or

\(ii\) the opinion is described in clause \(iii\). — A tax advisor is described in this clause if the tax advisor —

\(i\) is a material advisor (within the meaning of section 6111(b)(3)) who participates in the organization, management, promotion, sale of the transaction or who is related to the organization, management, promotion, or sale of the transaction (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates;

\(ii\) is compensated directly or indirectly by a material advisor with respect to the transaction;

\(iii\) has a fee arrangement with respect to the transaction which is contingent on all or any portion of such tax benefits from the transaction being sustained, or

\(iv\) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

\(C\) qualified opinions. — For purposes of section 6662B, any qualified opinion is a qualified opinion if —

\(i\) is based on reasonable factual or legal assumptions (including assumptions as to future events);

\(ii\) reasonably relies on representations, statements, findings, or agreements of the taxpayer or other person;

\(iii\) does not identify and consider all relevant facts, or

\(iv\) fails to meet any other requirement as the Secretary may prescribe.

\(D\) reasonable cause exception. — The heading for section 6662B is amended by striking ‘‘reasonable cause exception’’ and inserting ‘‘reasonable cause exception for reportable transaction understatement’’.

\(E\) reasonable cause exception. — For purposes of this section —

\(A\) in general. — No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

\(B\) special rules. — Paragraph \(A\) shall not apply to any reportable transaction understatement.

\(C\) tax shelter. — For purposes of subparagraph \(B\), the term ‘tax shelter’ means —

\(i\) a partnership or other entity,

\(ii\) any invesment plan or arrangement, or

\(iii\) any other plan or arrangement, if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.

\(F\) rules applicable to compromise of penalty. —

\(A\) in general. — If the term ‘tax shelter’ means —

\(i\) a partnership or other entity,

\(ii\) any invesment plan or arrangement, or

\(iii\) any other plan or arrangement, see section 6707A(c).
(2) APPLICABLE RULES.—The rules of paragraph (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of paragraph (1).

(3) CONFORMING AMENDMENT.—Section 6707A(e) is amended by inserting after the item '(C)' the following new item:

"(3) relating to registering tax shelters."
"(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return including the transaction is filed under section 6111.

Subparagraph (B) shall be applied by substituting ‘75 percent for ‘50 percent’ in the case of an intentional failure or act described in subparagraph (B).

"(c) CERTAIN RULES TO APPLY.—The provisions of section 6707A(d) shall apply to any penalty imposed under subsection (d) and by striking ‘reportable transactions’ and inserting ‘reportable transactions’.

"(d) REPORTABLE AND LISTED TRANSACTIONS.—The terms ‘reportable transaction’ and ‘listed transaction’ have the respective meanings given to such terms by section 6707A(c).

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part of chapter 6 of chapter 1 of title 26 is amended by striking “tax shelters” and inserting “reportable transactions”.

The amendments made by this section shall apply to returns made by this section occurring after the date of the enactment of this Act.

"(e) EFFECTIVE DATE.—The amendments made by this section shall apply to returns made by this section occurring after the date of the enactment of this Act.

SEC. 111. UNDERTAKING OF TAXPAYER’S LIABILITY BY INCOME TAX RETURN PREPARER.

(a) STANDARDS CONFORMED TO TAXPAYER STANDARDS.—Section 6694(a) (relating to understatements due to unreasonable positions) is amended—

(1) by striking ‘realistic possibility of being sustained on its merits’ in paragraph (1) and inserting ‘reasonable belief that the tax treatment in such position was more likely than not the proper treatment’;

(2) by striking ‘frivolous’ in paragraph (3) and inserting ‘or there was no reasonable basis for the tax treatment of such position’;

(3) by striking ‘UNREALISTIC’ in the heading and inserting ‘IMPROPER’;

(b) AMOUNT OF PENALTY.—Section 6694 is amended—

(1) by striking ‘$250’ in subsection (a) and inserting ‘$1,000’;

(2) by striking ‘$1,000’ in subsection (b) and inserting ‘$5,000’;

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

SEC. 112. PENALTY FOR REPORTING INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

(a) IN GENERAL.—Section 5312(a)(5) of title 31, United States Code, is amended to read as follows:

'(5) FOREIGN FINANCIAL TRANSACTION VIOLATION.—

'(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who, in any transaction in which such person has an account, fails to report to the Secretary such information as the Secretary shall require relating to such account.

'(B) AMOUNT OF PENALTY.—

'(i) In general.—Except as provided in paragraph (3), any person who fails to report to the Secretary such information as the Secretary shall require relating to such account shall pay a penalty of $10,000 for each day of such failure after such 20th day.

'(ii) Reasonable cause exception.—No penalty shall be imposed by paragraph (i) with respect to any failure on any day if such failure is due to reasonable cause.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to returns made by this section occurring after the date of the enactment of this Act.

SEC. 113. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Subsection (a) of section 6708 is amended as follows:

'(a) IMPOSITION OF PENALTY.—

'(1) In general.—If any person who is required to maintain a list under section 6112(f) fails to maintain such list available upon written request to the Secretary in accordance with section 6112(b)(1)(A) within 20 business days after the date of the Secretary’s request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day.

'(2) Reasonable cause exception.—No penalty shall be imposed by paragraph (1) with respect to any failure on any day if such failure is due to reasonable cause.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to returns made by this section occurring after the date of the enactment of this Act.

SEC. 114. FRAUDULENT SUBMISSIONS.

(a) SPECIFIED FRAUDULENT SUBMISSIONS.—The term ‘specified fraudulent submission’ means a submission if any portion of such submission

'(I) is based on a position which the Secretary has identified as frivolous under subsection (c), or

'(II) reflects a desire to delay or impede the administration of Federal tax laws.

(b) CIVIL PENALTY FOR SPECIFIED FRAUDULENT SUBMISSIONS.—

'(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified fraudulent submission shall pay a penalty of $5,000.

'(2) SPECIFIED FRAUDULENT SUBMISSION.—For purposes of this section—

'(A) SPECIFIED FRAUDULENT SUBMISSION.—The term ‘specified fraudulent submission’ means a submission if any portion of such submission

'(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

'(ii) reflects a desire to delay or impede the administration of Federal tax laws.

'(B) SPECIFIED SUBMISSION.—The term ‘specified submission’ means—

'(i) a request for a hearing under subparagraph (B);

'(ii) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

'(iii) section 6330 (relating to notice and opportunity for hearing before levy), or

'(ii) an application under—

'(I) section 6159 (relating to agreements for payment of tax liability in installments),

'(II) section 7122 (relating to compromises), or

'(III) section 7811 (relating to taxpayer assistance orders).

'(2) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified fraudulent submission or as being frivolous for purposes of this section, the Secretary shall not be subject to the provisions of section 7430 (relating to suits for recovery of overpayments of tax).

'(c) LISTING OF FRAUDULENT POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirements of section 6662(d)(2)(B)(ii).

'(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed by this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.
(e) Penalties in Addition to Other Penalties.—The penalties imposed by this section shall be in addition to any other penalty provided by law.

(b) Treatment of Frivolous Requests for Hearings Before Levy.—

(1) Frivolous Requests Disregarded.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

"(g) Frivolous Requests for Hearing, Etc.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.".

(2) Preclusion from Raising Frivolous Issues at Hearing.—Section 6330(c)(4) is amended—

(A) by striking "(A)"; and inserting "(A)";

(B) by striking "(B)" and inserting "(ii)";

(C) by striking "in writing under subsection (a)(3)(B) and stating the grounds for the requested hearing"; and

(D) by inserting after subparagraph (A)" and (so redesignated) the following:

"(B) the requirement of clause (i) or (ii) of section 6702(b)(2)(A)."

(3) Statement of Grounds.—Section 6330(b)(1) is amended by striking "under subsection (a)(3)(B) and stating the grounds for the requested hearing".

(c) Treatment of Frivolous Requests for Hearings Upon Filing of Notice of Lien.—Section 6320 is amended—

(1) in subsection (b)(1), by striking "under subsection (a)(3)(B)" and inserting "writing under subsection (a)(3)(B) and stating the grounds for the requested hearing"; and

(2) in subsection (c), by striking "and (e)" and inserting "(e) and (g)".

(d) Treatment of Frivolous Applications for Offers-in-Compromise and Installment Agreements.—Section 7122 is amended by adding at the end the following new subsection:

"(e) Frivolous Submissions, Etc.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.".

(e) Clerical Amendment.—The table of sections for part I of chapter 6 of title 31, United States Code, is amended—

"Sec. 6702. Frivolous tax submissions.".

(f) Effective Date.—The amendments made by this section shall apply to requests made and issues raised after the date on which this Act is enacted.

SEC. 114. REGULATION OF INDIVIDUALS PRAC- TICING BEFORE THE DEPARTMENT OF TREASURY.

(a) Censure; Imposition of Penalty.—

(1) For any return of a regulated investment company (as defined in section 6611(f)(1)) filed after September 30, 2003, for the purpose of carrying on, in behalf of any person, a business of practicing before the Secretary of the Treasury (or his delegate or designee), there shall be a penalty of a maximum of $10,000 for each such return. This penalty shall be in addition to any other penalty imposed by this title.

(b) Tax Shelter Opinions, Etc.—Section 6701(b)(2)(A) is amended—

(1) in paragraph (2), by striking "or at any other time, a material advisor (as defined in section 6701(b)(2)(B))", and inserting "or at any other time, a material advisor (as defined in section 6701(b)(2)(B)),", and

(2) in paragraph (6), by striking the period at the end and inserting "; or ".

(c) Effective Date.—The amendments made by this section shall apply to tax shelters, including the use of offshore financial institutions, in connection with the conduct giving rise to such penalty, the Secretary of the Treasury on which the penalty is imposed, any employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.

SEC. 115. PENALTY ON PROMOTERS OF TAX SHELTERS.

(a) Penalty on Promoting Abusive Tax Shelters.—Section 6700(a) is amended by adding at the end the following new sentence: "Notwithstanding the first sentence, if an activity meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A)."

(b) Effective Date.—The amendments made by this subsection shall apply to activities after the date of the enactment of this Act.

SEC. 116. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH REQUIRED LISTED TRANSACTIONS NOT REPORTED.

(a) In General.—Section 6664(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

"(12) Listed Transactions.—If a taxpayer fails to include on a return all transactions for any taxable year any information with respect to a listed transaction (as defined in section 6701(c)(2)(C)) which is required under regulations prescribed by the Secretary as a condition of the application, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of—"

"(A) the date on which the Secretary is furnished the information so required; or"

"(B) the date that a material advisor (as defined in section 6701(c)(2)(C)) first determines that the requirements of section 6121 with respect to a request by the Secretary under section 6121(a) relating to such transaction with respect to such taxpayer;"

(b) Effective Date.—The amendments made by this section shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act.

SEC. 117. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS AND NONECONOMIC SUBSTANCE TRANSACTIONS.—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to—

(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirements of section 6662A(c) are not met, or

(2) any noneconomic substance transaction understatement (as defined in section 6662A(c)).

(b) Effective Date.—The amendments made by this section shall apply to transactions in taxable years beginning after the date of the enactment of this Act.

SEC. 118. AUTHORIZATION OF PENALTY AMOUNTS FOR TAX LAW ENFORCEMENT.

There is authorized to be appropriated $300,000,000 for each fiscal year beginning after the date of the enactment of this Act to carry out the purposes of this Act.

(TITLE II—OTHER CORPORATE GOVERNANCE PROVISIONS)

SEC. 201. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.

(a) In General.—Section 6022 (relating to consolidated return regulations) is amended by adding at the end the following new sentence: "In prescribing such regulations, the Secretary may prescribe rules to corporations filing consolidated returns under section 1501 that are different from other provisions of this title that would apply if such corporations filed separate returns."

(b) Result Not Overturned.—Notwithstanding subsection (a), the Internal Revenue Code of 1986 shall be construed by treating Treasury regulation section 1.1502-20(c)(3)(ii) (as in effect on January 1, 2001) as being inapplicable to the type of factual situation in 255 F.3d 1357 (Fed. Cir. 2001).

(c) Effective Date.—The provisions of this section shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

SEC. 202. SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICER.

(a) In General.—Section 6022 (relating to signing of corporate tax returns) is amended by inserting after the first sentence the following new sentence: "The return of a corporation with respect to income shall also include a declaration signed by the chief executive officer of such corporation (or other such officer of the corporation as the Secretary may designate if the corporation does not have a chief executive officer), under penalties of perjury, that the chief executive officer ensures that such return complies with this title and that the chief executive officer was provided reasonable assurance of the accuracy of all material aspects of such return. The preceding sentence shall not apply to any return of a regulated investment company (within the meaning of section 851)."

(b) Effective Date.—The amendment made by this section shall apply to returns filed after the date of the enactment of this Act.

SEC. 203. DENIAL OF DEDUCTION FOR CERTAIN FINDS, PENALTIES, AND OTHER AMOUNTS.

(a) In General.—Subsection (f) of section 162 (relating to trade or business expenses) is amended by inserting after such paragraph—

"(f) Fines, Penalties, and Other Amounts.—

(1) In General.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by
suit, agreement, or otherwise) to, or at the direction of, a government or entity described in paragraph (4) in relation to the violation of any law or the investigation or inquiry by any government or entity into the potential violation of any law.

"(2) Exception for amounts constituting restitution.—Paragraph (1) shall not apply to any amount paid or incurred by any court in a suit in which no government or entity described in paragraph (4) is a party.

"(3) Certain nongovernmental regulatory entities.—An entity is described in this paragraph if it is—

(A) a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)), or

(B) to the extent provided in regulations, a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.

(b) Effective date.—The amendment made by this section shall apply to amounts paid or incurred after April 27, 2003, except that such amendment shall not apply to amounts paid or incurred under any binding order entered before April 27, 2003. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained on or before April 27, 2003.

SEC. 204. Disallowance of deduction for punitive damages.

(a) Disallowance of deduction (1) In general.—Section 162(g)(1) (relating to treble damage payments under the antitrust laws) is amended by adding at the end the following new paragraph:

"(2) Exception for punitive damages.—No deduction shall be allowed under this chapter for any amount paid or incurred for punitive damages in connection with any judgment in, or settlement of, a suit in which the person described in subsection (a) shall not apply to punitive damages described in section 104(c).

(2) Conforming amendments.—(A) Section 295C is amended—

(i) by striking "$1,000,000" and inserting "$500,000",

(ii) by striking "5 years" and inserting "10 years".

(B) in the case of a court of general jurisdiction of a State or territory, or of the District of Columbia, or of the United States, the amount prescribed by paragraph (1) shall be equal to the amount prescribed by subsection (a) for offenses described in that subsection.

(C) in the case of a foreign country, the amount prescribed by paragraph (1) shall be equal to the amount prescribed by subsection (a) for offenses described in that subsection.

(3) Effective date.—The amendments made by this section shall apply to any transaction after the date of the enactment of this Act.

SEC. 205. Increase in criminal monetary penalty limitation for underpayment or overpayment of tax due to fraud.

(a) In general.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking "Any person who—" and inserting "(a) Any person who—";

(2) by adding at the end the following new subsection:

"(b) Increase in monetary limitation for underpayment or overpayment of tax due to fraud.—If any portion of any underpayment (as defined in section 6651(a)) or overpayment (as defined in section 6601(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6662(b) shall apply for purposes of determining the portion so attributable.

(b) Increase in penalties.—(1) Attempt to evade or defeat tax.—Section 7201 is amended—

(A) by striking "$100,000" and inserting "$500,000",

(B) by striking "1 year" and inserting "2 years", and

(C) by striking the third sentence.

(2) Fraud and false statements.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking "$100,000" and inserting "$500,000",

(B) by striking "5 years" and inserting "10 years", and

(C) by striking "3 years" and inserting "5 years".

(c) Effective date.—The amendments made by this section shall apply to any transaction after the date of the enactment of this Act.

SEC. 206. Limitation on transfer or impairment of built-in losses.

(a) In general.—Section 337 (relating to basis adjustments) is amended by striking the last sentence and inserting the following:

"(B) Property described.—For purposes of paragraph (1), "property" means any interest in property described in section 337(a)."

(b) Date of transfer.—The amendments made by this section shall apply to any transaction after the date of the enactment of this Act.
SEC. 302. NO REDUCTION OF BASIS UNDER SECTION 734 IN STOCK HELD BY PARTNER IN CORPORATE PARTNER.—In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b), an allocation shall be made to stock in a corporation (or any person which is related (within the meaning of section 267(b) or 707(b)(1)) to such corporation) which is a partner in the partnership and

“(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property in such manner as the Secretary may prescribe.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (1).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after February 13, 2003.

SEC. 303. REPEAL OF SPECIAL RULES FOR FASITS.

(a) IN GENERAL.—Part V of subchapter M of chapter 1 (relating to financial asset securitization investment trusts) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (8) of section 56(g) is amended by striking “REMIC, or FASIT” and inserting “or REMIC”.

(2) Clause (ii) of section 382(f)(2)(B) is amended by striking “a REMIC to which part IV of chapter M applies, or a FASIT to which part V of chapter M applies,” and inserting “a REMIC to which part IV of chapter M applies,”.

(c) E FFECTIVE DATE.

—Any section of this title that any property is transferred to a fixed price contract in effect on the

II) occurs after the startup day, and

III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day.

Section 860(g)(a)(7)(B) is amended to read as follows:

“(B) QUALIFYING RESERVE FUND.—For purposes of subparagraph (A), the term ‘qualifying reserve fund’ means any reasonably required reserve to—

“(I) provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow invested in the REMIC, or

“(II) provide a source of funds for the purchase of obligations described in clause (i) or (ii) of paragraph (3)(A).

The aggregate fair market value of the assets held in any such reserve shall not exceed 50 percent of the aggregate fair market value of all of the assets of the REMIC on the startup day, and the amount of any such reserve shall be gradually reduced to the extent the amount held in such reserve is no longer reasonably required for purposes specified in clause (i) or (ii) of paragraph (3)(A).

(9) Subparagraph (C) of section 1222(e)(4) is amended by striking “REMIC, or FASIT” and inserting “or REMIC”.

(10) Section 1272(a)(6)(B) is amended by adding at the end the following new flush sentence:

“For purposes of clause (iii), the Secretary shall determine the regular payment, taking into account the use of a current prepayment assumption, debt service, and any other amount attributable to an advance made to the obligor pursuant to the original terms of the obligation, and

(11) Subparagraph (a)(19) of section 7701 is amended by adding “and” at the end of clause (ix), by striking “(ix), and” at the end of clause (x) and inserting a period, and by striking clause (xi).

(12) The table of parts for subchapter M of chapter 1 is amended by striking the item relating to part V.

(c) E FFECTIVE DATE.—(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on January 1, 2004.

(2) E XCEPTION FOR EXISTING FASITS.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any FASIT in existence on the date of the enactment of this Act to the extent that regular interests issued by the FASIT before such date continue to remain outstanding at such time and stand in compliance with the original terms of issuance.

(B) TRANSFER OF ADDITIONAL ASSETS NOT PERMITTED.—Except as provided in regulations prescribed by the Treasury or the Secretary’s delegate, subsection (A) shall cease to apply as of the earliest date after the date of the enactment of this Act that any property is transferred to the FASIT.

SEC. 304. EXPANDED DISALLOWANCE OF DEDUCTION FOR INTEREST ON CONVERTIBLE DEBT.

(a) IN GENERAL.—(1) Paragraph (2) of section 163(h) is amended by striking “or a related party” and inserting “or (or any related party)”.

(2) The principal purpose for which such acquisition was made is evasion or avoidance of tax, and

(b) CAPITULATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—

Section 163(h) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6) and by inserting after paragraph (3) the following new paragraph:

“(4) Capitalization allowed with respect to equity of persons other than issuer and related parties.—If the disqualified debt instrument of a corporation is payable in equity held by the issuer (or any related party) in any other person (other than a related party), the basis of such equity shall be increased by the amount not allowed as a deduction by reason of paragraph (1) with respect to the instrument.

(c) E XCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—

Section 163(h), as amended by subsection (b), is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7) and by inserting after paragraph (4) the following new paragraph:

EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—For purposes of this subsection, the term ‘disqualified debt instrument’ does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term ‘dealer in securities’ has the meaning given such term by section 747.

(d) CONFORMING AMENDMENTS.—

(1) by striking “or a related party” in the material preceding subparagraph (A) and inserting “or any other person”, and

(2) by striking “interest” each place it appears.

(e) E FFECTIVE DATE.—The amendments made by this section shall apply to indebtedness issued after February 13, 2003.

SEC. 305. EXPANDED AUTHORITY TO DISALLOW TAX BENEFITS UNDER SECTION 269.

(a) IN GENERAL.—Subsection (a) of section 269 (relating to acquisitions made to evade or avoid income tax) is amended to read as follows:

“(a) any person or persons acquire, directly or indirectly, control of a corporation, or

(b) any corporation acquires, directly or indirectly, property of another corporation and the basis of such property, in the hands of the acquiring corporation, is determined to be the value of the property in the hands of the transferor corporation, and

(2) the principal purpose for which such acquisition was made was evasion or avoidance of income tax,

then the Secretary may disallow such deduction, credit, or other allowance. For purposes of paragraph (1)(A), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of all shares of all classes of stock of the corporation.

(b) IN GENERAL.—The amendment made by this section shall apply to stock and property acquired after February 13, 2003.
Mr. GRASSLEY. Mr. President, I rise today to co-sponsor legislation, the “Tax Shelter Transparency and Enforcement Act” to address the continuing problem of tax shelters. This bill reflects tax shelter measures that have been passed by the Senate Finance Committee in the Jobs and Growth Tax Relief Act of 2003, the CARE Act, the J O B S Act, and the Energy Bill. The full Senate has passed these shelter provisions twice this year.

We have known for many years that abusive tax shelters, which are structured to avoid corporate inversions, individual expatriations, and corporate deductions for phony leases of tax-payer funded subways, bridges, and water lines. I have pursued public disclosure of the differences in the income on financial statements reported by controlled foreign corporations to their shareholders, and the income the company reports to the IRS on its tax return. I have written to the President, Treasury and SEC to encourage them to consider this idea.

During the Senate’s 2002 deliberation of the Sarbanes-Oxley bill, I attempted to add an amendment that would have prohibited auditors from opining on the financial statement results of tax shelters that they had sold to an audit client. I was blocked in my attempt to offer that amendment, with several members expressing skepticism about the need for such a measure. I suspect that today, however, few members would have such reservations.

On October 21st, 2003, the Senate Finance Committee conducted a hearing to delve into a continuing problem. Not only are they continuing, they are now expanding to mid-level companies and wealthy individuals, many of whom have been deceived into engaging in tax shelter transactions. During our hearing, we heard testimony from taxpayers who relied on reputable tax professionals and accounting firms for sound tax advice, but unknowingly purchased tax shelters they were peddled by those trusted professionals through a web of collusion and deception. We also heard from employees of large accounting firms and major corporations who testified regarding the pressure exerted on them to bless transactions that, in their professional opinions, would constitute abusive tax shelters. The price for their integrity was the loss of their jobs and the ruin of their career. Tax shelter abuses have been stopped for the sake of fairness, the integrity of our tax system, and the protection of honest tax professionals.

Our years of work on this issue was recently heard in the hearing before the Permanent Subcommittee on Investigations, which explored abusive shelters that were promoted by purportedly reputable tax lawyers and accounting firms. Following that hearing, there has been considerable discussion of promoting an amendment similar to the one I offered in 2002 during the Sarbanes-Oxley debate, and I am appreciative of that effort. I hope we are able to construct a measure that can be readily enforced by the Public Accounting Oversight Board and the SEC, even though that agency lacks expertise in, or jurisdiction over, federal tax matters.

At its core, however, the problem is not an SEC matter, but is a problem of ongoing abuse of the tax code by very smart people doing some very ugly business. The only way to end this type of behavior is to make it open. Even the most cynical tax advisor does not want their dirty laundry in the public eye, particularly if that public includes the IRS. That is why disclosure of abusive or potentially abusive transactions is so important in solving this problem.

The Tax Shelter Transparency and Enforcement Act requires taxpayer disclosure of potentially abusive tax avoidance transactions. It is surprising and unfortunate that taxpayers, though required to disclose tax shelter transactions under present law, have refused to comply. The Tax Shelter Transparency and Enforcement Act will curb non-compliance by providing clearer and more objective rules for the reporting of potential tax shelters and by providing strong penalties for any one who refuses to comply with the revised disclosure requirements.

The legislation has been carefully structured to reward those who are forthcoming with disclosure. I wholeheartedly agree with the remarks offered by the former Treasury Secretary for Tax Policy, that “if a taxpayer is comfortable entering into a transaction, a promoter is comfortable selling it, and an advisor is comfortable blessing it, they all should be comfortable disclosing it to the IRS.”

Tax Shelter Transparency is essential to an evaluation by the IRS and ultimately by the Congress of the United States as to whether the tax benefits generated by complex business transactions are appropriate interpretations of existing tax law.

It is time to get this bill done. The Finance Committee has worked on rooting out tax shelters for nearly five years, and we have debated the issue long enough. The time to act is now. I will vigorously pursue enactment of an anti-tax shelters bill in the upcoming year. I think we can all take pride in the Senate’s consistent action of passing anti-tax shelter legislation. We must press forward to put a final end to the seemingly endless abuse of tax shelters.

By Mr. CORZINE (for himself, Mr. SCHUMER, Mr. LAUTENBERG, and Mr. REED).

S. 1938. A bill to amend the Forest and Rangeland Renewable Resources Planning Act of 1974 and related laws to strengthen the protection of native biodiversity and ban clearcutting on Federal land, and to designate certain Federal land as Ancient forests, roadless areas, watershed protection areas, and special areas where logging and other intrusive activities are prohibited; to the Committee on Energy and Natural Resources.

Mr. CORZINE. Mr. President, today along with Senators SCHUMER, LAUTENBERG, and REED, I am introducing the Act to Save America’s Forests. This important legislation is designed to protect our national forests from needless clearcutting, safeguard our roadless areas, and preserve the last remaining stands of Ancient forests in this country.

There used to be over one billion acres of forest on the land that is now...
the United States. Over 95 percent of that original forest has been logged, and less than one percent is in a form large enough to support all the native plants and animals. This land is under continuous threat, and if we don’t act now to protect these Ancient forests we might lose many of them forever.

Our national forests also are under attack by clearcutting. Removing huge groups of trees at once creates a blighted landscape, destroys wildlife habitats, increases erosion, and degrades water quality. In the last ten years, over a quarter-million acres of our national forests were clearcut. Clearcutting destroys a vibrant, ecologically diverse natural forest, which is usually replaced, if at all, with a single species tree farm: tightly packed rows of the most profitable trees. This is forest management focused solely on economics, not ecology. And it is not the way to save America’s forests.

This bill is a balanced, scientific approach to forest management. It bans all logging operations in roadless areas, Ancient forests, and forests that have extraordinary biological, scenic, or recreational values. These are our most valuable ecosystems and need to be protected. This bill also bans clearcutting in our national forests except in specific cases where complete removal of non-native invasive tree species is ecologically necessary.

However, this bill does not ban all logging in our national forests. It allows a method of logging called “selection management,” which cuts individual trees instead of the whole forest, leaving a healthy, diverse woodland. Selection management is less harmful to the soil, less destructive to wildlife, and less disturbing to people who enjoy the scenic beauty of our forests. Selection management can be sustainable and profitable, as demonstrated by a number of private forests around the country.

This legislation emphasizes biodiversity and sustainable management, allowing ecologically sound logging practices in some of our national forestland and fully protecting the rest. That’s why over 900 scientists, including Dr. Jane Goodall and Dr. E.O. Wilson, and the Union of Concerned Scientists, support this bill. I am proud to introduce this legislation to protect and restore America’s public forests, and I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1986

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) This Act may be cited as the “Act to Save America’s Forests”.

(b) Table of Contents. — The table of contents of this Act is as follows:

Sec. 1. Definitions.
Sec. 2. Findings and purposes.
Sec. 101. Committee of scientists.
Sec. 102. Continuous forest inventory.
Sec. 103. Administration and management.
Sec. 104. Conforming amendments.

TITLE II — PROTECTION FOR ANCIENT FORESTS, ROADLESS AREAS, WATERSHED PROTECTION AREAS, AND SPECIAL AREAS

Sec. 201. Findings.
Sec. 203. Designation of special areas.
Sec. 204. Restrictions on management activities in Ancient forests, roadless areas, watershed protection areas, and special areas.

TITLE III — EFFECTIVE DATE

Sec. 301. Effective date.
Sec. 302. Effective treating contracts.
Sec. 303. Wilderness act exclusion.

SEC. 2. FINDINGS AND PURPOSES.

(a) Findings. — Congress finds that—

(1) Federal agencies that permit clearcutting and other forms of even-age logging operations include the Forest Service, the United States Fish and Wildlife Service, and the Bureau of Land Management;

(2) clearcutting and other forms of even-age logging operations cause substantial alterations in native biodiversity by—

(A) emphasizing the production of a limited number of species, the leaching of nutrients, and often only a single species, of trees on each site;

(B) manipulating the vegetation toward greater relative density of the commercial species;

(C) suppressing competing species; and

(D) requiring the planting, on numerous sites, of a commercial strain of the species that reduces the relative diversity of other genetic strains of the species that were traditionally located on the same sites;

(3) clearcutting and other forms of even-age logging operations—

(A) frequently lead to the death of immobile species and the very young of mobile species of wildlife; and

(B) deplete the habitat of deep-forest species of animals, including endangered species and threatened species;

(4)(A) clearcutting and other forms of even-age logging operations—

(i) expose the soil to direct sunlight and the impact of precipitation;

(ii) disrupt the leaching of nutrients;

(iii) compact organic layers; and

(iv) disrupt the run-off restraining capabilities of roots and low-lying vegetation, resulting in soil erosion, the leaching of nutrients, a reduction in the biological content of soil, and the impoverishment of soil; and

(B) all of the consequences described in subparagraphs (A) through (C), a depletion of critical ecosystem resources, including timber production;

(5) clearcutting and other forms of even-age logging operations aggravate global climate change by—

(A) decreasing the capability of the soil to retain carbon; and

(B) during critical periods of falling and site preparation, reducing the capacity of the biomass to process and to store carbon, with a resultant loss of stored carbon to the atmosphere;

(6) clearcutting and other forms of even-age logging operations render soil increasingly sensitive to acid deposits by causing a decline in soil pH, which impairs soil’s ability to maintain protective carbon compounds on the soil surface;

(7) a decline of solid wood and coarse woody debris reduces the capacity of soil to retain water and nutrients, which in turn increases soil erosion and impairs soils’ ability to support healthy, diverse woodland;

(8) clearcutting and other forms of even-age logging operations—

(A) increased stream sedimentation and the silting of stream bottoms;

(B) a decline in water quality;

(C) the impairment of life cycles and spawning processes of aquatic life from benthic organisms to large fish; and

(D) the impairment of life cycles and spawning processes of aquatic life from benthic organisms to large fish;

(9) clearcutting and other forms of even-age logging operations increase harmful edge effects, including—

(A) blowdowns;

(B) invasions by weed species; and

(C) heavier losses to predators and competitors;

(10) by reducing the number of deep, canopied, variegated, permanent forests, clearcutting and other forms of even-age logging operations—

(A) limit areas where the public can satisfy an expanding need for recreation; and

(B) decrease the recreational value of land;

(11) clearcutting and other forms of even-age logging operations replace forests described in paragraph (12) with a clearcut logging that grows unimpeachable thicket of saplings, and then into monoculture tree plantations; and

(12)(A) the reduction in habitat and food supplies and other important products; and

(B) as a source of intellectual and scientific knowledge, recreation, and aesthetic pleasure.

(13) alteration of native biodiversity has serious consequences for human welfare, as the United States irretrievably loses resources for research and agricultural, medical, and industrial development; and

(14) alteration of native biodiversity is important for the survival of some species of animals, including endangered species and threatened species; and

(17)(A) clearcutting and other forms of even-age management operations have significant deleterious effects on native biodiversity, by reducing habitat and food for cavity-nesting birds and insectivores such as the 3-toed woodpecker and hairy woodpecker and for neotropical migratory bird species; and

(B) the reduction in habitat and food supplies could disrupt the lines of dependency among species and their food resources and thereby jeopardize critical ecosystem function, including limiting outbreaks of destructive insect populations; for example—

(i) the 3-toed woodpecker requires clumped spruce-fir forests and 90 percent of its winter diet is composed of insects, primarily spruce beetles; and

(ii) a 3-toed woodpecker can consume as many as 10,000 spittle bugs per acre per season.

(18) there is a result of the effects described in subparagraphs (A) through (C), a depletion of the sport and commercial fisheries of the United States.

(19) clearcutting and other forms of even-age logging operations increase harmful edge effects, including—

(A) blowdowns;

(B) invasions by weed species; and

(C) heavier losses to predators and competitors;
Title I—Land Management

Section 101. Committee of Scientists.

Section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1580a) is amended by striking subsection (h) and inserting the following:

"(h) Committee of Scientists.—

(1) In General.—To carry out subsection (g), the Secretary shall appoint a committee composed of scientists—

(A) who are not officers or employees of the Forest Service, of any other public entity, or of any entity engaged in whole or in part in the production of wood or wood products;

(B) not more than one-third of whom have contracted with or represented any entity described in subparagraph (A) during the 5-year period ending on the date of the proposed selection to the committee; and

(C) not more than one-third of whom are foresters.

(2) Qualifications of Foresters.—A forester appointed to the committee shall be an individual with—

(A) extensive training in forest biology; and

(B) field experience in selection management.

(3) Duties.—The committee shall provide scientific and technical advice and counsel on prescribed criteria and procedures and all other issues involving forestry and native biodiversity to promote an effective interdisciplinary approach to forestry and native biodiversity.

(4) Termination.—The committee shall terminate on the date that is 10 years after the date of enactment of the Act to Save America's Forests.

Section 102. Continuous Forest Inventory.

(a) In General.—Not later than 2 years after the date of enactment of this Act, each of the Chief of the Forest Service, the Director of the United States Fish and Wildlife Service, and the Director of the Bureau of Land Management (referred to individually as an 'agency') shall prepare a continuous inventory of forest land administered by those agency heads, respectively.

(b) Requirements. A continuous forest inventory shall constitute a long-term monitoring and inventory system that—

(1) is contiguous throughout affected Federal forest land;

(2) is based on a set of permanent plots that are inventoried every 10 years to—

(A) assess the impacts that human activities are having on management of the ecosystem;

(b) gauge—

(i) floristic and faunistic diversity, abundance, and dominance; and

(ii) economic and social value; and

(c) monitor changes in the age, structure, and diversity of species of trees and other vegetation.

(c) Decennial Inventories.—Each decennial inventory under subsection (b)(2) shall be completed not more than 60 days after the date on which it is begun.

(d) National Academy of Sciences.—In preparing a continuous forest inventory, an agency head may use the services of the National Academy of Sciences to—

(1) develop a system for the continuous forest inventory by which certain guilds or indicator species are measured; and

(2) identify any changes to the continuous forest inventory that are necessary to ensure that the continuous forest inventory is consistent with the most accurate scientific methods.

(e) Whole-System Measures.—At the end of each forest planning period, an agency head shall document whole-system measures that will be taken as a result of a decennial inventory.

(f) Public Availability.—Results of a continuous forest inventory shall be made available to the public without charge.

Section 103. Administration and Management.

The Forest and Rangeland Renewable Resources Planning Act of 1974 is amended by adding after section 102 (16 U.S.C. 1604) the following:

"Sec. 6A. Conservation of Native Biodiversity; Selection Logging; Prohibition of Clearcutting.

'(a) Applicability.—This section applies to the administration and management of—

(1) National Forest System land, under this Act;

(2) Federal land, under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and


'(b) Native Biodiversity in Forested Areas.—The Secretary shall provide for the conservation or restoration of native biodiversity in each stand and each watershed throughout each forested area, except during the extraction stage of authorized mineral development or during authorized construction projects, in which cases the Secretary shall conserve native biodiversity to the maximum extent practicable.

'(c) Restriction on Use of Certain Logging Practices.—(1) Definitions.—In this subsection:

(A) Age Diversity.—The term 'age diversity' means the naturally occurring range and distribution of age classes within a given species.

(B) Basal Area.—The term 'basal area' means the area of the cross section of a tree stem, including the bark, at 4.5 feet above the ground.

(C) Clearcutting.—The term 'clearcutting' means an even-age logging operation that removes all of the trees over a considerable portion of a stand at 1 time.

(D) Conservation.—The term 'conservation' means protective measures for maintaining native biodiversity and active and passive measures for restoring diversity through management efforts, in order to provide for the continued existence and normal functioning, including the viability of populations throughout their natural geographic distributions.

(E) Even-Age Logging Operation.—The term 'even-age logging operation' means a logging activity that—

(i) creates a clearing or opening that exceeds 2 acres;

(ii) creates a stand in which the majority of trees are within 10 years of the same age; or

(iii) within a period of 30 years, cuts or removes more than the lesser of—

(aa) the growth of the basal area of all tree species (not including a tree of a non-native invasive tree species or an invasive plantation species) in a stand; or

(bb) 20 percent of the basal area of a stand.

(ii) Inclusion.—The term 'even-age logging operation' includes the application of clearcutting, high grading, seed-tree cutting, and shelterwood cutting. Any other logging method in a manner inconsistent with selection management is not included.

(iii) Exclusion.—The term 'even-age logging operation' does not include the cutting or removal of—

(1) a tree of a non-native invasive tree species; or

(2) an invasive plantation species, if native longleaf pine are planted in place of the removed invasive plantation species.

(G) High Grading.—The term 'high grading' means the removal of only the larger or more commercially valuable trees in a stand, resulting in an alteration in the natural range of age diversity or species diversity in the stand.

(H) Invasive Plantation Species.—The term 'invasive plantation species' means a fast-growing pine or slash pine that was planted or managed by the Forest Service or other Federal agency as part of an even-aged monoculture plantation.

(I) Native Biodiversity.—

(i) In General.—The term 'native biodiversity' means—

(1) the full range of variety and variability within and among living organisms; and

(2) the ecological complexes in which the living organisms would have occurred (including naturally occurring disturbance regimes) in the absence of significant human impact.

(ii) Inclusions.—The term 'native biodiversity' includes diversity—

(1) within a species (including genetic diversity, species diversity, and age diversity);

(2) within a community of species;

(3) between communities of species; and

(4) within a discrete area, such as a watershed;
"(V) along a vertical plane from ground to sky, including application of the plane to all the other types of diversity; and

(VI) along the horizontal plane of the land surface, within application of the plane to all the other types of diversity.

(I) NON-NATIVE INVASIVE TREE SPECIES.—

(I) IN GENERAL.—The term ‘non-native invasive tree species’ means—

(i) Prosopis (Mesquite) species;

(ii) Brazilian pepper (Schinus terebinthifolius);

(iii) Common buckthorn (Rhamnus cathartica);

(iv) Eucalyptus (Eucalyptus globulus);

(v) Glossy buckthorn (Rhamnus frangula);

(vi) Melaleuca (Melaleuca quinquenervia);

(vii) Norway maple (Acer platanoides);

(viii) Princess tree (Paulownia tomentosa);

(ix) Salt cedar (Tamarix species);

(x) Silk tree (Albizia julibrissin);

(xi) Strawberry guava (Psidium cattleianum);

(xii) Tree-of-heaven (Ailanthus altissima);

(xiii) Velvet tree (Miconia calvescens); and

(xiv) White poplar (Populus alba).

(II) USE OF DAMAGE AWARD.—The term ‘use’ includes the felling of trees or portions of trees to create land space for a Federal administrative structure.

(III) WITHIN-COMMUNITY DIVERSITY.—The term ‘within-community diversity’ means the distinctive assemblages of species and ecological processes that occur in various physical settings of the biosphere and distinct locations.

(IV) PROHIBITION OF CLEARCUTTING AND OTHER EVEN-AGE LOGGING OPERATIONS.—No clearcutting or other form of even-age logging operation shall be permitted in any stand or watershed.

(V) Management of NATIVE BIODIVERSITY.—On each stand on which an even-age logging operation has been conducted on or before the date of enactment of this section, and on each stand deforested area managed for timber purposes on or before the date of enactment of this section, excluding areas occupied by existing buildings, the Secretary shall—

(a) prescribe a shift to selection management; or

(b) cease managing the stand for timber purposes, in which case the Secretary shall—

(i) undertake an active restoration of the native biodiversity of the stand; or

(ii) permit the stand to regain native biodiversity.

(VI) ENFORCEMENT.—

(A) FINDING.—Congress finds that all people of the United States are injured by actions on land covered by subsection (g)(3)(B) and this subsection.

(B) PURPOSE.—The purpose of this paragraph is to foster the widest and most effective possible diversity of native species, including agents and employees of the United States, to the person or persons designated to receive the damage award.

(C) COURT COSTS.—

(i) IN GENERAL.—The United States, Acting for the United States, or a person designated to receive the damage award, shall be entitled to recover reasonable costs of proof in all actions under this subsection.

(ii)dojo—

The term ‘damage award’ means an even-age logging operation that leaves a small minority of seed trees in a stand for any period of time.

(I) SELECTION MANAGEMENT.—

(i) IN GENERAL.—The term ‘selection management’ means a method of logging that emphasizes the period, individual selection and removal of varying size and age classes of the tree to be left in each stand and leaves the stronger dominant trees to survive and reproduce, in a manner that works with natural forest processes and—

(I) ensures the maintenance of continuous high forest cover where high forest cover naturally occurs; and

(II) unfragments the maintenance or natural regeneration of all native species in a stand;

(III) ensures the growth and development of trees through a range of diameter or age classes, including the felling of trees or portions of trees to create land space for a Federal administrative structure;

(IV) establishes a 150-year projected felling age, that leaves a small minority of seed trees in a stand and leaves uncut the stronger dominant trees to survive and reproduce, in a manner that works with natural forest processes and—

(I) ensures the maintenance of continuous high forest cover where high forest cover naturally occurs; and

(II) unfragments the maintenance or natural regeneration of all native species in a stand;

(III) ensures the growth and development of trees through a range of diameter or age classes, including the felling of trees or portions of trees to create land space for a Federal administrative structure;

(IV) establishes a 150-year projected felling age, that leaves a small minority of seed trees in a stand and leaves uncut the stronger dominant trees to survive and reproduce, in a manner that works with natural forest processes and—

(I) ensures the maintenance of continuous high forest cover where high forest cover naturally occurs; and

(II) unfragments the maintenance or natural regeneration of all native species in a stand;

(III) ensures the growth and development of trees through a range of diameter or age classes, including the felling of trees or portions of trees to create land space for a Federal administrative structure;
(9) Ancient forests help regulate atmospheric balance, maintain biodiversity, and provide valuable scientific opportunity for monitoring the health of the planet;

(10) Practicing extractive logging in the Ancient forests would create the best conditions for ensuring stable, well distributed, and viable populations of the northern spotted owl, marten, and other vertebrates, invertebrates, vascular plants, and nonvascular plants associated with those forests;

(11) Avoiding extractive logging in the Ancient forests would create the best conditions for ensuring stable, well distributed, and viable populations of anadromous salmonids, resident salmonids, and bull trout;

(12) Roadless areas are de facto wilderness that provide wildlife habitat and recreation;

(13) Large unfragmented forests, contained in large part on roadless areas on Federal land, are among the last refuges for native animal and plant biodiversity, and are vital to maintaining viable populations of threatened, endangered, sensitive, and rare species;

(14) Roads cause soil erosion, disrupt wildlife migration, and allow nonnative species to invade native forests;

(15) The mortality and reproduction patterns of forest dwelling animal populations are affected by traffic-related fatalities that accompany roads;

(16) The exceptional recreational, biological, scientific, or economic assets of certain special forested areas on Federal land are valuable to the public of the United States and are damaged by extractive logging;

(17) In order to gauge the effectiveness and appropriateness of current and future resource management activities, and to continue to broaden and develop our understanding of silvicultural practices, many special forested areas need to remain in a natural, unmanaged state to serve as scientifically established baseline control areas;

(18) Certain special forested areas provide habitat for the survival and recovery of endangered and threatened plant and wildlife species, such as grizzly bears, spotted owls, Pacific salmon, and Pacific yew, that are species, such as grizzly bears, spotted owls, Pacific salmon, and Pacific yew, that are species of plants or animals; and

(19) The biological values of late successional and old-growth forest related species of plants or animals; and

(20) as a legacy for the enjoyment, knowledge, and well-being of future generations, provisions must be made for the protection and preservation of the Ancient forests, roadless areas, watershed protection areas, and special areas of the United States.

SEC. 202. DEFINITIONS.

In this title:

(A) ANCIENT FOREST.—The term "Ancient forest" means—

(i) Federal land identified as late-successional reserves, riparian reserves, and key watersheds under the heading "Alternative 1" of the report entitled "Final Supplemental Environmental Impact Statement on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl, Vol. 1,", and dated February 1994; and

(ii) Federal land identified by the term "medium and large conifer multi-storied, canopied forests" as defined in the report described in clause (i);

(B) the eastside Cascade Ancient forests, including—


(ii) Federal land identified as the Eastside Forests Scientific Society Panel (The Wildlife Society, Technical Review 94-2, August 1994);

(iii) Federal land identified as "late succession and old-growth forests in the general definition on page 28 of the report described in clause (i); and

(iv) Federal land classified as "Oregon Aquatic Diversity Areas", as defined in the report described in clause (i); and

(C) the Sierra Nevada Ancient forests, including—

(i) Federal land identified as "Areas of Late-Successional Emphasis (ALSE)" in the report entitled, "Final Report to Congress: Status of the Sierra Nevada", prepared by the Sierra Nevada Ecosystem Project (Wildlands Resources Center Report #40, University of California, Davis, 1996); and

(ii) Federal land identified as "Late-Succession/Old-Growth Forests Rank 3, 4 or 5" in the report described in clause (i); and

(iii) Federal land identified as "Potential Aquatic Diversity Management Areas" on the map on page 1407 of Volume II of the report described in clause (i).

(B) EXTRACTIVE LOGGING.—The term "extractive logging" means the felling or removal of any trees from Federal forest land for any purpose.

(C) IMPROVED ROAD.—The term "improved road" means any road maintained for travel by standard passenger type vehicles.

(D) ROADLESS AREA.—The term "roadless areas" means a contiguous parcel of Federal land that is—

(A) devoid of improved roads, except as provided in subparagraph (B); and

(B) composed of—

(i) at least 1,000 acres west of the 100th meridian (with up to 1 mile of improved roads per 1,000 acres); and

(ii) at least 1,000 acres east of the 100th meridian (with up to 1 mile of improved roads per 1,000 acres); or

(iii) less than 1,000 acres, but share a border with a wilderness area, primitive area, or wilderness study area.

(E) SECRETARY.—The term "Secretary", with respect to an ancient forest, roadless area, watershed protection area, or special area, means the head of the Federal agency having jurisdiction over the Federal land.

(F) SPECIAL AREA.—The term "special area" means an area of Federal forest land designated under section 3 that may not meet the definition of a National Forest, National Wilderness, or National Forest, National Recreation Area, National Park, National Monument, or National Rural Park, unless it is a National Forest, National Monument, or National Rural Park, or part thereof, created under section 1 of the Act of March 1, 1911 (36 Stat. 851); and

(G) WATERSHED PROTECTION AREA.—The term "watershed protection area" means Federal land that extends—

(A) 300 feet from both sides of the active stream channel of any permanently flowing stream or

(B) 100 feet from both sides of the active channel of any intermittent, ephemeral, or seasonal stream, or any other nonpermanent watercourse, and evidence of a definable channel and evidence of annual scour or deposition of flow-related debris;

(C) 300 feet from the edge of the maximum level of any natural lake or pond; or

(D) 150 feet from the edge of the maximum level of a constructed lake, pond, or reservoir.

SEC. 203. DESIGNATION OF SPECIAL AREAS.

(a) IN GENERAL.—

(1) FINDING.—A special area shall possess at least 1 of the values described in paragraphs (2) through (5).

(2) BIOLOGICAL VALUES.—The biological values of a special area may include the presence of—

(A) threatened species or endangered species of plants or animals;

(B) rare or endangered ecosystems;

(C) key habitat necessary for the recovery of endangered species of plants or animals;

(D) recovery or restoration areas of rare or underrepresented forest ecosystems;

(E) migration corridors;

(F) areas of outstanding biodiversity;

(G) old growth forests;

(H) commercial fisheries; and

(1) sources of clean water such as key watersheds.

(3) SCENIC VALUES.—The scenic values of a special area may include the presence of—

(A) unusual geological formations;

(B) designated old and scenic rivers;

(C) unique biota; and

(D) vistas.

(4) RECREATIONAL VALUES.—The recreational values of a special area may include the presence of—

(A) designated national recreational trails or recreational areas;

(B) areas that are popular for such recreation and sporting activities as—

(i) hunting;

(ii) fishing;

(iii) camping;

(iv) hiking;

(v) aquatic recreation; and

(vi) winter recreation.

(C) Federal land in regions that are under- served in terms of recreation;

(D) land adjacent to designated wilderness areas; and

(E) solitude.

(5) CULTURAL VALUES.—The cultural values of a special area may include the presence of—

(A) sites with Native American religious significance; and

(B) historic or prehistoric archaeological sites eligible for listing on the national historic register.

(b) SIZE VARIATION.—A special area may vary in size to encompass the outstanding biological, scenic, recreational, or cultural value or values to be protected.

(c) DESIGNATION OF SPECIAL AREAS.—There are designated the following special areas, which shall be subject to the management restrictions specified in section 204:

(1) ALABAMA.—

(A) SIPSLEY WILDERNESS HEADWATERS.—Certain land in the Bankhead National Forest, Bankhead Ranger District, in Lawrence County, totaling approximately 22,000 acres, located directly north and upstream of the Sweetknowe Wilderness, and directly south of Forest Road 213.

(B) BRUSHY FORK.—Certain land in the Bankhead National Forest, Bankhead Ranger District, in Lawrence County, totaling approximately 6,200 acres, located directly south of Forrest Road 420, 254, and 426 and Alabama Highway 35.

(2) MISSISSIPPI.—

(A) RICKS WILDERNESS.—Certain land in the Talladega National Forest, Talladega Ranger District, in Talladega County and Clay County, totaling approximately 3,900 acres, located directly north and upstream of the Weems Mtn Wilderness, and directly west of County Road 55.

(B) TALLADEGA.—Certain land in the Talladega National Forest, in Talladega County, totaling approximately 4,700 acres, located directly north and upstream of the Sipsey Wilderness, and directly south of Forrest Road 621 and 621 B, east of Alabama Highway 48/77 and County Road 55.

(3) REBECCA MOUNTAIN.—Certain land in the Sipsey Wilderness, in Cleburne County, totaling approximately 7,900 acres, located directly north and upstream of the Malakoff Falls Wilderness, and directly south of County Road 55.

(4) ISLAND OF THE HARRIS.—Certain land in the DeSoto National Forest, in Colbert County, totaling approximately 1,500 acres, located directly north and upstream of the Desoto Mountain Wilderness, and directly south of Forest Road 307 and 309.

(5) CHILISWATCHEE.—Certain land in the DeSoto National Forest, in Colbert County, totaling approximately 4,700 acres, located directly north and upstream of the Desoto Mountain Wilderness, and directly south of Forest Road 307 and 309.

(6) INDIAN HEAD.—Certain land in the Talladega National Forest, in Talladega County, totaling approximately 2,200 acres, located directly north and upstream of the Sipsey Wilderness, and directly south of County Road 55.

(7) SISTERS.—Certain land in the Sipsey Wilderness, in Cleburne County, totaling approximately 2,200 acres, located directly north and upstream of the Sipsey Wilderness, and directly south of County Road 55.

(8) SPOONBILL.—Certain land in the Old Hickory National Forest, in Madison County, totaling approximately 2,200 acres, located directly north and upstream of the DeSoto Mountain Wilderness, and directly south of County Road 55.

(9) KNOTT.—Certain land in the Talladega National Forest, in Talladega County, totaling approximately 2,200 acres, located directly north and upstream of the Sipsey Wilderness, and directly south of County Road 55.

(10) COTTLER.—Certain land in the Talladega National Forest, in Talladega County, totaling approximately 2,200 acres, located directly north and upstream of the Sipsey Wilderness, and directly south of County Road 55.
Highway 308, and north of the power transmission line.

(D) AUGUSTA MINE RIDGE.—Certain land in the Talladega National Forest, Sylamore Ranger District, located approximately 6,000 acres, and comprised of the Talladega National Forest land north of the Chief Ladiga Rail Trail.

(E) MAYFIELD CREEK.—Certain land in the Talladega National Forest, Oakmulgee Ranger District, in Tallapoosa County, totaling approximately 6,000 acres, and comprised of Forest Service lands that have not been designated as a wilderness area before the date of enactment of this Act, known as the "Upper Buffalo River Watershed", located approximately 35 miles from the town of Harris, Madison County, Tallapoosa County, and Chambers County.

(ii) the Buffalo River;
(iii) the various streams comprising the Headwaters of the Buffalo River;
(iv) Richland Creek;
(v) Little Buffalo Headwaters; and
(vi) Edmond Road.

(B) certain land in the Sequoia National Forest, the Giant Sequoia Preserve, known as the "Giant Sequoia Preserve", comprised of 3 discontiguous parcels and approximately 442,425 acres, located in Fresno County, Tulare County, and Kern County, in the Southern Sierra Nevada mountain range, including—
(A) the Kings River Unit (145,600 acres) and nearby Redwood Mountain Unit (11,730 acres), located approximately 25 miles east of the city of Porterville.

(C) Colorado: Cochetopa Hills.—Certain land in the Gunnison Basin area, known as the "Cochetopa Hills", administered by the Gunnison National Forest, Comanche National Forest, and Rio Grande National Forest, totaling approximately 500,000 acres, spanning the continental divide south and east of the City of Gunnison, in Saguache County, including—
(A) Elk Mountain and West Elk Mountain;
(B) the Uncompahgre Plateau;
(C) the southern San Juan Mountains; and
(D) the La Garitas Mountains; and
(E) the Cochetopa Hills.

(7) GEORGIA.—

(4) ARKANSAS.—

(A) Cow Creek drainage, Arkansas.—Certain land in the Ouachita National Forest, Mena Ranger District, in Polk County, totaling approximately 7,000 acres, known as "Cow Creek Drainage, Arkansas", and bounded approximately—
(i) on the north, by County Road 95;
(ii) on the south, by County Road 79;
(iii) on the west, by County Road 48; and
(iv) on the west, by the Arkansas-Oklahoma border.

(B) LICKSVILLE.—

(C) Cow Creek.—

(D) LICKSVILLE.—

(E) HOGBACK MOUNTAIN.—

(F) ED JENKINS NATIONAL RECREATION AREA CLUSTER.—

(G) ARKANSAS.—

(H) HOGBACK MOUNTAIN.—

(I) HOGBACK MOUNTAIN.—

(J) HOGBACK MOUNTAIN.—

(K) HOGBACK MOUNTAIN.—

(L) HOGBACK MOUNTAIN.—

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(X) HOGBACK MOUNTAIN.—

(Y) HOGBACK MOUNTAIN.—

(Z) HOGBACK MOUNTAIN.—

[**CONGRESSIONAL RECORD — SENATE**]

**November 24, 2003**
approximately 141,000 acres, located approximately 20 miles north of the town of McCall in the area generally known as “French Creek/Patrick Butte”.

9. ILLINOIS—(A) CRIPPS BEND.—Certain land in the Shawnee National Forest, totaling approximately 39 acres, located in Jackson County in the Big Muddy River watershed, in the area generally known as “Cripps Bend”.

(B) OPPORTUNITY AREA A—Certain land in the Shawnee National Forest, totaling approximately 142 acres, located in Pope County surrounding Bell Smith Springs Natural Area, in the area generally known as “Opportunity Area A”.

(C) QUARREL CREEK.—Certain land in the Shawnee National Forest, totaling approximately 40 acres, located in northern Pope County in the Quarrel Creek watershed, in the area generally known as “Quarrel Creek”.

10. MICHIGAN: TRAP HILLS.—Certain land in the Ottawa National Forest, Bergland Ranger District, totaling approximately 37,120 acres, known as the “Trap Hills”, located approximately 5 miles from the town of Berกลด, in Ontonagon County.

11. MINNESOTA—(A) TROUT LAKE AND SUOMI HILLS.—Certain land in the Chippewa National Forest, totaling approximately 10,000 acres, known as “TROUT LAKE/Suomi Hills” in Itasca County.

(B) LULLABY WHITE PINE RESERVE.—Certain land in the Chippewa National Forest, Gunflint Ranger District, totaling approximately 2,518 acres, in the South Brule Opportunity Area, northwest of Grand Marais in Cook County, known as the “Lullaby White Pine Reserve”.

12. MISSOURI: ELEVEN POINT BIG SPRINGS AREA.—Certain land in the Mark Twain National Forest, Ironton Ranger District, totaling approximately 200,000 acres, comprised of the administrative area of the Eleven Point Ranger District, known as the “Eleven Point–Big Springs Area”.

13. MONTANA: MOUNT BUSHELB.—Certain land in the Lolo National Forest, totaling approximately 41,000 acres, located approximately 5 miles southwest of the town of Thompson Falls in the area generally known as “Mount Bushnell”.

(A) LA MANGA.—Certain land in the eastern half of the Carson National Forest, Camino Real Ranger District, totaling approximately 5,000 acres, located in Township 21, Ranges 12 and 13, known as “Angostura”, and bounded—

(i) on the northeast, by Highway 518.

(ii) on the southeast, by the Angostura Creek watershed boundary.

(iii) on the southern side, by Trail 19 and the Pecos Wilderness; and

(iv) on the west, by the Agua Piedra Creek watershed.

(B) L'AMANZA.—Certain land in the western half of the Carson National Forest, El Rito Ranger District, located in the Vallecitos Sustained Yield Unit, totaling approximately 5,400 acres, known as “La Mangua”, in Township 27, Range 6, and bounded—

(i) on the north, by the Tierra Amarrilla Land Grant;

(ii) on the south, by Canada Escendida;

(iii) on the west, by the Sustained Yield Unit boundary and the Tierra Amarrilla Land Grant; and

(iv) on the east, by the Rio Vallecitos.

(C) ELK MOUNTAIN.—Certain land in the Santa Fe National Forest, totaling approximately 7,220 acres, known as “Elk Mountain” located in Townships 17 and 18 and Ranges 12 and 13, and bounded—

(i) on the northwest, by the Pecos Wilderness; and

(ii) on the east, by the Cow Creek Watershed;
OKLAHOMA—COW CREEK DRAINAGE, OKLAHOMA.—Certain land in the Osage National Forest, Mena Ranger District, in Le Flore County, totaling approximately 3,000 acres, bounded on the north by Cow Creek Drainage, Oklahoma, and bounded approximately—

(A) on the west, by the Beech Creek National Scenic Area;
(B) on the north, by State Highway 63;
(C) on the east, by the Arkansas-Oklahoma border; and
(D) on the south, by County Road 9038 on the south of the town of Williams, in the area generally known as the "Applegate Wilderness."

PENNSYLVANIA.—

(A) THE BEAR CREEK SPECIAL AREA.—Certain land in the Allegheny National Forest, Marienville Ranger District, Elk County, totaling approximately 7,900 acres, and comprised of Allegheny National Forest land bounded—

(i) on the west, by Forest Service Road 136;
(ii) on the north, by Forest Service Roads 339 and 237;
(iii) on the east, by Forest Service Road 143; and
(iv) on the south, by Forest Service Road 135.

(B) THE BOGUS ROCKS SPECIAL AREA.—Certain land in the Allegheny National Forest, Marienville Ranger District, Forest County, totaling approximately 1,015 acres, and comprised of Allegheny National Forest land in component 714 bounded—

(i) on the northeast and east, by State Route 948;
(ii) on the south, by State Route 66;
(iii) on the southwest and west, by Township Road 370; and
(iv) on the northwest, by Forest Service Road 632; and
(v) on the north, by a pipeline.

(C) THE CHAPPEL FORK SPECIAL AREA.—Certain land in the Allegheny National Forest, Bradford Ranger District, McKean County, totaling approximately 10,000 acres, and comprised of Allegheny National Forest land bounded—

(i) on the north, by State Route 86;
(ii) on the south, by Chappel Bay; and
(iii) on the west, by the Allegheny Reservoir.

(iv) on the north, by State Route 96; and
(v) on the east, by private land.

(D) THE FOOLS CREEK SPECIAL AREA.—Certain land in the Allegheny National Forest, Bradford Ranger District, Warren County, totaling approximately 1,500 acres, and comprised of Allegheny National Forest land south and west of Forest Service Road 255 and west of FR 255A, bounded—

(i) on the west, by Minister Road; and
(ii) on the south, by private land.

(E) THE HICKORY CREEK SPECIAL AREA.—Certain land in the Allegheny National Forest, Bradford Ranger District, Warren County, totaling approximately 2,000 acres, and comprised of Allegheny National Forest land bounded—

(i) on the east and northeast, by Heart's Content Road;
(ii) on the south, by Hickory Creek Wilderness Area; and
(iii) on the northwest, by private land; and
(iv) on the north, by Allegheny Front National Recreation Area.

(F) THE LAMENTS RUN SPECIAL AREA.— Certain land in the Allegheny National Forest, Marienville Ranger District, Forest County, totaling approximately 4,500 acres, and—

(i) comprised of Allegheny National Forest land bounded—

(ii) on the north, by Tionesta Creek;
(iii) on the east, by Salmon Creek;
(iv) on the southeast and southwest, by private land; and
(v) on the south, by Forest Service Road 210; and
(ii) including the lower reaches of Bear Creek.

(G) THE LEWIS RUN SPECIAL AREA.—Certain land in the Allegheny National Forest, Bradford Ranger District, McKean County, totaling approximately 500 acres, and comprised of Allegheny National Forest land north and east of Forest Service Road 312,3 including land known as the "Lewis Run Natural Area" and consisting of land within Compartment 466, Stands 1-3, 5-8, 10-14, and 18-27.

(H) THE MILL CREEK SPECIAL AREA.—Certain land in the Allegheny National Forest, Marienville Ranger District, Elk County, totaling approximately 2,000 acres, and comprised of Allegheny National Forest land bounded—

(i) on the north, by State Route 66;
(ii) on the northeast, by Forest Service Road 226;
(iii) on the east, by Forest Service Roads 130, 774, and 228; and
(iv) on the southeast, by State Road 3002 and Forest Service Road 189.

(I) THE MINISTER CREEK SPECIAL AREA.—Certain land in the Allegheny National Forest, Bradford Ranger District, Warren County, totaling approximately 6,600 acres, and comprised of Allegheny National Forest land bounded—

(i) on the north, by a snowmobile trail; and
(ii) on the east, by Forest Road 631.

(iii) on the south, by State Route 666 and private land; and
(iv) on the southwest, by Forest Service Road 420; and
(v) on the west, by warrants 3109 and 3014.

(K) THE MUZETTE SPECIAL AREA.—Certain land in the Allegheny National Forest, Marienville Ranger District, Forest County, totaling approximately 325 acres, and comprised of Allegheny National Forest land bounded—

(i) on the west, by 79'16' longitude, approximately; and
(ii) on the north, by Forest Service Road 561; and
(iii) on the east, by Forest Service Road 212; and
(iv) on the south, by private land.

(L) THE SUGAR RUN SPECIAL AREA.—Certain land in the Allegheny National Forest, Bradford Ranger District, McKean County, totaling approximately 8,800 acres, and comprised of Allegheny National Forest land bounded—

(i) on the north, by State Route 346 and private land; and
(ii) on the east, by Forest Service Road 137; and
(iii) on the south and west, by State Route 321.

(M) THE TIONESTA SPECIAL AREA.— Certain land in the Allegheny National Forest, Bradford Ranger District, McKean County, totaling approximately 27,000 acres, and comprised of Allegheny National Forest land bounded—

(i) on the west, by private land and State Route 948;
(ii) on the north, by Forest Service Road 258;
(iii) on the north, by Hoffman Farm Recreation Area and Forest Service Road 486; and
(iv) on the northeast, by private land and State Route 6.

(v) on the east, by private land south to Forest Road 123, then the Sumter Mountain trail from Forest Road 133 to Windy City, then by private land and Forest Road 327 to Russell City; and
(vi) on the southwest, by State Routes 66 and 948.

(SOUTH CAROLINA.—

(A) BIG SHOALS, SOUTH CAROLINA AREA.— Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 2,000 acres, known as "Big Shoals, South Carolina Area", 15 miles south of Highlands, North Carolina.

(B) BRASSTOWN CREEK, SOUTH CAROLINA AREA.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 3,500 acres, known as "Brasstown Creek, South Carolina Area", approximately 15 miles west of Westminster, South Carolina.

(C) CHAUGA.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, Oconee County, totaling approximately 16,000 acres, known as "Chauga", approximately 10 miles west of Walhalla, South Carolina.

(D) DARK BOTTOMS.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 4,000 acres, known as "Dark Bottoms", approximately 10 miles northeast of Westminster, South Carolina.

(E) ELIOTT ROCK EXTENSION, SOUTH CAROLINA AREA.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 2,000 acres, known as "Elliott Rock Extension, South Carolina Area", located approximately 10 miles south of Cashiers, North Carolina.

(F) FIVE FALLS, SOUTH CAROLINA AREA.— Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 3,500 acres, known as "Five Falls, South Carolina Area", approximately 10 miles southeast of Clayton, Georgia.

(G) PERSIMMON MOUNTAIN.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 7,000 acres, known as "Persimmon Mountain", approximately 12 miles south of Cashiers, North Carolina.

(H) ROCK GORGE, SOUTH CAROLINA AREA.— Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 2,000 acres, known as "Rock Gorge, South Carolina Area", 12 miles southeast of Highlands, North Carolina.

(I) TAMASSEE.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 5,500 acres, known as "Tamassee", approximately 10 miles north of Walhalla, South Carolina.

(J) THRIFT'S FERRY, SOUTH CAROLINA AREA.— Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 5,000 acres, known as "Thrift's Ferry, South Carolina Area", 10 miles east of Clayton, Georgia.

(SOUTH DAKOTA.—

(A) BLACK HILLS.—Certain land in the Black Hills National Forest, totaling approximately 12,400 acres, located in the upper...
reaches of the Rapid Creek watershed, known as the "Black Fox Area", and roughly bounded—
(i) on the north, by FDR 206;
(ii) on the west, by the steep slopes north of Forest Road 231; and
(iii) on the west, by a fork of Rapid Creek.

(B) Breakneck Area.—Certain land in the Black Hills National Forest, totaling 6,700
acres, located along the northeast edge of the Black Hills in the vicinity of the Black
Hills National Forest and the Bureau of Land Management’s Meade Recreation
Area, known as the "Breakneck Area", and generally—
(i) bounded by Forest Roads 139 and 189 on the north;
(ii) demarcated along the eastern and western
boundaries by the ridge-crests dividing the watershed.

(C) Norbeck Preserve.—Certain land in the Black Hills National Forest, totaling approxi-
mately 27,766 acres, known as the "Norbeck Preserve", and encompassed approxi-
mately by a boundary that, starting at the southeast corner
(i) runs north along FDR 753 and United States Highway Alt. 18, then along SD 244 to
the junction of Palmer Creek Road, which serves as the northeast limit;
(ii) heads south from the junction of High-
ways 87 and 89;
(iii) runs southeast along Highway 87; and
(iv) runs east back to FDR 753, excluding a corridor of private land along FDR 345.

(D) Pilger Mountain Area.—Certain land in the Black Hills National Forest, totaling approxi-
mately 12,600 acres, known as the "Pilger Mountain Area", located in the Elk
Mountains on the southwest edge of the Black Hills, roughly bounded—
(i) on the east and northeast, by Forest Roads 318 and 319.
(ii) on the north and northwest, by Road 312; and
(iii) on the southwest, by private land.

(E) Stagebarn Canyons.—Certain land in the Black Hills National Forest, known as
"Stagebarn Canyons", totaling approximately 7,300 acres, approximately 10 miles
west of Rapid City, South Dakota.

(22) TENNESSEE.—
(A) MOUNTAINS CLUSTER, TENNESSEE AREAS.— Certain land in the Nolichucky and
Unaka Ranger Districts of the Cherokee Na-
tional Forest, in Cocke County, Green Coun-
ty, Washington County, and Unicoi Count-
y, totaling approximately 46,133 acres, known as the "Bald Mountains, Tennessee
Areas", and comprised of 10 parcels known as "Laurel Mountain", "Blackbone", "Lar-
uel Mountain", "Walden Mountain", "Wolf Creek", "Meadow Creek Mountain",
"Brush Creek Mountain", "Paint Creek", "Bald Mountain", and "Sampson Mountain
Extension", located near the towns of Newport, Hot Springs, Greeneville, and Erwin.

(B) FROGCOHUTTA CLUSTER.—Certain land in the Cherokee National Forest, in
Polk County, Ocoee Ranger District, Hwa-
see Ranger District, and Tennessee Ranger
District, totaling approximately 28,800 acres, known as the "Big Frog Cohutta
Cluster", comprised of 4 parcels known as "Big Frog Extensions", "Little Frog Ext-
ensions", "Big Frog Cohutta", and "Rock Creek", located near the towns of Copperhill,
Ducktown, Turtletown, and Benton.

(C) CITICO CREEK WATERSHED CLUSTER TEN-
NESSEE AREAS.—Certain land in the Tel-
lico Ranger District of the Cherokee National Forest, in Monroe County, totaling approxi-
mately 14,256 acres, known as the "Citico Creek Watershed Cluster, Tennessee
Areas", and comprised of 4 parcels known as "Flats Mountain", "Miller Ridge", "Cowcamp
Ridge", and "Joyce Kilmer-Slickrock Extension", near the town of Tellico Plains.

(D) IRON MOUNTAINS CLUSTER.—Certain land in the Cherokee National Forest, Wataga
Range District, totaling approximately 58,090 acres, known as the "Iron Mountains
Cluster", comprised of 8 parcels known as "Big Laurel Branch Addition", "Hickory
Flat Mountain", "Low Iron Mountain", "Upper Iron Mountain", "London Bridge", "Beaverdam Creek", and "Rod-
gers Ridge", located near the towns of Bris-
ton and Elizabethton, in Sullivan County and
Johnson County.

(E) NORTHERN UNICOI MOUNTAINS CLUSTER.
—Certain land in the Cherokee National Forest, in Monroe County, totaling approximately 30,453 acres, known as the "Northern Unicoi Mountain

(F) ROAN MOUNTAIN CLUSTER.—Certain land in the Cherokee National Forest, Unaka and
Watauga Ranger Districts, totaling approximately 25,725 acres known as the "Roan
Mountains Cluster", comprised of 7 parcels known as "Strawberry Mountain", "High-
lands of Roan", "Ripshin Ridge", "Doe River Gorge Scenic Area", "White Rocks Moun-
tain", "Ride Hill", and "Watauga Reserve", approximately 8 to 20 miles south of the town of Elizabethton, in Unicoi County, Carter County, and Sullivan County.

(G) SOUTHERN UNICOI MOUNTAINS CLUSTER.—
Certain land in the Hiwassee Ranger District of the Cherokee National Forest, in Polk
County, Monroe County, and McMinn Coun-
ty, totaling approximately 11,251 acres, known as the "Southern Unicoi Mountains
Cluster", comprised of 3 parcels known as "Gee Creek Recreation Area", "Slide Hollow
Cluster", and "Buck Bald", near the towns of Etowah, Benton, and Turtletown.

(H) UNAKA MOUNTAINS, TENNESSEE AREAS.— Certain land in the Cherokee Na-
tional Forest, Unaka Ranger District, totaling approximately 15,669 acres, known as the
"Unaka Mountains Cluster, Tennessee Areas", comprised of 3 parcels known as "No-
litchucky", "Unaka Mountain Extension", and "Stone Mountain", approximately 8 miles from Erwin, in Unicoi County and Carter County.

(23) TEXAS.—
(A) LONERIDGE CLUSTER.—Certain land in the Angelina National Forest, in Jasper
County and Angelina County, totaling approxi-
mately 30,000 acres, generally known as
"Loneridge", and bounded—
(A) on the west, by Upland Island Wilder-
ness Area, as described below;
(B) on the south, by the Neches River; and
(C) on the northeast, by Sam Rayburn Res-
erve.

(B) VERNOM.—
(A) GLASTENBURY AREA.— Certain land in the Green Mountain National Forest, totaling
approximately 35,000 acres, located 3 miles southwest of Wilmington, generally known as the "Glastenbury Area", and bounded—
(i) on the north, by Kelly Stand Road;
(ii) on the east, by Forest Road 7L;
(iii) on the south, by Route 9; and
(iv) on the west, by Route 7.

(B) LAKE OWENS CLUSTER.— Certain land in the Green Mountain National Forest, totaling approximately 5,500 acres, located 3 miles southwest of Wilmington, generally known as "Lamb Brook", and bounded—
(i) on the north, by Route 100;
(ii) on the south, by Route 100;
(iii) on the north, by Route 9; and
(iv) on the east, by land owned by New
England Properties.

(C) ROBERT FROST MOUNTAIN CLUSTER.— Certain land in the Green Mountain National Forest, totaling approximately 6,500 acres, known as "Robert Frost Mountain Area", located northeast of Middleburg, consisting of the Forest Service land bounded—
(i) on the west, by Bristol Notch Road;
(ii) on the north, by Bristol Notch Road;
(iii) on the east, by Lincoln/Ripton Road; and
(iv) on the south, by Route 125.

(25) VIRGINIA.—
(A) BEAR CREEK.— Certain land in the Jefferson National Forest, Wythe Ranger
District, totaling approximately 3,000 acres, known as "Bear Creek", known as the
"White Oak Ridge-Terrapin Mountain", totaling approximately 8,000 acres, east of the Blue Ridge Parkway, in Botetourt County and Rockbridge County.

(B) WHITETOP MOUNTAIN.— Certain land in the Jefferson National Forest, Mt. Rodgers Recreation Area, totaling 3,500 acres, known as "Whitetop Mountain", located in Botetourt County, Smyth County, and Grayson County.

(G) WILSON MOUNTAIN.— Certain land known as "Wilson Mountain", in the Jefferson National Forest, Glenwood Ranger District, totaling approximately 5,100 acres, east of Interstate 81, in Botetourt County and Rockbridge County.

(H) FEATHERCAMP.— Certain land in the Mt. Rodgers Recreation Area of the Jefferson Na-
tional Forest, totaling 4,974 acres, known as "Feathercamp", located in Botetourt County, a parcel of the town of Damascus and north of State Route 58 on the Feathercamp Ridge, in Washington County.

(26) WISCONSIN.—
(A) FLYNN LAKE.— Certain land in the Chequamegon-Nicolet National Forest, in the Fish Creek Ranger District, totaling approximately 5,700 acres, known as "Flynn Lake", in the Flynn Lake semi-primitive non-
omotorized area, in Bayfield County.

(B) GHOST LAKE CLUSTER.— Certain land in the Chequamegon-Nicolet National Forest, Great Divide Ranger District, totaling approximately 6,000 acres, known as "Ghost Lake Cluster", including 5 parcels known as "Ghost Lake", "Perch Lake", "Lower Teal River", "Fox Lake", and "Bulldog Springs", in Sawyer County.

(C) LAKE OWENS CLUSTER.— Certain land in the Chequamegon-Nicolet National Forest, Great Divide and Washburn Ranger Districts, totaling approximately 3,600 acres, known as "Lake Owens Cluster", including 5 parcels known as "Lake Owens", "Eighteenmile Creek", "Northeast Lake", and "Sugarbush Lake", in Bayfield County.

(T) MEDFORD CLUSTER.— Certain land in the Chequamegon-Nicolet National Forest, Med-
ford-Park Falls Ranger District, totaling approximately 23,000 acres, known as the "Med-
ford-Franklin Ranger District", including 5 parcels known as "County E Hardwoods", "Silver Creek/ Mondeaux River Bottoms", "Lost Lake
(27) Wyoming: Sand Creek area.—
(A) in general.—Certain land in the Black Hills National Forest, totaling approximately 8,300 acres known as the "Sand Creek area", located in Custer County, in the far northwest corner of the Black Hills.
(B) boundary.—Beginning in the northwest corner and proceeding counterclockwise for the Sandy Creek Area roughly follows—
(i) forest Roads 883, 886, 886.1B, and 882.1B;
(ii) a line linking forest roads 886.1B and 882.1B;
(iii) forest road 882.1B;
(iv) forest road 882.1; and
(v) an unnamed road;
(vi) Spotted Tail Creek (excluding all private land);
(vii) forest road 829.1; and
(viii) a line connecting forest roads 829.1 and 864.
(d) Committee of Scientists.—(1) Establishment.—The Secretaries concerned shall appoint a committee consisting of scientists with expertise in at least one of the following areas:
(A) not are not officers or employees of the Federal Government;
(B) are not officers or employees of any entity engaged in whole or in part in the production of wood or wood products; and
(C) have not contracted with or represented (for compensation or otherwise) the entity described in subparagraph (A) or (B) in a period beginning 5 years before the date on which the scientist is appointed to the committee.
(2) Recommendations for Additional Special Areas.—Not later than 2 years of the date of enactment of this Act, the committee shall provide Congress with recommendations for additional special areas.
(3) Candidate Areas.—Candidate areas for recommendation as additional special areas shall have outstanding biological values that are exemplary on a local, regional, and national level, including the presence of—
(A) threatened or endangered species of plants or animals;
(B) rare or endangered ecosystems;
(C) key habitats necessary for the recovery of endangered or threatened species;
(D) high quality restoration areas, of rare or underrepresented forest ecosystems;
(E) migration corridors;
(F) areas of outstanding biodiversity;
(G) old growth forests;
(H) commercial fisheries; and
(I) sources of clean water such as key watersheds.
(4) Governing Principle.—The committee shall adhere to the principles of conservation biology in identifying special areas based on biological values.
SBC 204. RECOMMENDATIONS ON MANAGEMENT ACTIVITIES IN ANCIENT FORESTS, ROADLESS AREAS, WATERSHED PROTECTION AREAS, AND SPECIAL AREAS.
(a) Restrictions of Management Activities in Ancient Forests.—On Federal land located in Ancient Forests—
(1) no roads shall be constructed or reconstructed;
(2) no extractive logging shall be permitted; and
(3) no improvements for the purpose of extractive logging shall be permitted.
(b) Restrictions of Management Activities in Roadless Areas.—On Federal land located in roadless areas (except military installations)—
(1) no roads shall be constructed or reconstructed;
(2) no extractive logging shall be permitted except of non-native invasive tree species, in which case the limitations on logging in title I shall apply; and
(3) no improvements for the purpose of extractive logging shall be permitted.
(c) Restriction of Management Activities in Watershed Protection Areas.—On Federal land located in watershed protection areas—
(1) no roads shall be constructed or reconstructed;
(2) no extractive logging shall be permitted except of non-native invasive tree species, in which case the limitations on logging in title I shall apply; and
(3) no improvements for the purpose of extractive logging shall be permitted.
(d) Restriction of Management Activities in Special Areas.—On Federal land located in special areas—
(1) no roads shall be constructed or reconstructed;
(2) no extractive logging shall be permitted except of non-native invasive tree species, in which case the limitations on logging in title I shall apply; and
(3) no improvements for the purpose of extractive logging shall be permitted.
(e) Maintenance of Existing Roads.—(1) general.—Except as provided in paragraph (2), the restrictions described in subsection (a) shall not prohibit the maintenance of an improved road, or any road acquired by private holdings.
(2) Abandoned Roads.—Any road that the Secretary determines to have been abandoned before the date of enactment of this Act shall not be maintained or reconstructed.
(f) Enforcement.—Finding.—Congress finds that all people of the United States are injured by actions on land to which this section applies.
(2) Purpose.—The purpose of this subsection is to foster the widest possible enforcement of this section.
(3) Federal Enforcement.—The Secretary and the Attorney General of the United States shall enforce this section against any person that violates this section.
(4) Citizen Suits.—(A) in general.—A citizen harmed by a violation of this section may enforce this section by bringing a civil action for a declaratory judgment, a temporary restraining order, an injunction, statutory damages, or other forms of equitable relief; and
(B) payment of damages. The Secretary shall apply; and
(3) for which the United States is determined to be liable shall be paid from the Treasury, as provided under section 1304 of the United States Code. Any person or persons designated to receive the damage award.

[612x792]
Mr. Lindsay, whose candor reportedly cost him his job, was the Administration official to provide anything close to a realistic estimate. In December, Director Daniels put the figure at $50 billion to $60 billion. A few weeks later, Secretary of Defense Donald Rumsfeld told us the war would cost under $50 billion.

As the Administration planned for war, it stopped making any public estimates at all. As Deputy Defense Secretary Wolfowitz quoted: “I think it’s necessary to preserve some ambiguity of exactly where the numbers are.” Administration officials also insisted repeatedly that Iraq would pay for its own reconstruction. To quote Deputy Secretary Wolfowitz again: “There’s a lot of money there, and to assume that we’re going to pay for it is just wrong.”

The Administration failed to include any military or reconstruction costs in its Fiscal Year 2004 budget estimate, released to Congress as a budget amendment. As a result, we passed a budget resolution that included enormous, fiscally irresponsible tax cuts but no money for a war that was already upon us. Even after President Bush sent a letter to Saddam Hussein, the Administration, along with my Republican colleagues, opposed a series of efforts to put aside between $80 billion and $100 billion for the war. Only the following week, after the budget was passed, did we receive the first supplemental request, with nearly $75 billion, of which nearly $50 billion was for defense and nearly two and a half billion was for the reconstruction of Iraq.

Even with the war having begun, the Administration continued to downplay expected costs of reconstruction. On March 27, Deputy Secretary Wolfowitz stated: “We’re dealing with a country that can really finance it themselves, and we expect it relatively soon.” And, on April 10, Secretary Rumsfeld said: “I don’t know that there’s much reconstruction to do.”

These reassurances were contradicted flatly by outside experts. In March, a panel led by former Nixon and Ford Secretary of Defense James Schlesinger estimated that the cost of post-war reconstruction would be at least $20 billion a year. The panel, which included both budget and war costs, at least through 2006. And even these figures seem low considering that we are now spending in Iraq at the rate of $4 billion a month, which would translate into $48 billion per year.

We cannot continue to play guessing games with the war in Iraq, our national defense, or our children’s future. The Congressional Budget Office, which this month estimated that with $67,000 to 106,000 military personnel in Iraq, the annual cost of the occupation would be between $14 billion and $19 billion. Given recent revelations about the Army’s current planning, we might almost double those costs, at least through 2006. And even these figures seem low considering that we are now spending in Iraq at the rate of $4 billion a month, which would translate into $48 billion per year.

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the resources they need and leaving critical infrastructure such as chemical facilities unguarded. We are underfunding veterans’ benefits at a time when thousands of new veterans are returning home from Iraq wounded and disabled. We must ensure that our troops and may have to consider a significant increase in end-strength. All of these priorities are put at risk so long as we fail to budget for future costs of the war and occupation in Iraq.

The Senate clearly recognized the seriousness of this problem when it agreed unanimously last month to this legislation. There is simply no reason why we should not expect the Administration to plan for the future costs of the occupation of Iraq, to budget accordingly, and to keep Congress and the American people informed.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 492

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 “Future Iraq Costs Act”.

SEC. 2. REPORT ON PROJECTED TOTAL COST OF UNITED STATES OPERATIONS IN IRAQ.

(a) QUARTERLY REPORT.—Not later than 30 days after the date of the enactment of this Act, and thereafter, the President shall submit to each Member of Congress a report on the projected total cost of United States operations in Iraq, including military operations and reconstruction efforts, through fiscal year 2008.

(b) EXPLANATION OF CHANGES IN PROJECTED COST.—The President shall include in each report submitted under subsection (a) after the initial report under that subsection an explanation for any change in the projected total cost of United States operations in Iraq from the projected total cost of such operations stated in the preceding report.

(c) TERMINATION OF REPORTING REQUIREMENT IN FISCAL YEAR 2008.—No report is required under this section after December 31, 2008.

By Mr. ENSIGN (for himself, Mr. NELSON of Florida, Mr. COLEMAN, Mr. GRAHAM of South Carolina, Mr. CRAPO, Mr. REID, Mr. BAYH, Mr. EDWARDS, Mr. ALLARD, Mr. SMITH, Mr. ALLEN, and Mrs. BOXER):

S. 446

A bill to enhance peace between the Israelis and Palestinians; to the Committee on Foreign Relations.

Mr. ENSIGN. Mr. President, a lot has changed in the climate of the Middle East since I was there in 1995, but unfortunately not enough has changed.

In 1995, the Oslo Accords were signed and suicide bombers detonated themselves on buses around Jerusalem. Eight years later, Israelis continue to face the daily threat of terrorism on their buses in their grocery stores, in their restaurants, and in their cafes. For them, every single day is September 11. It’s hard to imagine that kind of reality and the strength it takes to continue each day not knowing where the next attack will occur.

I think about September 11 here in the United States, and the shock many Americans felt—not just at the terrible loss of life and property, but knowing many had targeted our people here in our own country—where they live and work. I remember one commentator back then said—today, every American learned what it is like to be an Israeli.

We do the best we can to comfort each other, but also to do whatever we could to prevent another attack on our soil and to eliminate the world of the evil terrorists who had targeted our innocent victims. In those moments and days that followed, leaders from around the world called to express their condolences. There were no calls to the United States to show restraint in responding to the terrorists. And it there were, they would have fallen on deaf ears. The world knew that the United States and United States would do whatever it took to keep our citizens safe. The security of our nation would always be our priority.

But when September 11 happens on a daily basis in Israel, the calls they get are not to express sympathy, but to urge restraint in responding to the attack. Not only is Israel criticized for doing exactly what the United States has done—respond to attacks against its citizens by going after the terrorists where they hide—Israel is even criticized for taking steps to secure its homeland security and prevent further attacks.

So where do we go from here? Well, the legislation I am introducing with my colleagues, the junior Senator from Florida, focuses on the fact that Israel has a right to make the security of their country a priority and that such security is a major and enduring national security interest of the United States.

The bipartisan Israeli-Palestinian Peace Enhancement Act of 2003 contains strong, unequivocal expressions of the Senate’s support for the President’s June 24, 2002, speech and the vision of two states living side-by-side in peace and security.

However, it expresses the Senate’s expectation that the Palestinian Authority must meet certain conditions before it is recognized, including: a leadership not compromised by terrorism; a firm commitment to peace with Israel; the dismantling of terrorist infrastructures in the West Bank and Gaza; sustained security cooperation with Israel; and an end to anti-Israel incitement.

It provides concrete, positive incentives for the Palestinians to achieve the reforms called for by President Bush and a negotiated peace with Israel, including the authorization of a temporary United States Administration and a commitment to organize international assistance, to build the new state when it comes into being and has been recognized by the United States and Israel—conditions that can only occur in the absence of terrorism.

Ambiguous promises of non-aggression are not enough. Lasting peace means the absence of terror. Without legitimate guarantees toward the security of the state of Israel, there can be no lasting peace in the region.

Words are cheap—and nowhere are they cheaper than in the Middle East. Until there is Palestinian leadership that is committed to eliminating the infrastructure for terrorism, the world will be serious about making peace with Israel, and that envisions two states existing together, peace will not be known.

Who can we trust to support Israel in this hour of crisis?

Well, I believe we can trust President Bush. Particularly after September 11, the President understands that there can be no peace without security. He made that clear on June 24, 2002, when he gave an address in the Rose Garden that went above and beyond any other official United States position on the Middle East. He made clear that unless and until Israel has a trustworthy partner on the Palestinian side, there can be no lasting peace. And he emphasized that a Palestinian state could become a reality only after new leaders—not compromised by terror—were elected and a practicing democracy, based on tolerance and liberty was built.

That statement should be the road map to peace. That is why we have taken the principles the President laid out in his June 24 speech, and turned them into legislation.

In closing, I would like to thank the original cosponsors of the Israeli-Palestinian Peace Enhancement Act of 2003, including Senator BILL NELSON, Senator COLEMAN, Senator LINDSEY GRAHAM, Senator CRAPO, Senator REID, Senator BAYH, Senator EDWARDS, Senator ALLARD, Senator GORDON SMITH, Senator ALLEN, and Senator BOXER for joining me in working on a lasting and true peace in the Middle East.

By Mr. CORZINE:

S. 1946

A bill to establish an independent national commission to examine and evaluate the collection, analysis, reporting, use, and dissemination of intelligence related to Iraq and Operation Iraqi Freedom; to the Select Committee on Intelligence.

Mr. President, I am introducing today a bill to establish an independent, bipartisan commission to examine intelligence issues related to Iraq. This commission is necessary because what we have discovered on the ground in Iraq has shown our intelligence to be wrong. It is necessary because Administration officials misled intelligence—that is, they made public statements and submitted reports to Congress that the Administration intended to—this I have to be supported by the available intelligence. And it is necessary because inaccurate and misused intelligence played a role in leading us to war.
Accurate, objective, and credible intelligence is a fundamental cornerstone of our national security, particularly in an age of shadowy terrorist networks and clandestine weapons programs. Unless we improve our intelligence, we risk failing to identify the serious threats to the United States and being distracted by lesser dangers at the expense of larger and more urgent security concerns.

This effort must include not only the collection and analysis of intelligence, but the use, reporting, and dissemination of intelligence assessments. If the American people are asked to go to war to preempt an attack, or—as in the case of Iraq—to prevent a possible future threat from emerging, it is critical that the public statements of our officials be supported by the available intelligence. If members of Congress are to consider authorizing the use of force against countries that have not attacked the United States, they must be provided with honest and complete intelligence. And if our allies are to be asked to join us in confronting these threats, the intelligence that we share with them and that we rely on to bolster our case must be credible in the eyes of the world.

I first proposed an independent commission to examine intelligence related to Iraq last summer, when it became clear that President Bush had made an important but unsubstantiated claim in his January 2002 State of the Union address. That claim was, quote: "The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa." Approximately this statement has been dismissed as "the 16 words," its significance was overstated. The State of the Union address is the most important, the most scrutinized speech the President delivers. The statement concerned the most important topic a President can discuss—the use of force against countries that have not attacked the United States, they must be provided with honest and complete intelligence. And if our allies are to be asked to join us in confronting these threats, the intelligence that we share with them and that we rely on to bolster our case must be credible in the eyes of the world.

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Administration had, quote: “very reliable reporting of senior level contacts going back a decade.”

As Congress deliberated whether to authorize the use of force against Iraq, the Administration officials made increased public statements that Iraq’s ties to al Qaeda and about its nuclear weapons program. On October 7, 3 days before the vote in the House of Representatives and four days before the vote in the Senate, President Bush gave a speech in which he said, unambiguously, that quote: “We know that Iraq and al Qaeda have had high-level contacts that go back a decade,” and, quote: “The evidence indicates the Iraq is reconstituting its nuclear weapons program.” He repeated the allegations about uranium tubes and the warning about purchases of uranium. Then the President put it all together—the implication that Iraq was connected to the September 11 attacks, the implication that Iraq could have a nuclear weapon in days, weeks, or months, the warning that Saddam Hussein could decide on any day to explode a nuclear bomb in the United States. Here is what the President said: “Why do we need to confront it [Saddam] now? And there we’ve experienced the horror of September the 11th. We have seen that those who hate America are willing to crash airplanes into buildings full of innocent people. Our enemies would be no less willing, in fact, they would regard us, to use biological or chemical, or a nuclear weapon. Knowing these realities, America should not ignore the threat gathering against us. Facing clear evidence of peril, we cannot wait for the final proof—the smoking gun—that could come in the form of a mushroom cloud.”

This was the most powerful, dire, and convincing warning a President could give. And it was based on one inferences that the President has acknowledged he never had evidence of, that Saddam was tied to September 11, and another which had already been refuted by many within the Administration, that Iraq was reconstituting its nuclear program.

Later statements included Secretary of Defense Rumsfeld’s claims to specific knowledge of the whereabouts and movements of biological and chemical weapons. On March 11, he stated, quote: “We know he continues to hide biological and chemical weapons, moving them to different locations as often as every 12 to 24 hours, and placing them in residential neighborhoods.” On March 30, he said, quote: “We know where they are. They’re in the area around Tikrit and Baghdad and east, west, south and north somewhat.”

The Administration also continued to insist that the threat was imminent—a claim that served to counter arguments that the United Nations should have more time. On February 6, the day after Secretary of State Powell made his presentation to the UN, Secretary of Defense Rumsfeld made an appeal for immediate action. “Why now?” he asked. “The answer is that every week that goes by, his weapons of mass destruction programs become more mature.” That same day, Deputy Secretary Wolfowitz stated, quote: “Connections with terrorists, which go back decades, and which started some 10 years ago with al Qaeda, are growing every day.”

Finally, on March 16, the day before President Bush’s ultimatum to Saddam Hussein went into effect, the President went beyond claims that Iraq had the intent to produce nuclear weapons, and even beyond the claims that Iraq was seeking centrifuge equipment or uranium. Rather, the vice president stated flatly, quote: “We believe he has, in fact, reconstituted nuclear weapons.” This assertion, which the vice president has recently acknowledged was a misstatement, was not corrected. Instead, it was allowed to stand as nearly the final word on why we were going to war.

Questions surrounding the Administration’s use of intelligence extend beyond public statements, to include reports that before Congress. One example of unsubstantiated reporting was the January 20 report to Congress, mandated by the use of force resolution, that cited Iraq’s failure to declare its, quote: “attempts to acquire uranium and the means to enrich it” the same unsubstantiated claim made in the President’s State of the Union address.

This commission would be authorized to examine other intelligence issues related to Iraq. The Administration made claims related to weapons delivery systems, including President Bush’s assertion on October 7 that, quote: “Iraq has a growing fleet of manned and unmanned aerial vehicles that could be used to disperse chemical or biological weapons across broad areas,” and that Iraq could use them for, quote: “missions targeting the United States. There has never been evidence that Iraq’s UAVs with ranges of thousands of miles.”

Administration officials made claims related to the occupation, including Vice President Cheney’s March 16 assertion that, quote: “I really do believe that we will be greeted as liberators.” and Deputy Defense Secretary Wolfowitz’s November 17 analogy to, quote: “post-liberation France.”

The Administration also downplayed the costs of the occupation. Despite White House advisor Lawrence Lindsey’s estimate that the occupation would cost between $100 and $200 billion—an estimate for which he was apparently fired—Secretary of Defense Rumsfeld on January 19 put the figure much lower, something closer to about $50 billion. On February 27, Deputy Defense Secretary Wolfowitz stated that, quote: “there’s a lot of money there, and to assume that we’re going to pay the price of it is just wrong.” And, on March 27, Deputy Defense Secretary Wolfowitz stated, quote: “we’re dealing with a country that can really finance its own reconstruction, and relatively soon.”

The independent commission I propose would be authorized to examine the relationship between policy makers and the intelligence community. Were members of the intelligence community pressured to produce analyses that could support the Administration’s policies? Did Administration officials seek to bypass the normal analysis process by cherry-picking bits of intelligence that suited their agenda, through the Office of Special Plans in the Department of Defense or through other special or ad hoc arrangements? Did the Administration base its analyses on foreign intelligence sources of dubious credibility? These questions must be answered, and corrective measures undertaken, if our intelligence community is to be as effective and objective as we need it to be.

Perhaps the most egregious under- mining, indeed betrayal, of the intelligence community was the identifica tion by senior Administration officials of a operative that they called the operative is the spouse of a person who has been called a national hero by President George H.W. Bush but who questioned the current Administration’s statements regarding Iraq. The leak of the operative’s identity sent an implicit warning to others in the intelligence community who might disagree with the Administration’s positions. It potentially endangered the life of the operative and those with whom the operative worked and rendered the operative’s skills, experience and sources permanently useless, thus wasting precisely the kind of intelligence asset that the United States so desperately needs right now.

The purpose of this commission is to identify ways in which we can learn from past mistakes and thus improve our collection, analysis, reporting, use and dissemination of intelligence. The commission’s members, who will come from both sides of the aisle and from different parts of the United States, will bring to the intelligence community. All of the members of this commission have had different careers, and are knowledgeable and experienced in the military, the intelligence agencies, and in government. We are joined by individuals who have all been involved in the policy process and have different perspectives on the role of intelligence. We will not seek to bury intelligence that is not relevant to our conclusions. Our approach will be guided by the belief that intelligence agencies and others in the intelligence community should be held accountable for their actions. We will not avoid controversial issues or topics that we believe are important to our overall conclusion.
in Iraq, facing challenges that require accurate and objective intelligence. We have an obligation to pursue every opportunity to improve that intelligence. Meanwhile, the United States faces other threats—from despotic regimes with nuclear, chemical, or biological weapons, from terrorism, and from the horrible possibility that terrorists could acquire these weapons. Our ability to confront these threats requires that our intelligence be accurate and objective. And, as we seek to enlist our friends and allies in our efforts to address these common threats, we must ensure that our intelligence is credible. Unless we identify and correct the mistakes of the past, we will not be safe.

I ask unanimous consent that the text of the legislation be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 1946

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

SEC. 1. SHORT TITLE.

This Act may be cited as the “Independent Iraq Intelligence Commission Act.”

SEC. 2. ESTABLISHMENT OF COMMISSION.

There shall be established the National Commission on Iraq Intelligence (in this Act referred to as the “Commission”).

SEC. 3. PURPOSES.

The purposes of the Commission are as follows:

(1) To examine and evaluate the performance of the United States intelligence community with respect to the collection of intelligence, and the quality of intelligence obtained, on the weapons of mass destruction and related delivery systems capabilities of Iraq in the period from 1998 until the conclusion of military operations against Iraq under Operation Iraqi Freedom.

(2) To examine and evaluate the performance of the United States intelligence community with respect to the collection of intelligence, and the quality of intelligence obtained, on the connections and support, if any, of the governments or the plans and intentions of terrorist groups to attack the United States or United States interests abroad during the period referred to in paragraph (1).

(3) To examine and evaluate the performance of the United States intelligence community with respect to the collection of intelligence, and the quality of intelligence obtained, during and after the period referred to in paragraph (1), on matters relating to:

(A) the conduct of military and intelligence operations against Iraq; and

(B) the search for and securing of weapons of mass destruction, related delivery systems capabilities, and conventional weapons in Iraq; and

(C) the military, political, and economic aspects of the occupation of Iraq.

(4) To examine and evaluate the quality of the analysis by the United States intelligence community of the available intelligence related to the matters referred to in paragraphs (1) through (3), including intelligence from foreign intelligence services, that served as a basis during the period referred to in paragraph (1) for:

(A) reports, testimony, and presentations to policymakers in the Executive Branch and Congress, and to United Nations bodies and other consumers; and

(B) assessments that were used or disseminated by the Executive Branch.

(5) To examine and evaluate, if any, on the United States intelligence community’s understanding of the quality of the intelligence obtained and intelligence provided to the United States intelligence agencies and the Executive Branch officials regarding the collection, analysis, and reporting on intelligence matters referred to in paragraphs (1) through (3).

(6) To examine the relevant facts and circumstances relating to the use and dissemination by Executive Branch officials of intelligence and intelligence analyses underlying intelligence matters referred to in paragraphs (1) through (3) during the period referred to in paragraph (1), including assessments contained in public speeches, statements, reports, and testimony before Congress, and communications with and reports and presentations to United Nations bodies.

(7) To build on the investigations of other entities, and avoid unnecessary duplication, by reviewing the work, findings, conclusions, and recommendations of other Executive Branch, Congressional, or independent commission investigations into the collection, analysis, reporting, use, and dissemination of intelligence related to Iraq by the United States.

(8) Based on the examinations and evaluations under paragraphs (1) through (6) and the work, findings, conclusions, and recommendations of other investigations referred to in paragraph (7), to identify corrective measures to improve the collection, analysis, reporting, use, and dissemination of intelligence by the Executive Branch, and to report to the President and Congress on the examinations, evaluations, findings, and conclusions of the Commission and on the recommendations of the Commission with respect to such corrective measures.

SEC. 4. COMPOSITION OF COMMISSION.

(a) MEMBERS.—The Commission shall be composed of 10 members appointed by:

(1) 1 member shall be appointed by the President, who shall serve as co-chairman of the Commission;

(2) 1 member shall be appointed by the leader of the Senate (majority or minority leader, as the case may be) of the Democratic Party, in consultation with the leader of the House of Representatives (majority or minority leader, as the case may be) of the Democratic Party, who shall serve as co-chairman of the Commission;

(3) 2 members shall be appointed by the senior member of the Senate leadership of the Democratic Party;

(4) 2 members shall be appointed by the senior member of the House of Representatives of the Republican Party;

(5) 2 members shall be appointed by the senior member of the Senate leadership of the Republican Party; and

(6) 2 members shall be appointed by the senior member of the leadership of the House of Representatives of the Democratic Party.

(b) NONGOVERNMENTAL APPOINTEES.—(1) POLITICAL PARTY AFFILIATION.—Not more than 5 members of the Commission shall be from the same political party.

(2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission may not 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 national recognition and significant depth of experience in such professions as governmental service, the armed services, law, intelligence, and foreign affairs.

(4) DEADLINE FOR APPOINTMENT.—All members of the Commission shall be appointed not later than one month after the date of the enactment of this Act.

(c) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the joint call of the co-chairmen or a majority of its 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. 5. FUNCTIONS OF COMMISSION.

The functions of the Commission are—

(1) to conduct an investigation into the relevant facts and circumstances relating to the collection, analysis, reporting, use, and dissemination by the United States intelligence community and others in the Executive Branch of intelligence relating to Iraq and Operation Iraqi Freedom, including—

(A) an examination and evaluation of the quality and quantity of United States intelligence underlying assessments made during the period referred to in section 3(1) of—

(i) weapons of mass destruction and delivery systems capabilities of Iraq;

(ii) connections and support, if any, of Iraq with and for the plans and intentions of terrorist groups to attack the United States or United States interests abroad;

(b) an examination and evaluation of the quality and quantity of United States intelligence underlying assessments made during the period referred to in section 3(1) on intelligence matters relating to—

(i) the conduct of military and intelligence operations against Iraq;

(ii) the search for and securing of weapons of mass destruction, related delivery systems capabilities, and conventional weapons in Iraq;

(iii) the military, political, and economic aspects of the occupation of Iraq;

(c) an examination and evaluation regarding whether the analytical judgments in the assessments referred to in subparagraphs (A) and (B) were thorough, timely, objective, independent, and reasonable, based upon the collection of intelligence.

(D) an examination and evaluation of the accuracy of the assessments referred to in subparagraphs (A) and (B) when compared with the results of the efforts of the Iraq Survey Group and other relevant Executive Branch and Congressional entities, and with relevant assessments of the intelligence community and foreign governments, foreign governments, nongovernmental organizations, and other institutions and individuals;

(E) an examination and evaluation of the quality of the intelligence on Iraq that was provided to the United States intelligence community and Executive Branch policymakers, including by foreign intelligence services, that served as a basis during the period referred to in section 3(1) for—

(i) reports, testimony, and presentations to policymakers in the Executive Branch and Congress, and to United Nations bodies and other consumers; and

(ii) assessments that were used or disseminated by the Executive Branch;

(F) a determination of the extent, if any, to which elements of the United States intelligence community were inappropriately pressured by members of the Executive Branch to produce intelligence consistent with such members policy objectives, and of the extent, if any, to which intelligence was misused or misinterpreted by members of the Executive Branch or elements under their control;
(G) an assessment of the extent to which Congress was kept fully and currently informed about intelligence related to Iraq and Operation Iraqi Freedom;
(H) an assessment of the extent to which the intelligence of the United States intelligence community, and of the United States Armed Forces and coalition forces, were sufficiently accurate, thorough, timely, objective, and independent to prepare such forces to conduct effective military and intelligence operations against Iraq, including the search for and securing of weapons of mass destruction and conventional weapons in Iraq, and to prepare such forces and other United States and coalition entities to successfully carry out the military, political, and economic aspects of the occupation of Iraq; and
(i) an examination, evaluation, and assessment of such other related facts and circumstances that the Commission considers appropriate;
(ii) to identify, review, and evaluate the lessons learned from issues related to the collection, analysis, reporting, use, and dissemination of intelligence relating to Iraq and Operation Iraqi Freedom;
(iii) to consult with the facts and circumstances relating to disclosures, if any, by Executive Branch officials of the identity of a covert Central Intelligence Agency official; and
(iv) to submit to the President and Congress the reports provided for by section 11.

SEC. 6. POWERS OF COMMISSION.

(a) In General. —

(1) Hearings and evidence.—The Commission, or on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this Act,
(a) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths;
(b) subject to paragraph (2)(A), require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine;
(c) issue subpoenas;

(b) Subpoenas. —

(i) In General.—A subpoena may be issued under this section only—
(i) by the joint agreement of the co-chairman or
(ii) by the affirmative vote of 5 members of the Commission.

(ii) Signature.—Subject to clause (i), subpoenas issued under this subsection may be issued under the signature of a co-chairman or any member designated by 5 members of the Commission, and may be served by any person designated by a co-chairman or by a member designated by 5 members of the Commission.

(b) Enforcement.—

(i) In General.—In the case of contumacy or failure to obey a subpoena issued under subsection (a), the United States district court for the judicial district 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 at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be enforced by the court as a contempt of that court.

(ii) Additional enforcement.—In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the Commission had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(c) Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this Act.

(d) Information from federal agencies.—

(i) In general.—The Commission may secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality thereof, or from any other source, whatever testimony, documents, and other evidence is necessary for the purpose of carrying out this Act.

(ii) Access to facilities of the intelligence community.—In carrying out its functions, the Commission shall have the right to receive such evidence, administer such oaths, and take such testimony, as if the United States attorney had received the same statutory authority and procedures as if the United States attorney had received such failure to the appropriate United States attorney.

(iii) Access to classified information.—Except as provided in section 11, the Commission shall have the right to receive, handle, store, and disseminate classified information and to use, disseminate, and dispose of gifts or donations of services, for the purpose of carrying out this Act.

(e) Rights of individuals.—The Commission shall be entitled to all rights, status, and privileges of his or her employees, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(f) Use of information.—The Commission may use the services, funds, facilities, staff, and other support services as it may determine advisable and as may be authorized by law.

(g) Gifts.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(h) Postal services.—The Commission may not use the United States mails in the manner and under the same conditions as other Federal agencies.

(i) Social security numbers.—The Commission may not apply for or use a social security number.

(j) Joint hearings.—The Commission may conduct joint hearings with the appropriate committees of the Congress.

(k) Joint reports.—The Commission may conduct joint investigations with the appropriate committees of the Congress.

(l) Cooperation.—The Commission shall cooperate with other Federal agencies or departments in carrying out its functions.

SEC. 7. NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

(a) In General.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(b) Public meetings and release of public versions of reports.—The Commission shall—

(1) hold public hearings and meetings to the extent appropriate;

(2) release public versions of the reports provided for by subsections (a) and (b) of section 11.

(c) Public hearings.—The Commission shall conduct public hearings in a manner that provides for the dissemination of information provided to or developed for or by the Commission as required by any applicable statute, regulation, or Executive order.

SEC. 8. STAFF OF COMMISSION.

(a) In General.—

(1) Appointment and compensation.—The co-chairs, acting jointly and in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 45 of title 5, United States Code, concerning the compensation, classification, and general schedule 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 5315 of title 5, United States Code.

(b) Powers and duties.—

(i) General. —The director of the Commission and each employee of the Commission may exercise such powers and perform such duties as are necessary to enable the Commission to carry out its functions.

(ii) Our source.—In performing its duties under this Act, the Commission shall carry out its functions in a manner consistent with the purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of title 5.

(iii) Decisions.—The Commission shall be autonomous in the performance of its functions.

(iv) Security clearances.—The appropriate Federal agencies or departments shall cooperate with the Commission in expeditiously providing to the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as employees of the appropriate Federal agencies or departments.

(v) Security clearances.—The appropriate Federal agencies or departments shall cooperate with the Commission in expeditiously providing to the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as employees of the appropriate Federal agencies or departments.

SEC. 10. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.

The appropriate Federal agencies or departments shall cooperate with the Commission in expeditiously providing to the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as employees of the appropriate Federal agencies or departments.

SEC. 11. REPORTS OF COMMISSION; TERMINATION.

(a) Interim reports.—The Commission shall submit to the President and Congress interim reports containing such examinations, evaluations, findings, and conclusions of the Commission, and such recommendations with respect to corrective measures (including changes in policies, practices, organizational structures, and arrangements), as have been agreed to by a majority of Commission members.

(b) Final report.—Not later than 18 months after the date of the enactment of this Act, the Commission shall submit to the President and Congress a final report containing such examinations, evaluations, findings, and conclusions of the Commission, and such recommendations with respect to corrective measures (including changes in
S. 1948. A bill to provide that service of the organization known as the United States Cadet Nurse Corps during World War II constituted active military service for purposes of laws administered by the Secretary of Veterans Affairs; to the Committee of Veterans' Affairs.

Mr. REID (for himself and Mr. DASCHLE):

S. 1948. A bill to provide that service of the organization known as the United States Cadet Nurse Corps during World War II constituted active military service for purposes of laws administered by the Secretary of Veterans Affairs; to the Committee of Veterans' Affairs.

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Mr. REID (for himself and Mr. DASCHLE):

S. 1948. A bill to provide that service of the organization known as the United States Cadet Nurse Corps during World War II constituted active military service for purposes of laws administered by the Secretary of Veterans Affairs; to the Committee of Veterans' Affairs.
A Return of Talent program is an important piece of our overall strategy to stabilize and rebuild countries torn by conflict. I urge my colleagues to support this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

SEC. 2. RETURN OF TALENT PROGRAM.
(a) IN GENERAL.—Title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after section 317 the following:

"TEMPORARY ABSENCE OF PERSONS PARTICI-
PATING IN THE RETURN OF TALENT PROGRAM

"SEC. 317A. Temporary absence of persons partici-
pating in the Return of Talent Program.

(1) in subparagraph (L), by inserting a semicolon after "Improvement Act of 1998";
(2) in subparagraph (M), by striking the period and inserting ";
(3) by adding the following:
"(N) an immigrant who—

"(i) has been lawfully admitted to the United States for permanent residence;
"(ii) demonstrates an ability and willingness to make a material contribution to the post-conflict reconstruction in the alien's country of citizenship; and
"(iii) as determined by the Secretary of Homeland Security in consultation with the Secretary of State—

"(1) is a citizen of a country in which Armed conflicts are engaged, or have engaged in the 10 years preceding such determination, in combat or peacekeeping operations; or
"(2) is a citizen of a country where authorization for United Nations peacekeeping operations was initiated by the United Nations Security Council during the 10 years preceding such determination."

SEC. 4. REPORT TO CONGRESS.
Not later than 24 months after the date of enactment of this Act, the Secretary of Homeland Security shall submit a report to Congress that describes—

(1) the countries of citizenship of the participants in the Return of Talent Program established under subsection (a) and (b) that benefited, or were made possible, by the actions of participants in the Return of Talent Program during the 24-month period referred to in subsection (d); and

(2) the post-conflict reconstruction efforts that benefited, or were made possible, through participation in the program; and

(3) any other information that the Secretary of Homeland Security determines to be appropriate.

SEC. 5. REGULATIONS.
Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security shall promulgate regulations to carry out this Act.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.
There are authorized to be appropriated to the Bureau of Citizenship and Immigration Services for each of the fiscal years 2004 and 2005, such sums as may be necessary to carry out this Act.

SUBMITTED RESOLUTIONS


Whereas, on November 20, 2003, two bombs exploded in Istanbul at the Consulate of the United Kingdom and the HSBC Bank; and
Whereas the acts of murder committed on November 15 and 20, 2003, in Istanbul, Turkey, were cowardly and brutal manifestations of international terrorism; and
Whereas the Government of Turkey immediately condemned the terrorist attacks in the strongest possible terms and has vowed to bring the perpetrators to justice at all costs; and
Whereas the United States, the United Kingdom, and Turkey equally abhor and denounce these hateful, repugnant, and loathsome acts of terrorism; and
Whereas terrorism respects neither boundaries nor borders; and
Whereas the United States and Turkey are allied by shared values and a common interest in building a stable, peaceful, and prosperous world; and
Whereas Turkey, a predominantly Muslim nation with a secular government, has close relations with Israel and is also the only pre-dominantly Muslim member of the North Atlantic Treaty Organization; and
Whereas the acts of murder committed on November 15 and 20, 2003, demonstrate again that terrorism respects neither the United States nor the governments of the Republic of Turkey and the United Kingdom over the losses they suffered in these attacks; and
Whereas troops of the United Kingdom are part of the United States-led coalition that liberated Iraq from the regime of Saddam Hussein and are now present under the auspices of the United Nations Security Council; and
Resolved, That the Senate—
(1) condemns in the strongest possible terms the terrorist attacks in Istanbul, Turkey, on November 15 and 20, 2003;
(2) expresses its condolences to the families, the individuals, and the governments of the Republic of Turkey and the United Kingdom over the losses they suffered in these attacks; and
(3) expresses its solidarity with the United Kingdom and Turkey, and all other countries that stand united against terrorism and together to bring to justice the perpetrators of these and other terrorist attacks.

SENATE RESOLUTION 274—TO AUTHOREIZE THE PRODUCTION OF RECORDS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. FRIST (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:
Whereas, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs has been conducting an investigation into the role of accountants, lawyers, and financial professionals in the tax shelter industry; Whereas, the Subcommittee has received requests from law enforcement and regulatory agencies for access to records of the Subcommittee’s investigation; Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate: Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate may order it to be delivered to the officers and agencies for access to records, officials, court-appointed officials, and other enforcement and regulatory entities and officers, for the purpose of providing access to enforcement and regulatory entities and officials, court-appointed officials, and other entities or individuals duly authorized by Federal, State, or foreign governments, records of the Subcommittee’s investigation into the role of accountants, lawyers, and financial professionals in the tax shelter industry.

AMENDMENTS SUBMITTED & PROPOSED

SA 2212. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 2799, making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table.

SA 2213. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 2799, making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table.

SA 2214. Mr. ENSIGN (for Mr. Voinovich (for himself and Mr. Carper)) proposed an amendment to the bill S. 610, to amend the provisions of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel provisions relating to the National Aeronautics and Space Administration, and for other purposes; which was ordered to lie on the table.

SA 2215. Mr. ENSIGN (for Mr. Inhofe (for himself and Mr. Effords)) proposed an amendment to the bill H.R. 1006, to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species.

SA 2216. Mr. ENSIGN (for Mr. Shelby) proposed an amendment to the bill S. 811, to support certain housing proposals in the fiscal year 2003 budget for the Federal Government, including the downpayment assistance initiative under the HOME Investment Partnership Act, and for other purposes.

TEXT OF AMENDMENTS

SA 2212. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 2799, making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 54, beginning on line 1, strike all through line 7.

SA 2213. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 2799, making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 30, line 10, strike "$36,994,000" and insert "$41,994,000".

SA 2214. Mr. ENSIGN (for Mr. Voinovich (for himself and Mr. Carper)) proposed an amendment to the bill S. 610, to amend the provisions of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel provisions relating to the National Aeronautics and Space Administration, and for other purposes; as follows:

§ 9801. Definitions

(a) IN GENERAL. —Subparagraph (A) of section 203(c)(2) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A)) is amended by striking “the highest rate of grade 18 of the General Schedule of the Civil Service of the United States and Rule XI of the Standards of Appointments in the Executive Branch of the Government” and in lieu thereof inserting “$36,994,000, which shall be available to the National Aeronautics and Space Administration for the fiscal year 2004 and for other purposes.”

(b) EFFECTIVE DATE. —The amendment made by this section shall take effect on the first day of the first pay period beginning on or after the date of enactment of this Act.

§ 9802. Planning, notification, and reporting requirements

(a) Not later than 90 days before exercising any of the workforce authorities made available under this chapter, the Administrator shall submit a written plan to the appropriate committees of Congress. Such plan shall be approved by the Office of Personnel Management.

(b) A workforce plan shall include a description of—

(1) each critical need of the Administration and the criteria used in the identification of that need;

(2)(A) the functions, approximate number, and classes or other categories of positions or employees that—

(I) address critical needs; and

(II) would be eligible for each authority proposed to be exercised under this chapter; and

(3) the reasons why those needs would not be so addressed;

(4) the specific criteria to be used in determining which individuals may receive the benefits described under sections 9804 and 9805 (including the criteria for granting bonuses in the absence of a critical need), and how the level of those benefits will be determined;

(5) the safeguards or other measures that will be applied to ensure that this chapter is carried out in a manner consistent with merit system principles;

(6) the means by which employees will be afforded the notification required under subsections (c) and (d)(1)(B); and

(7) the methods that will be used to determine if the authorities exercised under this chapter have successfully addressed each critical need identified under paragraph (1).

(b) The methods used by the Administration before the enactment of this chapter to recruit highly qualified individuals; and

(b) The changes the Administration will implement after the enactment of this chapter in order to improve its recruitment of
highly qualified individuals, including how it intends to use—

(i) nongovernmental recruitment or placement agencies; and

(ii) nongovernmental retention bonuses; and

(iii) any workforce-related reforms required to resolve the findings and recommendations of the Columbia Accident In

vestigation Board. Extent to which those recommendations were accepted, and, if necessary, the reasons why any of those recommendations were not accepted.

(c) Within 60 days before first exercising any of the workforce authorities made available under this chapter, the Admin

istration shall provide to all employees the written notices and additional information which the Administrator considers appropriate.

(d) The Administrator may from time to time modify the workforce plan. Any modification to the workforce plan shall be submitted to the Office of Personnel Management for approval by the Office before the modification may be implemented.

(e) Before submitting any written plan under subsection (a) (or modification under subsection (d)) to the Office of Personnel Management, the Administrator shall—

(1) provide to each employee representa-

tive representing any employees who might be affected by the plan (or modification) a copy of the proposed plan (or modification);

(2) give each representative 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposed plan (or modification); and

(3) give any recommendations received from any such representatives under paragraph (2) full and fair consideration in deciding whether or how to proceed with respect to the proposed plan (or modification).

(f) Workforce authorities made available under this chapter may be exercised in a manner inconsistent with the workforce plan.

(g) Before the Administration submits its performance plan under section 1115 to the Office of Management and Budget for any year, the Administration shall at the same time submit a copy of such plan to the appropriate committees of Congress.

(h) Not later than 6 years after the date of enactment of this chapter, the Administrator shall submit to the appropriate committees of Congress an evaluation and analysis of the actions taken by the Administration under this chapter, including—

(1) an evaluation, using the methods described in subsection (b)(7), of whether the authorities exercised under this chapter successfully addressed each critical need identified under subsection (b)(1); and

(2) to the extent that they did not, an explanation of the reasons why any critical need (apart from the ones under subsection (b)(3)) was not successfully addressed; and

(3) recommendations for how the Administrator may exercise any remaining critical need and could prevent those that have been addressed from recurring.

(i) The budget request for the Administration for any fiscal year beginning after the date of enactment of this chapter and for each fiscal year thereafter shall include a

statement of the total amount of appropriations requested for such fiscal year to carry out this chapter.

§9803. Restrictions

(a) None of the workforce authorities made available under this chapter may be exercised with respect to any officer who is appointed by the President, by and with the advice and consent of the Senate.

(b) Unless specifically stated otherwise, all workforce authorities made available under this chapter shall be subject to section 5307.

(c)(1) None of the workforce authorities made available under section 9804, 9805, 9806, 9807, 9808, or 9809 may be exercised with respect to a political appointee.

(2) For purposes of this subsection, the term 'political appointee' means an employee who holds—

(A) a position which has been excepted with respect to a political appointee.

(B) a position in the Senior Executive Service as a noncareer appointee (as such term is defined in section 3132(a)).

§9804. Recruitment, redesignation, and relocation bonuses

(a) Notwithstanding section 5754, the Admin

istration may pay a bonus to an em

ployee, in accordance with the workforce plan for paying recruitment, redesignation, and relocation bonuses,

(i) the required service period;

(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof; and

(iii) the amount of the bonus and the basis for calculating that amount; and

(iv) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

(b) The employee's service period shall be expressed as the number of years to the full years and twelfth parts thereof, rounding the fractional part of a year to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

(c) Notwithstanding paragraph (1), a service agreement is not required if the Administration pays a bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee, with no portion of the bonus deferred. In this case, the Administration shall inform the employee in writing of any decision to change the retention bonus payments, and the employee shall continue to accrue entitlement to the retention bonus through the end of the pay period in which such written notice is provided.

(d) A bonus under this section may not be considered to be part of the basic pay of an employee.
“(f) An employee is not entitled to a retention bonus under this section during a service period previously established for that employee under section 5753 or under section 9804.

“(g) No more than 25 percent of the total amount in bonuses awarded under subsection (a) in any year may be awarded to supervisors or managers of the Administration.

“§ 9806. Term appointments

“(a) The Administrator may authorize term appointments within the Administration under subchapter I of chapter 33, for a period of not less than 1 year and not more than 6 years.

“(b) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration without further competition if:

“(1) such individual was appointed under section 3312 through 3317; (2) the announcement for the term appointment to which the employee was converted stated that there was potential for subsequent conversion to a career-conditional or career appointment; (3) such individual has completed at least 2 years of current continuous service under a term appointment in the competitive service; (4) the employee’s performance under such term appointment was at least fully successful or equivalent; and

“(c) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration through internal competitive promotion procedures if the conditions under paragraphs (1) through (4) of subsection (b) are met.

“(d) An employee converted under this section becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure.

“(e) An employee converted to career or career-conditional employment under this section acquires competitive status upon conversion.

“§ 9807. Pay authority for critical positions

“(a) In this section, the term ‘position’ means—

“(1) a position to which chapter 51 applies, including a position in the Senior Executive Service; (2) a position under the Executive Schedule under sections 5312 through 5317; (3) a position established under section 3144; or

“(d) The Administrator may defer the obligation of an individual to provide a period of service under paragraph (1) if the Administrator determines that such a deferral is appropriate.

“(g) Scholarship recipients who fail to maintain a high level of academic standing, as determined by the Administrator, or who fail to comply with any regulations, who are dismissed from their educational institutions for disciplinary reasons, or who voluntarily terminate academic training before graduating, lose the scholarship for which the scholarship was awarded, shall be in breach of their contractual agreement and, in lieu of any scholarship obligations, shall be liable to the United States for reimbursement of all scholarship funds paid to them and, in lieu of any contractual agreement with an institution of higher education under which the amounts provided for a scholarship under this section for tuition, fees, and other authorized expenses are paid directly to the institution, the terms and conditions under which a service obligation may be deferred through regulation.

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Higher Education in an Academic Field or Discipline described in the list made available under subsection (d); (2) be a United States citizen or permanent resident; and

“(d) The Administrator shall make public a list of programs and fields of study for which scholarships under the Program may be utilized and shall update the list as necessary.

“(e) The Administrator may provide a scholarship under the Program for an academic year if the individual applying for the scholarship meets the criteria established by the Administrator for that academic year.

“(f) An individual may not receive a scholarship under this section for more than 4 academic years, unless the Administrator grants a waiver.

“(g) The dollar amount of a scholarship under this section may be expended for tuition, fees, and other authorized expenses as established by the Administrator by regulation.
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"(2) Scholarship recipients who, for any reason, fail to begin or complete their service obligation after completion of academic training, or fail to comply with the terms and conditions of deferment established by the Administrator pursuant to subsection (f)(2)(B), shall be in breach of their contractual agreement. When recipients breach their agreement with the reasons stated in the preceding sentence, the recipient shall be liable to the United States for an amount equal to—

"(A) the total amount of scholarships received by such individual under this section; plus

"(B) the interest on the amount of such award, if any, accruing at a rate of interest not to exceed 6 percent per annum (compounded annually) payable if at the time the awards were received they were loaned bearing interest at the maximum legal pre-vailing rate, as determined by the Treasurer of the United States, multiplied by 3.

"(h)(1) Any obligation of an individual incurred under the Program (or a contractual agreement thereunder) for service or pay- ment shall be canceled upon the death of the individual.

"(2) The Administrator shall by regulation provide for the total waiver or suspension of any obligation of service or payment incurred by an individual under the Program (or a contractual agreement thereunder) in the following circumstances: if the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be contrary to the best interests of the Government.

"(i) For purposes of this section—

"(1) the term 'cost of attendance' has the meaning given in section 472 of the Higher Education Act of 1965;

"(2) the term 'institution of higher education' has the meaning given that term in section 101(a) of the Higher Education Act of 1965; and

"(3) the term 'Program' means the National Aeronautics and Space Administration Science and Technology Scholarship Program established under this section.

"(i)(1) There is authorized to be appropri- ated to the Administration for the Program $10,000,000 for each fiscal year.

"(2) Amounts appropriated under this sec- tion shall remain available for 2 fiscal years.

"§ 9810. Distinguished scholar ap- pointments

"(a) In this section—

"(1) the term 'professional position' means a position that is classified to an occupa- tional specialty by the Office of Personnel Management as a position that—

"(A) requires education and training in the principles, concepts, and theories of the occupation; and

"(B) is covered by the Group Coverage Qualification Standards for Professional and Scientific Positions;

"(2) the term 'research position' means a position in a professional series that pri- marily involves scientific inquiry or inves- tigation, or research-type exploratory develop- ment of a creative or scientific nature, where the knowledge required to perform the work is acquired primarily and primarily through graduate study.

"(b) The Administration may appoint, without regard to the provisions of section 3304(b) and sections 3309 through 3318, but section 3303, candidates directly to General Schedule professional, competi- tive service positions in the Administration for which there has been a determination (in ac- cordance with regulations of the Office of Personnel Management), if—

"(1) with respect to a position at the GS- 7 level, the individual—

"(A) received, within 2 years before the effec- tive date of the appointment, from an ac- credited institution authorized to grant baccalaureate degrees, a baccalaureate degree in a field of study for which possession of that degree meets the qualification standards as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

"(B) achieved a cumulative grade point av- erage of 3.0 or higher on a 4.0 scale and a grade point average of 3.5 or higher for courses in the field of study required to qual- ify for the position;

"(2) with respect to a position at the GS- 9 level, the individual—

"(A) received, within 2 years before the effec- tive date of the appointment, from an ac- credited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

"(B) achieved a cumulative grade point av- erage of 3.0 or higher on a 4.0 scale in gradu- ate coursework in the field of study required for the position;

"(3) with respect to a position at the GS- 11 level, the individual—

"(A) received, within 2 years before the effec- tive date of the appointment, from an ac- credited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

"(B) achieved a cumulative grade point av- erage of 3.5 or higher on a 4.0 scale in gradu- ate coursework in the field of study required for the position; or

"(4) with respect to a research position at the GS-12 level, the individual—

"(A) received, within 2 years before the effec- tive date of the appointment, from an ac- credited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

"(B) achieved a cumulative grade point av- erage of 3.5 or higher on a 4.0 scale in gradu- ate coursework in the field of study required for the position; or

"(c) In making any selections under this section, preference eligibles who meet the criteria for distinguished scholar appoint- ments shall be considered ahead of non- preference eligibles.

"(d) An appointment made under this au- thority shall be a career-conditional ap- pointment in the competitive civil service.

"§ 9811. Travel and transportation expenses of certain new appointees

"(a) In this section, the term 'new appointee' means—

"(1) a person newly appointed or reinstated to Federal service to the Administration to—

"(A) a career or career-conditional ap- pointment; or

"(B) a term appointment;

"(2) an excepted service appointment which provides for the competitive conversion to a career or career-conditional appointment;

"(3) a career or limited term Senior Exec- utive Service appointment; or

"(4) an appointment made under section 203(c)(2)(A) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A));

"(f) an appointment to a position estab- lished under section 3104; or

"(g) an appointment to a position estab- lished under section 3120; or

"(h) a student trainee appointment, upon comple- tion of academic work, is converted to an ap- pointment in the Administration that is identified in paragraph (i) in accordance with appropriate authority.

"(b) The Administrator may pay the travel, transportation, and relocation expenses of a new appointee to the same extent, in the same manner, and under the same conditions as the payment of such expenses under sections 5724, 5724a, 5724b, and 5724c to an employee transferred in the interests of the United States Government.

"§ 9812. Annual leave enhancements

"(a) In this section—

"(1) the term 'newly appointed employee' means an individual who is first appointed—

"(A) as an employee of the Federal Govern- ment; or

"(B) as an employee of the Federal Govern- ment following a break in service of at least 90 days after that individual’s last period of Federal employment, other than—

"(i) employment under the Student Edu- cational Employment Program administered by the Office of Personnel Management;

"(ii) employment as a law clerk trainee; and

"(iii) employment under a short-term tem- porary appointment to an employee during periods of vacation from the edu- cational institution at which the student is enrolled;

"(2) an appointment under a provisional ap- pointment if the new appointment is perma- nent and immediately follows the provi- sional appointment; or

"(B) except for this section, would not other- wise be considered a full-time Federal employee for purposes of section 6030; and

"(3) the term 'directly related to the duties of the position' means duties and responsibil- ities of the same nature and level of work which require similar qualifications.

"(b) For purposes of section 6030, the Ad- ministrator may deem a period of qualified non-Federal service performed by a newly appointed employee to be a period of service of equal length performed as an employee.

"(2) A decision under paragraph (1) to treat a period of qualified non-Federal service as if it were service performed as an employee shall continue to apply so long as that indi- vidual serves in or under the Administration.

"(c) Notwithstanding section 6030(a), the annual leave accrual rate for an employee of the Administration in a position paid under section 5376 or 5383, or for an employee in an equivalent category whose rate of basic pay is greater than the rate payable at GS-15, step 10, shall be 1 day for each full biweekly period.

"(2) The accrual rate established under this subsection shall continue to apply to the employee so long as such employee serves in or under the Administration.

"§ 9813. Limited appointments to Senior Exec- utive Service positions

"(a) In this section—

"(1) the term 'career reserved position' means a position to which the Administration designated under section 3132(b) which may be filled only by—

"(A) an individual who—

"(i) is a career employee or—

"(ii) is an individual who is not a career employee but has served in or under the Administration;
“(A) a career appointee; or

“(B) a limited emergency appointee or a limited term appointee—

“(i) who, immediately before entering the career or career-conditional appointment, was serving under a career or career-conditional appointment outside the Senior Executive Service; or

“(ii) whose limited emergency or limited term appointment was approved in advance by the Office of Personnel Management;

“(2) is assigned—

“(A) new duties, without a change of position; or

“(B) to a new position.

“(B) the exercise of the authority under this section relates to a current employee selected for another position within the Administration, a determination shall be made that the new position will exceed that in the former position, before setting pay under this section.

“(c) Pay as set under this section is basic pay for such purposes as set pay under section 5334.

“(d) If the employee serves for at least 1 year in the position the pay determination under this section was made, or a successor position, the pay earned under such position may be used in succeeding actions to set pay under this section.

“(e) Before setting any employee’s pay under this section, the Administrator shall submit a plan to the Office of Personnel Management for the appropriate committees of Congress, that includes—

“(1) criteria for approval of actions to set pay under this section;

“(2) the level of approval required to set pay under this section;

“(3) all types of actions and positions to be covered;

“(4) the relationship between the exercise of authority under this section and the use of other pay incentives; and

“(5) a process to evaluate the effectiveness of this section.

“§ 9815. Reporting requirement

“The Administrator shall submit to the appropriate committees of Congress, not later than February 28 of each of the next 6 years beginning after the date of enactment of this chapter, a report that provides the following:

“(1) A summary of all bonuses paid under subsections (a) and (b) and during the preceding fiscal year. Such summary shall include the total amount of bonuses paid, the total number of bonuses paid, the percentage of the amount of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount, under each of those subsections.

“(2) A summary of all bonuses paid under subsections (b) and (c) of section 9805 during the preceding fiscal year. Such summary shall include, for each type of bonus, the total amount of bonuses paid, the total number of bonuses paid, the percentage of the amount of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount, under each of those subsections.

“(3) The total number of permanent appointments converted during the preceding fiscal year under section 9806 and, of that total number, the number of conversions that were made to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

“(4) The number of positions for which the rate of basic pay was fixed under section 9807 during the preceding fiscal year, the number of positions for which the rate of basic pay under such section was terminated during the preceding fiscal year, and the number of times the rate of basic pay was fixed under such section to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

“(5) The total number of scholarships awarded under section 9809 during the preceding fiscal year and the number of scholarship recipients appointed by the Administration during the preceding fiscal year.

“(6) The total number of distinguished scholar appointments made under section 9810 during the preceding fiscal year and, of that total number, the number of appointees that were made to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

“(7) The average amount paid per appointee, and the largest amount paid to any appointee, under section 9811 during the preceding fiscal year for travel and transportation expenses.

“(8) The total number of employees who were awarded enhanced annual leave under section 9812 during the preceding fiscal year; of that total number, the number of employees who were serving in a position addressing a critical need described in the workforce plan pursuant to section 9802(b)(2), the number of employees in each of those respective groups, the average amount of additional annual leave such employees earned in the preceding fiscal year (over and above what they would have earned absent section 9812).

“(9) The total number of appointments made under section 9813 during the preceding fiscal year and, of that total number, the number of appointees that were made to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

“(10) The number of permanent appointments made under section 9814 during the preceding fiscal year and the number of times pay was set under such section to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

“(11) A summary of all recruitment, relocation, redesignation, and retention bonuses paid under authorities other than this chapter and excluding the authorities provided in sections 5753 and 5754 of this title, during the preceding fiscal year. Such summary shall include, for each type of bonus, the total amount of bonuses paid, the total number of bonuses paid, the percentage of the amount of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount.

“(12) A summary of all proposed and enacted performance awards for permanent appointments made under section 9814 during the preceding fiscal year and the number of times pay was set under such section to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

“(13) A summary of all proposed and enacted performance awards for temporary appointments made under section 9815 during the preceding fiscal year and the number of times pay was set under such section to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

“(b) Clerical Amendment.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end the following:

“National Aeronautics and Space Administration ................................. 9811".

SA215, Mr. ENSIGN (for Mr. INHOFE (for Mr. JEFFORDS)) proposed an amendment to the bill H.R. 1006, to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species; as follows:

On page 2, strike lines 11 through 14 and insert the following:

“(g) Prohibited Wildlife Species.—The term ‘prohibited wildlife species’ means any live species of lion, tiger, leopard, cheetah, jaguar, or cougar or any hybrid of such species.”.

On page 3, line 1, strike “live animal of a”.

On page 3, strike lines 20 through 22 and insert the following:

“(A) is licensed or registered, and inspected, by the Animal and Plant Health Inspection Service or any other Federal agency with respect to that species;

On page 4, line 12, insert “listed in section 2(g)” after “animals”.

On page 4, line 14, insert “listed in section 2(g)” after “animals”.

On page 5, line 3, strike the quotation marks and the following period.

On page 5, between lines 3 and 4, insert the following:

“(5) Authorization of Appropriations.—There is authorized to be appropriated to
carry out subsection (a)(2)(C) $3,000,000 for each of fiscal years 2004 through 2008."

SA 2216. Mr. ENSIGN (for Mr. SHELBY) proposed an amendment to the bill S. 811, to support certain housing proposals in the fiscal year 2003 budget for the Federal Government, including the downpayment assistance initiative under the HOME Investment Partnership Act, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION I.—TABLE OF CONTENTS

The table of contents for this Act is as follows:

Sec. 1. Table of contents.
Sec. I.—Downpayment Assistance
Sec. 101. Short title.
Sec. 102. Downpayment assistance initiative.

Sec. 2. Definitions.
Sec. 3. Demonstration program for elderly and nonelderly housing for intergenerational families.
Sec. 4. Training for HUD personnel regarding grandparent-headed and related-headed families.
Sec. 5. Study of housing needs of grandparent-headed and related-headed families.

TITLE III.—ADJUSTABLE RATE SINGLE FAMILY MORTGAGES AND LOAN LIMIT

ADJUSTMENTS

Sec. 301. Hybrid arms.
Sec. 302. FHA multifamily loan limit adjustments.

TITLE IV.—HOUSING ASSISTANCE

Sec. 401. Short title.
Sec. 402. Hope VI program reauthorization.
Sec. 403. Hope VI grants for assisting affordable housing through main street projects.

TITLE V.—COMMUNITY DEVELOPMENT

Sec. 501. Funding for isolated areas.

TITLE VI.—DOWNPAYMENT ASSISTANCE

Sec. 101. Short title.
Sec. 102. Downpayment assistance initiative.

(a) Downpayment Assistance Initiative.—Subtitle E of title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705) is amended to read as follows:

"Subtitle E—Other Assistance

"SEC. 271. DOWNPAYMENT ASSISTANCE INITIATIVE.

'(a) Definition of a Participating Jurisdiction.—The term "participating jurisdiction" means any State or unit of general local government designated under section 216.

'(b) Grant Authority.—The Secretary may award downpayment assistance grants to assist low-income families to achieve homeownership, in accordance with this section.

'(c) Eligible Activities.—

1. In general.—

'(A) Downpayment Assistance.—Subject to subparagraph (B), grants awarded under this section may be used only for downpayment assistance toward the purchase of a single family housing unit (including 1 to 4 unit family dwelling units, condominium units, cooperative units, and manufactured housing units which are located on land which is owned by the manufactured housing unit owner, owned as a cooperative, or is subject to a leasehold interest with a term equal to at least the term of the mortgage financing on the unit, and manufactured housing lots) by low-income families who are first-time homebuyers.

'(B) Home Repairs.—Not more than 20 percent of thegrant funds provided under subsection (d) to a participating jurisdiction may be used to provide downpayment assistance to low-income, first-time homebuyers for home repairs.

'(2) Limitation.—

'(A) Amount of Assistance.—The amount of assistance provided to any low-income family under paragraph (1) shall not exceed the greater of:

'(i) 6 percent of the purchase price of a single family housing unit; or

'(ii) $10,000.

'(B) Participation.—A participating jurisdiction may not use grant funds awarded under this section to provide funding to an entity or organization that provides downpayment assistance if the activities of that entity or organization are financed in whole or in part, directly or indirectly, by contributions, service fees, or other payments from the sellers of housing.

'(3) Formulas.—

'(i) In general.—For each fiscal year, the Secretary shall allocate any amounts made available for assistance under this section to each State based on the allocation made to that State under section (d) to a participating jurisdiction in an amount equal to a percentage of the total allocation that is equal to the percentage of the national total of low-income households residing in rental housing in that State, as determined on the basis of the most recent census data compiled by the Bureau of the Census.

'(ii) Limitation.—

'(I) In general.—Direct allocations made under subparagraph (A) shall be made to a local participating jurisdiction only if—

'(I) the jurisdiction has a total population of 300,000 individuals or more, as determined on the basis of the most recent census data compiled by the Bureau of the Census; or

'(II) the participating jurisdiction would receive an allocation of $50,000 or more.

'(II) Reversion.—Any amounts allocated to a participating jurisdiction under this section become available for reallocation to other participating jurisdictions in accordance with subsection (d).

'(3) Applicability of Other Provisions.—

'(i) In General.—Except as otherwise provided in this section, any reference to the provisions of title I, sections 215(b), 218, 219, 221, 223, 224, and 226(a) of subtitle A of this title, and subtitle F of this title shall not be subject to the provisions of this title.

'(ii) Definitions.—In applying the requirements of subtitle A referred to in paragraph (2),

'(A) any references to funds under subtitle A shall be considered to refer to amounts made available for assistance under this section; and

'(B) any references to funds allocated or reallocated under section 217 or 217(d) shall be considered to refer to amounts allocated or reallocated under subsection (d) or (e) of this section, respectively.

'(g) Housing Strategy.—To be eligible to receive a grant under this section in any fiscal year, a participating jurisdiction shall include in its comprehensive housing affordability strategy developed under section 105 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705) for such fiscal year

'(i) a description of the anticipated use of any grant received under this section;

'(ii) a plan for conducting targeted outreach to residents and tenants of public housing, and trailer manufactured housing, and to other families assisted by public housing agencies, for the purpose of informing those families that grants allocated under this section to a participating jurisdiction are used for downpayment assistance for such residents, tenants, and families; and

'(iii) a description of the actions to be taken to ensure the suitability of families receiving downpayment assistance under this section to undertake and maintain homeownership.

'(h) Report.—Not later than June 30, 2006, the Comptroller General of the United States shall submit a report containing a State-by-State analysis of the impact of grants awarded under this section to—

'(i) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

'(ii) the Committee on Financial Services of the House of Representatives.

'(i) Sunset.—The Secretary shall have no authority to make grants under this Act after December 31, 2007.

'(j) Relocation Assistance and Downpayment Assistance.—The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 Stat. 1894) shall not apply to downpayment assistance under this section.

'(k) Authorization of Appropriations.—To the extent authorized to be appropriated to carry out this section $200,000,000 for each of fiscal years 2004 through 2007."
SEC. 201. SHORT TITLE.
This title may be cited as the “Living Equitably: Grandparents Aiding Children and Youth Act of 2003” or the “LEGACY Act of 2003”.

SEC. 202. DEFINITIONS.
In this title:
(1) CHILD.—The term “child” means an individual who—
(A) is not attending school and is not more than 18 years of age; or
(B) is attending school and is not more than 19 years of age.
(2) COVERED FAMILY.—The term “covered family” means a family that—
(A) includes a child; and
(B) has a head of household who is—
(i) a grandparent of the child who is raising the child; or
(ii) a relative of the child who is raising the child.
(3) ELDERLY PERSON.—The term “elderly person” has the same meaning as in section 202(k) of the Housing Act of 1959 (12 U.S.C. 170q(k)).
(4) GRANDPARENT.—(A) IN GENERAL.—The term “grandparent” means, with respect to a child, an individual who is a grandparent or stepgrandparent of the child by blood or marriage, regardless of the age of the individual.
(B) CASE OF ADOPTION.—In the case of a child who was adopted, the term includes an individual who, by blood or marriage, is a grandparent or stepgrandparent of the child as adopted.
(5) INTERGENERATIONAL DWELLING UNIT.—The term “intergenerational dwelling unit” means a dwelling unit that—
(A) has not fewer than 2 separate bedrooms;
(B) is equipped with design features appropriate to meet the special physical needs of elderly persons, as needed; and
(C) is equipped with design features appropriate to meet the special physical needs of young children, as needed.
(6) RAISING A CHILD.—The term “raising a child” means, with respect to an individual, that the individual—
(A) resides with the child; and
(B) is the primary caregiver for the child—
(i) because the biological or adoptive parents of the child do not reside with the child or are unable or unwilling to serve as the primary caregiver for the child; and
(ii) regardless of whether the individual has a legal relationship to the child (such as guardian or legal custody) or is caring for the child informally and has no such legal relationship with the child.
(7) RELATIVE.—(A) IN GENERAL.—The term “relative” means, with respect to a child, an individual who—
(i) is not a parent of the child by blood or marriage; and
(ii) is a relative of the child by blood or marriage, regardless of the age of the individual.
(B) CASE OF ADOPTION.—In the case of a child who was adopted, the term “relative” includes an individual who, by blood or marriage, is a relative of the family who adopted the child.
(8) SECRETARY.—The term “Secretary” means the Secretary of Housing and Urban Development.

SEC. 203. DEMONSTRATION PROGRAM FOR ELDERLY PERSONS RAISING GRANDCHILDREN OR RELATIVE-HEADED FAMILIES.

(a) DEMONSTRATION PROGRAM.—The Secretary shall carry out a demonstration program (referred to in this section as the “demonstration program”) to provide assistance for intergenerational dwelling units for intergenerational families in connection with the supportive housing intervention in section 202 of the Housing Act of 1959 (12 U.S.C. 170q) that contains intergenerational dwelling units, including—
(1) by designating and retrofitting, for use as intergenerational dwelling units, existing dwelling units that are located within a project assisted under section 202 of the Housing Act of 1959 (12 U.S.C. 170q(a));
(2) through development of buildings or projects comprised solely of intergenerational dwelling units; or
(3) through the provision of an annex or addition to an existing project assisted under section 202 of the Housing Act of 1959 (12 U.S.C. 170q(a)) that contains intergenerational dwelling units, including through the development of elder cottage housing opportunity units that are small, freestanding, barrier free, energy efficient, removable and reconfigurable, designed adjacent to a larger project or dwelling.
(b) PROGRAM TERMS.—Assistance provided pursuant to this section shall be subject to the provisions of section 202 of the Housing Act of 1959 (12 U.S.C. 170q), except that—
(1) notwithstanding subsection (d)(1) of that section 202 or any provision of that section restricting occupancy to elderly persons, any intergenerational dwelling unit assisted under the demonstration program may be occupied by an intergenerational family;
(2) subsections (e) and (f) of that section 202 shall not apply;
(3) in addition to the requirements under subsection (g) of that section 202, the Secretary shall—
(i) ensure that occupants of intergenerational housing units assisted under the demonstration program are provided a range of services that are tailored to meet the needs of elderly persons, children, and intergenerational families; and
(ii) coordinate with the heads of other Federal agencies as may be appropriate to ensure the provision of such services; and
(4) the Secretary may waive or alter any other provision of that section 202 necessary to provide for assistance under the demonstration program.
(c) SELECTION.—The Secretary shall—
(1) establish application procedures for private nonprofit organizations to apply for assistance under this section; and
(2) to the extent that amounts are made available pursuant to subsection (f), select not less than 2 and not more than 4 projects for purposes of section 202 of the Housing Act of 1959 (12 U.S.C. 170q) for assistance under this section, based on the ability of the applicant to develop and operate intergenerational housing units and the provision of services to elderly persons and young children.
(d) REPORT.—Not later than 36 months after the date of enactment of this Act, the Secretary shall submit a report to Congress that—
(1) describes the demonstration program; and
(2) analyzes the effectiveness of the demonstration program.

SEC. 204. TRAINING FOR HUD PERSONNEL REGARDING GRANDPARENT-HEADED AND RELATIVE-HEADED FAMILIES.
The Secretary shall ensure that all personnel employed in field offices of the Department who have responsibilities for administering the housing assistance program under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), the supportive housing program under section 202 of the Housing Act of 1959 (12 U.S.C. 170q), and an appropriate number of personnel in the headquarters office of the Department who have responsibilities for those programs, have received adequate training regarding how covered families (as that term is defined in section 202 of the Legislative History of 2003) can be served by existing affordable housing programs.”.

SEC. 205. STUDY OF HOUSING NEEDS OF GRANDPARENT-HEADED AND RELATIVE-HEADED FAMILIES.
(a) IN GENERAL.—The Secretary and the Director of the Bureau of the Census jointly shall—
(1) conduct a study to determine an estimate of the number of covered families in the United States and their affordable housing needs; and
(2) submit a report to Congress regarding the results of the study conducted under paragraph (1).
(b) REPORT AND RECOMMENDATIONS.—The report required under subsection (a) shall—
(1) be submitted to Congress not later than 12 months after the date of enactment of this Act and
(2) include recommendations by the Secretary and the Director of the Bureau of the Census regarding how the major assisted and unassisted programs of the Department of Housing and Urban Development, including the supportive housing for the elderly program under section 202 of the Housing Act of 1959 (12 U.S.C. 170q), can be used and, if appropriate, amended or altered, to meet the affordable housing needs of covered families.

TITLE III—ADJUSTABLE RATE SINGLE FAMILY MORTGAGES AND LOAN LIMIT ADJUSTMENTS.

SEC. 301. HYBRID ARMS.
(a) IN GENERAL.—Section 251(d)(1)(C) of the National Housing Act (12 U.S.C. 1715z-16(d)(1)(C)) is amended by striking “five” and inserting “three”.
(b) APPLICABILITY.—The amendment made by subsection (a) shall apply to mortgages executed on or after the date of enactment of this Act.

SEC. 302. FHA MULTIFAMILY LOAN LIMIT ADJUSTMENTS.
(a) SHORT TITLE.—This section may be cited as the “FHA Multifamily Loan Limit Adjustment Act of 2003”.
(b) MAXIMUM MORTGAGE AMOUNT LIMIT FOR MULTIFAMILY HOUSING IN HIGH-COST AREAS.—
(1) IN GENERAL.—The FHA loan limit for multifamily housing in high-cost areas, as determined under section 221(d)(3)(B)(ii), 222(d)(3)(B)(ii), 221(d)(4)(ii)(I), 231(c)(2)(B), and 234(e)(3)(B) of...
the National Housing Act (12 U.S.C. 171(c)(3), 1715k(3), 1715k(3)(ii)(I), 1715k(3)(ii)(II), and 1715k(3)(ii)(III)) are each amended—

(1) by striking “110 percent” and inserting “140 percent”; and

(2) by inserting “, or 170 percent in high cost areas,” after “140 percent”; (C) CATCH-UP ADJUSTMENTS TO CERTAIN MAXIMUM MORTGAGE AMOUNT LIMITS.—

(1) SECTION 207 LIMITS.—Section 207(c)(3)(A) of the National Housing Act (12 U.S.C. 1713(c)(3)(A)) is amended by striking “$112,500” and inserting “$174,400”.

(2) SECTION 212 LIMITS.—Section 212(b)(2)(A) of the National Housing Act (12 U.S.C. 1715k(b)(2)(A)) is amended—

(A) by striking “$38,025” and inserting “$41,207”;

(B) by striking “$42,120” and inserting “$47,511”;

(C) by striking “$50,310” and inserting “$57,500”;

(D) by striking “$90,010” and inserting “$97,343”;

(E) by striking “$70,200” and inserting “$81,708”;

(F) by striking “$149,140” and inserting “$149,710”;

(G) by striking “$60,255” and inserting “$81,708”;

(H) by striking “$75,465” and inserting “$97,343”;

(i) by striking “$85,328” and inserting “$108,633”;

(d) REHABILITATION AND NEIGHBORHOOD CONSERVATION HOUSING MORTGAGE INSURANCE.—Section 220(d)(3)(B)(iii) of the National Housing Act (12 U.S.C. 1715k(d)(3)(B)(iii)) is amended—

(1) by striking “with respect to dollar amount limitations applicable to rehabilitation or neighborhood conservation projects described in subsection (I),” and inserting “; and”; (II);

(2) by redesignating subsections (I) and (IV) as subsections (IV) and (V), respectively.

TITTE IV—HOPE VI PROGRAM REAUTHORIZATION

SEC. 401. SHORT TITLE.

This title may be cited as the “HOPE VI Program Reauthorization and Small Community Mainstreet Rejuvenation and Housing Act of 2003”.

SEC. 402. HOPE VI PROGRAM REAUTHORIZATION. (a) SELECTION CRITERIA.—Section 24(e)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437v(e)(2)) is amended—

(1) by striking the matter preceding paragraph (A) and inserting the following:

“SEC. 24(e).—

(2) SELECTION CRITERIA. The Secretary shall establish criteria for the award of grants under this section and shall include among the factors—;

(2) in subparagraph (B), by striking “large-scale”;

(3) in subparagraph (D)—

(A) by inserting “and ongoing implementation of development”; and

(B) by inserting “, except that the Secretary may not award a grant under this section unless the applicant has involved affected public housing residents at the beginning and during the planning process for the revitalization program, prior to submission of an application” before the semicolon at the end;

(4) in subparagraph (H), by striking “and” at the end;

(5) by redesignating subparagraph (I) as subparagraph (J); and

(6) by inserting after subparagraph (H) the following:

“(I) the extent to which the plan minimizes, under current planning, displacement of current residents of the public housing site who wish to remain in or return to the revitalized community and provides for community and supportive services for residents prior to any relocation;

“(J) the extent to which the plan sustains or creates opportunities for persons eligible for public housing units available to persons eligible for public housing in markets where the plan shows there is demand for the maintenance or creation of such units;

“(K) the extent to which the plan gives to existing residents priority for occupancy in dwelling units which are public housing units or development opportunities which can afford to live in other units, priority for those units in the revitalized community; and”;

(b) DEFINITION OF SEVERELY DISTRESSED PUBLIC HOUSING.—Section 24(j)(2)(A)(iii) of the United States Housing Act of 1937 (42 U.S.C. 1437v(j)(2)(A)(iii)) is amended—

(1) in clause (I), by striking “or” at the end;

(2) in clause (II), by inserting “or” after the semicolon at the end; and

(3) by inserting at the end the following:

“(III) is lacking in sufficient appropriate transportation, supportive services, economic opportunity, schools, civic and religious institutions, and public services resulting in severe social distress in the project;”;

(c) STUDY OF ELDERLY AND DISABLED PUBLIC HOUSING NEEDS.—Section 24(m) of the United States Housing Act of 1937 (42 U.S.C. 1437v(m)) is amended by striking “, 2001,” and “, 2002” and inserting “through 2006”; (d) EXTENSION OF PROGRAM.—Section 24(n) of the United States Housing Act of 1937 (42 U.S.C. 1437v(n)) is amended by striking “September 30, 2004” and inserting “September 30, 2006”.

SEC. 403. HOPE VI GRANTS FOR ASSISTING AFFORDABLE HOUSING THROUGH MAIN STREET PROJECTS IN SMALLER COMMUNITIES.—Section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v) is amended—

(1) by inserting before the period the following:

“(i) the extent to which the plan minimizes, under current planning, displacement of current residents of the public housing site who wish to remain in or return to the revitalized community and provides for community and supportive services for residents prior to any relocation;

“(ii) the extent to which the plan sustains or creates opportunities for persons eligible for public housing units available to persons eligible for public housing in markets where the plan shows there is demand for the maintenance or creation of such units;

“(iii) is lacking in sufficient appropriate transportation, supportive services, economic opportunity, schools, civic and religious institutions, and public services resulting in severe social distress in the project;”;

(3) MAIN STREET PROJECTS.—The Secretary shall establish requirements for a project to be considered a main street project for purposes of this section, which shall require that the project—

“(A) has as its purpose the revitalization or redevelopment of a historic or traditional commercial area;

“(B) involves investment, or other participation, by the government for, and private entities in, the community in which the project is carried out; and

“(C) complies with such historic preservation guidelines or principles as the Secretary shall identify to preserve significant historic or traditional architectural and design features in the structures or area involved in the project.

(4) ELIGIBLE AFFORDABLE HOUSING ACTIVITIES.—For purposes of this subsection, the activities described in subparagraphs (B) through (E), (J), or (K) of subsection (d)(1) shall be considered eligible affordable housing activities, except that—

(A) such activities shall be conducted with respect to affordable housing rather than with respect to severely distressed public housing projects; and

(B) eligible affordable housing activities under this subsection shall not include the activities described in subparagraphs (B) through (E), (J), or (K) of subsection (d)(1).

(5) MAXIMUM GRANT AMOUNT.—A grant under this subsection for a fiscal year for a smaller community may not exceed $1,000,000.

(6) CONTRIBUTION REQUIREMENT.—A smaller community applying for a grant under this subsection shall be considered an applicant for purposes of section (c) (relating to contributions by applicants), except that—

(A) such supplemental amounts shall be used only for carrying out eligible affordable housing activities; and

(B) paragraphs (1)(B) and (3) shall not apply to grants under this subsection.

(7) APPLICATION AND SELECTION.—An application and selection for a grant under this subsection (i), the Secretary shall provide for smaller communities to apply for grants under this subsection, except that the Secretary may establish selection criteria or other additional criteria for applications for such grants as may be appropriate to carry out this subsection.

(B) SELECTION CRITERIA.—The Secretary shall establish selection criteria for the award of grants under this subsection, which shall be based on the selection criteria established pursuant to subsection (e)(2), with such changes as may be appropriate to carry out the purposes of this subsection.

(8) COST LIMITS.—The cost limits established pursuant to subsection (f) shall apply to eligible affordable housing activities assisted with grant amounts under this subsection.

(9) INAPPLICABILITY OF OTHER PROVISIONS.—The provisions of sections (g) (relating to disposition and replacement of severely distressed public housing), and (h) (relating to administration of grants by the Secretary) shall not apply to grants under this subsection.

(10) REPORTING.—The Secretary shall require each smaller community receiving a grant under this subsection to submit a report regarding the use of all amounts provided under the grant.
(11) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) AFFORDABLE HOUSING.—The term ‘affordable housing’ means rental or homeowner-ownership dwelling units that—

(i) are made available for initial occupancy to low-income families, with a subset of units made available to very- and extremely-low income families; and

(ii) are subject to the same rules regarding occupant contribution toward rent or purchase and terms of rental or purchase as dwelling units in public housing projects as- sisted with a grant under this section.

(B) SMALLER COMMUNITY.—The term ‘smaller community’ means a unit of general local government (as such term is defined in section 102 of the Housing and Community Development Act of 1994 (42 U.S.C. 5302)) that—

(i) has a population of 50,000 or fewer; and

(ii) is not served by a public housing agency; or

(ii) is served by a single public housing agency, which agency administers 100 or fewer public housing dwelling units;.

(c) FUNDING.—Section 246(1) of the United States Housing Act of 1937 (42 U.S.C. 1437v(1)) is amended—

(1) by striking the last sentence of paragraph (1) and inserting ‘The Secretary shall provide for distribution of amounts under this paragraph after reserving such amounts for the units made available under paragraphs (1), (2) and (3) in the following manner:

(A) by striking an “appropriation Act” and inserting ‘appropriation Acts’; and

(B) by striking ‘in any year’ and inserting ‘for such fiscal year’;

(2) in paragraph (2), by inserting ‘under paragraph (1) and after reserving such amounts for insular areas under paragraph (2) after “tribes”;’

(3) in paragraph (3), by striking ‘paragraphs (1) and (2)’ and inserting ‘paragraphs (1), (2), and (3)”;

(4) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4); and

(5) by inserting after paragraph (1) the following:

‘The Secretary shall provide for distribution of amounts under this paragraph to insular areas on the basis of the ratio of the population of each insular area to the population of all insular areas. In determining the distribution of amounts to insular areas, the Secretary may also include other statistical criteria as data become available from the Bureau of Census, but only if such criteria are contained in a regulation promulgated by the Secretary after notice and public comment.’

(d) CONFORMING AMENDMENT.—The first sentence of section 103 of the Housing and Community Development Act of 1974 (42 U.S.C. 5303) is amended by striking ‘grants for such fiscal year (excluding amounts under paragraph (1) and after reserving such amounts for the units made available under paragraphs (1), (2), and (3) and the Trust Territory)”.

(e) SPECIAL PURPOSE GRANTS.—Section 107 of the Housing and Community Development Act of 1974 (42 U.S.C. 5307) is amended—

(1) in subparagraphs (A) and (B) of subsection (a)(3), by striking subparagraphs (A) and (B) and inserting ‘paragraphs (A) and (B)’, respectively; and

(2) by redesigning paragraphs (2) and (3) as paragraphs (1), (2), and (3); and

(f) REGULATIONS.—The Secretary of Housing and Urban Development shall issue regulations to carry out the amendments made by this section, which shall take effect not later than the expiration of the 90-day period beginning on the date of the enactment of this Act.

PRIVILEGE OF THE FLOOR

Mr. GRASSLEY. Mr. President, I would like to make a unanimous consent request for Senator BAUCUS. He asked consent that John Colleran, Jill Davidsaver, Mandon Lovett, Justin Bonsey, Brittany Dalton, and Diana Birkett be granted the privilege of the Floor for the consideration of the floor debate on Medicare.

The PRESIDING OFFICER. Without objection, it is so ordered.
Title 31 to the Office of Management and Budget for any year, the Administration shall at the same time submit a copy of such plan to—

(1) the Committee on Governmental Affairs and the Committee on Appropriations of the Senate; and

(2) the Committee on Governmental Reform and the Committee on Appropriations of the House of Representatives.

§ 9903. Workforce authorities

(a) The workforce authorities under this subchapter are the following:

(1) The authority to make recruitment, re-designation, and relocation bonuses under section 9904.

(b) The authority to pay retention bonuses under section 9905.

(c) The authority to make term appointments and to take related personnel actions under section 9906.

(d) The authority to fix rates of basic pay for critical positions under section 9907.

(e) The authority to extend intergovernmental personnel act assignments under section 9908.

(f) No authority under this subchapter may be exercised in a manner inconsistent with the plan shall be considered to include any modifications to the workforce plan submitted under section 9115 of title 31 to the Office of Management and Budget for any year, the Administration shall at the same time submit a copy of such plan to—

(1) the Committee on Governmental Affairs and the Committee on Appropriations of the Senate; and

(2) the Committee on Governmental Reform and the Committee on Appropriations of the House of Representatives.

§ 9904. Recruitment, redesignation, and relocation bonuses

(a) Notwithstanding section 5733, the Administrator may pay a bonus to an individual, in accordance with the workforce plan and subject to the limitations in this section, if—

(1) the Administrator determines that the Administration would be likely, in the absence of a bonus, to encounter difficulty in filling a position; and

(2) the individual—

(i) is newly appointed as an employee of the Federal Government; or

(ii) is currently employed by the Federal Government and is newly appointed to another position in the same geographic area; or

(iii) is currently employed by the Federal Government and is newly reappointed to a position in the same geographic area; or

(iv) has previously served in the Federal Government in a position in the same geographic area; or

(b) A bonus under this section may not exceed 50 percent of the employee’s annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period multiplied by the service period specified under subsection (d)(1)(B) or (1)(C) if the position is not described as addressing a critical need in the workforce plan under section 9902(b)(2)(A), the amount of a bonus may not exceed 25 percent of the employee’s annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

(c) The position is not described as addressing a critical need in the workforce plan under section 9902(b)(2)(A), the amount of a bonus may not exceed 25 percent of the employee’s annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

(d) (1)(A) Payment of a bonus under this section shall be contingent upon the employee entering into a service agreement with the Administration.

(B) At a minimum, the service agreement shall include—

(i) the required service period;

(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

(iii) the amount of the bonus and the basis for calculating that amount; and

(iv) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

(2) For purposes of determinations under subsections (b)(i) and (c)(1), the employee’s service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest month. The service period may not be less than 6 months and may not exceed 4 years.

(3) A bonus under this section may not be counted to be part of the basic pay of an employee.

(e) Before paying a bonus under this section, the Administration shall establish a plan for paying recruitment, redesignation, and relocation bonuses, subject to approval by the Office of Personnel Management.

§ 9905. Retention bonuses

(a) Notwithstanding section 5754, the Administrator may pay to an employee, in accordance with the workforce plan and subject to the limitations in this section, if the Administrator determines that—

(1) the unusually high or unique qualifications of the employee or a special need of the Administration for the employee’s services makes it essential to retain the employee; and

(2) the employee would be likely to leave in the absence of a retention bonus.

(b) The position is described as addressing a critical need in the workforce plan under section 9902(b)(2)(A), the amount of a bonus may not exceed 50 percent of the employee’s annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

(c) If the position is not described as addressing a critical need in the workforce plan under section 9902(b)(2)(A), the amount of a bonus may not exceed 25 percent of the employee’s annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

(d) (1)(A) Payment of a bonus under this section shall be contingent upon the employee entering into a service agreement with the Administration.

(B) At a minimum, the service agreement shall include—

(i) the required service period;

(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

(iii) the amount of the bonus and the basis for calculating that amount; and

(iv) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

(2) The employee’s service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest month. The service period may not be less than 6 months and may not exceed 4 years.

(3) The employee’s service period shall be considered to include any modification made in accordance with this subchapter.
any decision to change the retention bonus payments. The employee shall continue to accrue entitlement to the retention bonus through the end of the pay period in which such notice is provided.

(6) A bonus under this section may not be considered to be part of the basic pay of an employee.

(f) An employee is not entitled to a retention bonus under this section during a service period previously established for that employee under section 5731, or under section 9004.

§ 9906. Term appointments

(a) The Administrator may authorize term appointments within the Administration under subchapter I of chapter 33, for a period of not less than 1 year and not more than 6 years.

(b) Authority under this section

(1) the term appointment from which the conversion is made stated that there was potential for subsequent conversion to a career-conditional or career appointment;

(2) the announcement for the term appointment from which the conversion is made stated that there was potential for subsequent conversion to a career-conditional or career appointment within the Administration without further conversion to both.

(c) The Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration without further competition.

(d) The position to which such employee is being converted under this section is in the same occupational series, is in the same geographic location, and provides no greater promotion potential than the position from which the conversion is made.

(e) An employee is not entitled to a retention bonus under this section on detail to a private sector entity, the Administration or a foreign government or agency of a foreign government, that is not a State, local government, Federal agency, or other organization as defined in section 3371 (1), (2), (3), and (4), respectively.

(b) On request from or with the concurrence of a private sector entity, and with the consent of the employee concerned, the Administrator may arrange for the assignment of...

(A) An employee of the Administration serving under a career or career-conditional appointment, a career appointee in the Senior Executive Service, or an individual under a term appointment to an excepted service position, but excluding employees in positions which have been excepted from the competitive service by reason of their confidential, policy-determining, policymaking, or policy-advocating character, to a private sector entity; and

(B) an employee of a private sector entity to the Administration for work of mutual concern to the Administration and the private sector entity that the Administrator determines will be beneficial to both.

(c) The period of an assignment under this section may not exceed 2 years. However, the Administrator may specify a period of assignment for not more than 2 additional years.

(d) An employee of the Administration may be assigned under this section only if the employee agrees, as a condition of accepting an assignment, to serve in the Administration upon the completion of the assignment for a period equal to the length of the assignment. The Administrator may waive the requirement under this paragraph, with the approval of the Office of Management and Budget, with respect to any employee if the Administrator determines it to be in the best interests of the United States to do so.

(e) Each agreement required under paragraph (3) shall provide that if the employee fails to carry out the agreement (except in the case of a waiver made under paragraph (3)), the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount due shall be treated as a debt due the United States.

(f) An Administration employee assigned to a private sector entity under this section is deemed, during the assignment, to be on detail to a work assignment (as a detail to the entity).

(g) An Administration employee assigned under this section on detail remains an employee of the Administration. Chapter 171 of title 28 and any other Federal tort liability statute apply to the Administration employee so assigned, and all defenses available to the United States under these laws or applicable provisions of State law shall remain in effect. The supervision of the duties of an Administration employee assigned to the private sector entity through detail may be governed by agreement between the Administration and the private sector entity concerned.

(h) The assignment of an Administration employee on detail to a private sector entity under this section may be made with or without reimbursement by the private sector entity for the travel and transportation expenses to or from the place of assignment, for the pay, or supplemental pay, or a part thereof, of the employee, or for the contribution of the Administration to the employee’s benefit systems during the assignment. Any reimbursements shall be credited to the appropriation of the Administration used for the travel and transportation expenses, pay, or benefits, and not paid to the employee.
1(4) An employee of a private sector entity who is assigned to the Administration under an arrangement under this section shall be deemed on detail to the Administration.

1(2) During the period of assignment, a private sector employee shall be deemed to be employed by, and shall hold a position in, the Administration.

1(A) is not entitled to pay from the Administration, except to the extent that the pay received from the private sector entity is less than the appropriate rate of pay which the employee would be entitled to receive if the employee were employed by the United States, any instrumentality of the United States, or any private sector employer in accordance with the terms of the arrangement under which the employee is assigned to the Administration; and

1(B) the individual is obligated to provide.

1(C) the individual agrees to serve as an employee of the Administration, for the period described under subsection (b), in positions needed by the Administration and for which the individual is qualified.

1(D) is a United States citizen; and

1(E) at the time of the initial scholarship award, are not Federal employees as defined under section 2105.

1(2) For purposes of subsection (a)(1)(B), the period of service for which an individual is obligated to serve as an employee of the Administration is subject to subparagraph (A) of paragraph (2), 12 months for each academic year for which the scholarship is provided.

1(3) Subject to subparagraph (B), the Administrator may provide a scholarship under this section if the individual applying for the scholarship agrees that, not later than 120 days after obtaining the additional degree involved, the individual will begin serving full-time as an employee in satisfactory periods of service that the individual is obligated to provide.

1(3) The Administrator may provide a scholarship under subsection (a) for an academic year if the individual applying for the scholarship agrees to maintain a high level of academic standing as defined by regulation.

1(4) A scholarship may be awarded for the amount of a scholarship paid to an individual under this section.

1(4) The dollar amount of a scholarship awarded to an individual under this section shall be equal to the costs incurred in attending the institution involved.

1(5) The Administrator may enter into a contractual agreement with an institution of higher education under which the amounts provided in the scholarship for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which the scholarship is awarded, shall be credited to the United States for repayment of all scholarship funds paid to that recipient and to the Administration.
at a recognized college or university; and through completion of a specified curriculum the principles, concepts, and theories of the means a position that is classified to an oc-

year for scholarships under this section shall

necessary to carry out this section.

as the Administrator determines to be nec-

such agreements, assurance, and information

scholarship under this section if an applica-

est shall accrue on the payments required to

award, in accordance with the following for-

of months of the period of obligated service

of months of the period of obligated service

the compliance by the individual is

enforcement of such obligation with respect to any individual would be contrary to the best interests of the Government.

to provide a scholarship under this section if an applica-

for the scholarship is submitted to the Adminis-

and information as the Administrator deter-

Away There are authorized to be ap-

this section shall section 10,000,000 for fiscal year 2004 and

Amounts appropriated for a fiscal year

education is available only through completion of a specified curriculum at a recognized college or university; and

I"(B) is covered by the Group Coverage Qualification Standard for Professional and Scientific Positions; and

I"(2) the term 'research position' means a posi-

I"(1) a person newly appointed or rein-

I"(A) a career or career-conditional ap-

I"(B) a term appointment;

I"(C) an excepted service appointment that

I"(D) a career or limited term Senior Ex-

I"(G) an appointment to a position estab-

I"(1) with respect to a position at the GS-

I"(1) with respect to a position at the GS-

I"(2) with respect to a position at the GS-

I"(A) received, from an accredited institu-

I"(B) achieved a cumulative grade point

I"(C) achieved a cumulative grade point

I"(D) a career or limited term Senior Ex-

I"(E) the term 'S' means the number of

I"(F) the term 't' means the total number

I"(1) the term 'A' means the amount

I"(2) the term 'S' means the number of

I"(3) the term 's' means the num-

I"(4) the term 't' means the number

I"(1) the term 'F' means the sum of the

I"(2) the term 'S' means the number of

November 24, 2003

CONGRESSIONAL RECORD — SENATE

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educational institution on their behalf under

November 24, 2003

...
Seniors Executive Service position in the Administration, may be reassigned to another continuing position under a term prescribed under this section of which are continuing; and

(2) the term "limited term appointee" means an employee as defined under section 3132(b) which may be filled only by—

(A) a career appointee; or

(B) a limited emergency appointee or a limited term appointee.

(i) who, immediately before entering the career reserved position, was serving under a career or career-condition appointment outside the Senior Executive Service; or

(ii) whose limited emergency or limited term appointment is approved in advance by the Office of Personnel Management.

(ii) the term "limited emergency appointee" has the meaning given under section 3132, and

(iii) the term "limited term appointee" means an individual appointed to a Senior Executive Service position in the Administration to meet a bona fide temporary need, as determined by the Administrator.

(iii) the number of career reserved positions which are filled by an appointee as described under subsection (a)(1)(B) may not exceed 10 percent of the total number of Senior Executive Service positions allocated to the Administration.

(c) Notwithstanding sections 3132 and 3394—

(1) the Administrator may appoint an individual to any Senior Executive Service position in the Administration as a limited term appointee under this section for a period of—

(A) 4 years or less to a position the duties of which will expire at the end of such term; or

(B) 1 year or less to a position the duties of which are continuing; and

(2) in rare circumstances, the Administrator may approve the extension of a limited appointment under—

(A) paragraph (1)(A) for a period to exceed 2 years; and

(B) paragraph (1)(B) for a period not to exceed 1 year.

(d) A limited term appointee who has been appointed in the Administration from a career or career-condition appointment outside the Senior Executive Service shall have reemployment rights in the agency from which appointed, or in another agency, under conditions of employment established by the Office of Personnel Management. The Office shall have the authority to direct such placement in any agency.

(e) Notwithstanding section 3394(b) and section 3395—

(1) a limited term appointee serving under a term prescribed under this section may not be reassigned to another Senior Executive Service position in the Administration, the duties of which will expire at the end of a term of 4 years or less; and

(2) a limited term appointee serving under a term prescribed under this section may not serve in 1 or more positions in the Administration under such appointment in excess of 1 year, except that in rare circumstances, the Administrator may approve an extension up to an additional 1 year.

(f) A limited term appointee may not serve for more than 7 consecutive years under any combination of limited appointments.

(g) Notwithstanding section 3394, the Administrator may make an employee paid under the General Schedule at any step within the pay range for the grade of the position, based on a superior qualification of the employee, or the special need of the Administration.

(h) If an exercise of the authority under this section results in a current employee selected for another position within the Administration, a determination shall be made that the employee's contribution in the new position will exceed that in the former position, before setting pay under this section.

(i) Pay as set under this section is basic pay for which purposes as pay set under section 5334.

(j) If the employee serves for at least 1 year in the position for which the pay determination under this section was made, or for a successor position, the pay earned under such position may be used in succeeding actions to set pay under chapter 53.

(k) The Administrator may waive the restrictions in subsection (e), based on criteria established in the plan required under subsection (g).

(l) Before setting any employee's pay under this section, the Administrator shall submit a plan to the Office of Personnel Management.

(m) If a successor position, the pay earned under this section; the pay earned under the plan required under this section was made, or a successor position, the pay earned under such position may be used in succeeding actions to set pay under chapter 53.

(n) The Administrator may waive the restrictions in subsection (e), based on criteria established in the plan required under this section.

(2) the term "critical need" means a specific and important requirement of the Administration, the Administration being unable to fulfill because the Administration lacks the appropriate employees because—

(A) of the inability to fill positions; or

(B) employees do not possess the requisite skills;

(3) the term "employee" means an individual employed in or under the Administration;

(4) the term "workforce plan" means the plan required under section 9802(a); and

(5) the term "appropriate committees of Congress" means—

(A) the Committees on Government Reform, Science, and Appropriations of the House of Representatives; and

(B) the Committees on Governmental Affairs, Commerce, Science, and Transportation, and Appropriations of the Senate; and

(6) the term "redesignation bonus" means a bonus under section 9804 paid to an individual described in subsection (1)(2) thereof.

§9802. Planning, notification, and reporting requirements

(a) Not later than 60 days before exercising any of the workforce authorities under this subsection, the Administrator shall submit a written plan to the appropriate Committees of Congress. A plan under this subsection may not be
implemented without the approval of the Office of Personnel Management.

"(b) A workforce plan shall include a description of each such critical need of the Administration and the criteria used in the identification of that need;

"(2)(A) the functions, approximate number, and classes or other categories of positions or employees that—

"(i) address critical needs; and

"(ii) have successfully addressed each critical need identified under paragraph (1); and

"(B) the methods that will be used to determine if the authorities exercised under this subchapter are implemented in a manner consistent with merit system principles;

"(1) each critical need of the Administration;

"(2) give any recommendations received from any such recruiting authorities, and, if necessary, the reasons why any recommendations were not accepted;

"(3) recommendations for how the Administration could address or prevent any critical need and could prevent those that have been addressed from recurring.

"§9803. Workforce authorities

(a) The workforce authorities under this subchapter are the following:

"(1) The authority to pay recruitment, redesignation, and relocation bonuses under section 9804.

"(2) The authority to pay retention bonuses under section 9805.

"(3) The authority to make term appointments and to take related personnel actions under section 9806.

"(4) The authority to fix rates of basic pay for critical positions under section 9807.

"(5) The authority to extend intergovernmental personnel act assignments under section 9808.

"(6) The authority to apply subchapter II of chapter 35 in accordance with section 9810.

"(b) No authority under this subchapter may be exercised with respect to any individual who is currently employed by the Federal Government.

"(c) Not later than 60 days before first exercising such authorities made available under this subchapter, the Administrator shall provide to all employees the workforce plan to which the Administrator considers appropriate.

"(d)(1)(A) The Administrator may submit any written plan under subsection (b)(1) to the appropriate committees of Congress.

"(B) Any reference in this subchapter or any provision of law to the Administration shall be construed as including the Administrator.

"(2) Any reference to the limitations in this section, if the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed—

"(1) 25 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period specified under subsection (d)(1)(B)(i); or

"(2) 100 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period specified under subsection (d)(1)(B)(i); or

"(c) If the position is not described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed—

"(1) 25 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period specified under subsection (d)(1)(B)(i); or

"(2) 100 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

"(d)(1)(A) Payment of a bonus under this section shall be contingent upon the individual entering into a service agreement with the Administrator.

"(B) At a minimum, the service agreement shall include—

"(i) the required service period;

"(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

"(iii) the amount of the bonus and the basis for calculating that amount; and

"(iv) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

"(2) For purposes of determinations under subsections (b)(1) and (c)(1), the employee's service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

"(3) A bonus under this section may not be considered to be part of the basic pay of an employee.

"(e) Before paying a bonus under this section, the Administrator shall establish a plan for paying recruitment, redesignation, and relocation bonuses, subject to approval by the Office of Personnel Management.

"(f) More than a 25 percent of the total amount in bonuses awarded under subsection (a) in any year may be awarded to supervisors or management officials (as such terms are defined in section 7103(a) (10) and (11), respectively).

"§9804. Recruitment, redesignation, and relocation bonuses

(a) Notwithstanding section 5753, the Administrator may pay a bonus to an employee, in accordance with the workforce plan and subject to the limitations in this section, if—

"(1) the Administrator determines that the employee's services are unique or of high or unique qualifications of the employee or a special need of the Administration for the employee's services makes it essential to retain the employee; and

"(2) the employee is likely to leave in the absence of a retention bonus.

"(b) If the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 50 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

"(c) If the position is not described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 25 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

"(1)(A) Payment of a bonus under this section shall be contingent upon the individual entering into a service agreement with the Administrator.
“(B) At a minimum, the service agreement shall include—

(i) the required service period;

(ii) the method of payment, including a payment plan which may include a lump sum payment, installment payments, or a combination thereof;

(iii) the amount of the bonus and the basis for calculating the amount; and

(iv) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

(2) The employee’s service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

(3) Notwithstanding paragraph (1), a service agreement is not required if the Administration pays a bonus in biweekly installments and sets the installment payment at the full bonus percentage for the employment period, with no portion of the bonus deferred. In this case, the Administration shall inform the employee in writing of any decision to change the retention bonus payment. The employee shall continue to accrue entitlement to the retention bonus through the end of the pay period in which such written notice is provided.

(4) A bonus under this section may not be considered to be part of the basic pay of an employee.

(5) An employee is not entitled to a retention bonus during a service period previously established for that employee under section 5753 or under section 9004.

(6) No more than 25 percent of the total amount in bonuses awarded under subsection (a) in any year may be awarded to supervisors or management officials (as such terms are defined in section 7503(a)(10) and (11), respectively).

§9806. Term appointments

(a) The Administrator may authorize term appointments within the Administration under subchapter I of chapter 33, for a period of not less than 1 year and not more than 6 years, with no portion of the bonus deferred. In this case, the Administration shall inform the employee in writing of any decision to change the retention bonus payment. The employee shall continue to accrue entitlement to the retention bonus through the end of the pay period in which such written notice is provided.

(b) A bonus under this section may not be considered to be part of the basic pay of an employee.

(1) The annual rate of basic pay fixed under this section may not exceed the per annum rate of basic pay (including any comparability payments) which would otherwise be payable for the position involved if this section had never been enacted.

(2) The rate of basic pay fixed under this section may not exceed 10 at any time.

(3) The rate of basic pay fixed under this section may not exceed the rate of basic pay (including any comparability payments) which would otherwise be payable for the position involved if this section had never been enacted.

(4) The rate of basic pay fixed under this section may not exceed the rate of basic pay (including any comparability payments) which would otherwise be payable for the position involved if this section had never been enacted.

§9807. Pay authority for critical positions

(a) In this section, the term ‘position’ means—

(i) a position to which chapter 51 applies, including a position in the Senior Executive Service;

(ii) a position under the Executive Schedule under sections 5312 through 5317; and

(iii) a senior-level position to which section 5371a(c)(1) applies.

(b) Authority under this section—

(i) may be exercised only with respect to a position that—

(1) is described as addressing a critical need in the workforce plan under section 9002(b)(2)(A); and

(2) requires expertise of an extremely high level in a scientific, technical, professional, or administrative field.

(ii) may be exercised only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position, and

(iii) may be exercised only to the extent necessary to retain employees of the Administration or in appointing individuals who were not employees of another Federal agency as defined under section 5102(a).

(c) The number of positions with pay fixed under this section may not exceed 25 percent of the total number of positions with pay fixed under this section in the Administration in accordance with this section.

(d) The number of positions with pay fixed under this section may not exceed 10 at any time.

§9808. Assignments of intergovernmental personnel

For purposes of applying the third sentence of section 3372(a) (relating to the authority of the head of a Federal agency to extend the period of an employee’s assignment to or from a State or local government, institution of higher education, or other organization), the Administrator may, with the concurrence of the employee and the government or organization concerned, take any action which would be allowable if such sentence had been amended by striking ‘two’ and inserting ‘four’.

SUBCHAPTER II—PERSONNEL PROVISIONS

§9831. Definitions

For purposes of this subchapter, the terms ‘Administration’ and ‘Administrator’ have the meanings set forth in section 9801.

§9832. Administration and private sector exchange assignments

(a) In this section—

(1) the term ‘private sector employee’ means an employee of a private sector entity that the Administration is authorized to assign to the Administration;

(2) the term ‘private sector entity’ means an organization, company, corporation, or other business concern, or a foreign government or a foreign government agency of a foreign government that is not a State, local government, Federal agency, or other organization as defined under section 3371 (2), (3), and (4), respectively;

(b) On request from or with the concurrence of a private sector entity, and with the consent of the employee concerned, the Administration may arrange for the employee to be an employee of a private sector entity;

(c) An employee of a private sector entity serving in a scientific or technical position to which the assignment is made under this section may be paid to such employee if, or to the extent the assignment is made under this section may not exceed 2 years. However, the Administrator may extend the period of assignment for not more than 2 additional years.

(d) An employee of a private sector entity may be assigned under this section only if the employee agrees, as a condition of accepting an assignment, to serve in the Administration upon the completion of the assignment in an amount equal to the length of the assignment. The Administrator may waive the requirement under this paragraph, with the approval of the Office of Management and Budget, with respect to any employee if the Administrator determines it to be in the best interests of the United States to do so.

(e) (1) Each agreement required under paragraph (3) shall provide that if the employee fails to carry out the agreement (except in the case of a service made under paragraph (3)), the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount due shall be treated as a debt due the United States.

(f) (1) An Administration employee assigned to a private sector entity under this section is deemed, during the assignment, to be on detail to the Administration.

§9833. Administration and private sector exchange assignments

(a) In this section—

(1) the term ‘private sector employee’ means an employee of a private sector entity that the Administration is authorized to assign to the Administration;

(2) the term ‘private sector entity’ means an organization, company, corporation, or other business concern, or a foreign government or a foreign government agency of a foreign government that is not a State, local government, Federal agency, or other organization as defined under section 3371 (2), (3), and (4), respectively;

(b) On request from or with the concurrence of a private sector entity, and with the consent of the employee concerned, the Administration may arrange for the employee to be an employee of a private sector entity;

(c) An employee of a private sector entity serving in a scientific or technical position to which the assignment is made under this section may be paid to such employee if, or to the extent the assignment is made under this section may not exceed 2 years. However, the Administrator may extend the period of assignment for not more than 2 additional years.

(d) An employee of a private sector entity may be assigned under this section only if the employee agrees, as a condition of accepting an assignment, to serve in the Administration upon the completion of the assignment in an amount equal to the length of the assignment. The Administrator may waive the requirement under this paragraph, with the approval of the Office of Management and Budget, with respect to any employee if the Administrator determines it to be in the best interests of the United States to do so.

(e) Each agreement required under paragraph (3) shall provide that if the employee fails to carry out the agreement (except in the case of a service made under paragraph (3)), the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount due shall be treated as a debt due the United States.

(f) An Administration employee assigned to a private sector entity under this section on detail remains an employee of the Administration. Chapter 171 of title 28 and any other Federal tort liability statute apply to the Administration employee so as to treat the Administration employee as a detailee to the entity.

(g) An Administration employee assigned under this section on detail remains an employee of the Administration. Chapter 171 of title 28 and any other Federal tort liability statute applies to the Administration employee so as to treat the Administration employee as a detailee to the entity.
(A) is not entitled to pay from the Administra-
tion, except to the extent that the pay re-
ceived from the private sector entity is less than
the appropriate rate of pay which the duties
would have entailed if pay provisions of this title
or any other applicable authority;

(B) is deemed an employee of the Administra-
tion for purposes of chapter 73 or 75 of title 5,
the Ethics in Government Act of 1978, section 27
of the Office of Federal Procurement Policy Act,
sections 201, 203, 205, 207, 208, 209, 602, 603, 606,
607, 609, 610, and 1231 of title 10, sections 1343, 1344,
and 1349(b) of title 31, chapter 171 of title 28, and any other Federal tort lia-

(C) notwithstanding subparagraph (B), is also
deemed to be an employee of his or her pri-

(D) is subject to such regulations as the Ad-

(3) The supervision of the duties of an em-

(4) A detail of a private sector employee to
the Administration may be made with or with-
out reimbursement by the Administration for the pay,
costs under a Federal contract, the costs of pay,
or a part thereof, of the employee during the period
of assignment, or for the contribution
of the private sector entity, or a part thereof, to
employee benefit systems.

(5)(A) A private sector employee on detail to
the Administration under this section who suf-
mers disability or dies as a result of personal in-
jury sustained while in the performance of du-
ties during the assignment shall be treated, for
purposes of subchapter I of chapter 81 as an
employee as defined under section 8101 who had
sustained the injury in the performance of du-
ties.

(B) When an employee (or the employee’s de-
pendents in case of death) entitled by reason of injury
suffered under subchapter I of chapter 81 is also entitled to benefits from
the employee’s private sector employer for the same
injury or death, the employee (or the employee’s dependents in case of death) shall elect which
benefits the employee will receive. The election
shall be made within 1 year after the injury or
death, or such further time as the Secretary of Labor
can approve, if good cause shown.

(C) Except as provided in subparagraphs (A) and
(B), the United States, any instrumentality of the
United States, or any employee, agent, or assign of
the United States shall not be liable to

(ii) a temporary employee assigned to the Administration under this section;

(iii) such employee’s legal representative, spouse, dependents, survivors, or part of kin;

(iv) any other person, including any third party as to whom such employee, or that
employee’s legal representative, spouse, dependents, survivors, or next of kin, has a cause of
action arising out of an injury or death sus-
tained in the performance of duty pursuant to
an assignment under this section, other-
etti

(iii) travel, including a per diem allowance, to
and from the assignment location;

(iv) in those cases where the assignment
location during the period of the assignment,

(3) The Administration may allow for reasonable cause shown.

(b) In order to be eligible to participate in
the Administration shall establish a
Science and Technology Scholarship Program
under this section, an individual shall
be deferred through regulation.

(1) Scholarship recipients who fail to
maintain a high level of academic standing, as
defined by the Administration, or
are dismissed from their educational institu-
tions for disciplinary reasons, or who voluntarily ter-
minate academic training before graduation from
the educational program for which the
scholarship was awarded, shall be in breach of
their contract and in lieu of any
service obligation arising under such agreement,
shall repay

(2) The period of service for which an indi-

(3) To carry out the Program the Adminis-
trator shall enter into agreements with
individuals selected under paragraph (2)
under which the individuals agree to serve as
full-time employees of the Administration, for
the period or periods and on such terms and
conditions as may be determined by the Adminis-
tration, to provide services to or for the
benefit of the Administration, for the period
of time specified in the agreement, at an
amount equal to the full-time re-

(4) The Administration may defer the obliga-
tion of an individual to provide a service
obligation under this paragraph in whole or in
part, where the Administrator de-

(5) The Administrator may enter into a
contractual agreement with an institution
of higher education under which the amounts pro-
scribed in the list made available under subsection (d)
shall be in breach of their contractual agreement and, in lieu of any
service obligation arising under such agreement, shall repay

(6) The period of service for which an in-
dividual is obligated to serve as an employee
of the Administration is, except as provided
in subsection (h)(2), 12 months for each
academic year for which a scholarship under
this section is provided.

(2)(A) Except as provided in subparagraph
(B), obligated service under paragraph (1) shall
begin not later than 60 days after the individual
obtains the educational degree for which the
scholarship was provided.

(B) The Administrator may defer the
obligation of an individual to provide a service
obligation under this paragraph in whole or in
part, where the Administrator de-

(1) Scholarship recipients who fail to
maintain a high level of academic standing, as
defined by the Administration, or
are dismissed from their educational institu-
tions for disciplinary reasons, or who voluntarily ter-
minate academic training before graduation from
the educational program for which the
scholarship was awarded, shall be in breach of
their contract and in lieu of any
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conditions as may be determined by the Adminis-
tration, to provide services to or for the
benefit of the Administration, for the period
of time specified in the agreement, at an
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this section is provided.

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the educational program for which the
scholarship was awarded, shall be in breach of
their contract and in lieu of any
service obligation arising under such agreement,
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(2) The period of service for which an indi-

(3) To carry out the Program the Adminis-
trator shall enter into agreements with
individuals selected under paragraph (2)
under which the individuals agree to serve as
full-time employees of the Administration, for
the period or periods and on such terms and
conditions as may be determined by the Adminis-
tration, to provide services to or for the
benefit of the Administration, for the period
of time specified in the agreement, at an
amount equal to the full-time re-

(4) The Administration may defer the obliga-
tion of an individual to provide a service
obligation under this paragraph in whole or in
part, where the Administrator de-

(5) The Administrator may enter into a
contractual agreement with an institution
of higher education under which the amounts pro-
scribed in the list made available under subsection (d)
shall be in breach of their contractual agreement and, in lieu of any
service obligation arising under such agreement, shall repay

(6) The period of service for which an in-
dividual is obligated to serve as an employee
of the Administration is, except as provided
in subsection (h)(2), 12 months for each
academic year for which a scholarship under
this section is provided.
"(A) the total amount of scholarships received by such individual under this section; plus

(B) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States, multiplied by the number of years during which the individual has been an appointee to the same extent, in the same manner, and subject to the same conditions as provided in section 5108; or

(h)(1) Any obligation of an individual incurred under the Program (or a contractual agreement thereunder) for service or payment shall not be canceled upon the death of the individual.

(2) The Administrator shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment incurred by an individual under the Program (or a contractual agreement thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be contrary to the best interests of the Government.

(i) For purposes of this section—

"(1) the term 'cost of attendance' has the meaning given that term in section 472 of the Higher Education Act of 1965; and

"(2) the term 'institution of higher education' has the meaning given that term in section 101(a) of the Higher Education Act of 1965; and

"(3) the term 'National Aeronautics and Space Administration Science and Technology Scholarship Program established under section 9836. Annual leave enhancements

"[A] The term 'career reserved position' means a position that is classified to an occupational series identified by the Office of Personnel Management as a position that—

"(A) requires education and training in the principles, concepts, and theories of the occupation that typically can be gained only through completion of a specified curriculum at a recognized college or university; and

"(B) is covered by the Group Coverage Qualification Standard for Professional and Scientific Positions.

"(2) The term 'research position' means a position in a professional series that primarily involves scientific inquiry or investigation, or research and development of creative or scientific nature, where the knowledge required to perform the work successfully is acquired typically and primarily through graduate study.

(b) The Administration may appoint, without regard to the provisions of sections 3304(b) and 3309 through 3318, candidates directly to General Schedule professional positions in the Administration for which public notice has been given, if—

"(1) with respect to a position at the GS-7 level, the individual—

"(A) received, from an accredited institution authorized to grant baccalaureate degrees, a baccalaureate degree in a field of study for which possession of that degree in conjunction with academic achievements meets the qualification standards as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

"(B) achieved a cumulative grade point average of 3.0 or higher on a 4.0 scale and a grade point average of 3.5 or higher for courses in the field of study required to qualify for the position;

"(2) with respect to a position at the GS-9 level, the individual—

"(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

"(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position; or

"(3) with respect to a position at the GS-11 level, the individual—

"(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

"(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position; or

"(4) with respect to a research position at the GS-12 level, the individual—

"(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

"(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position.

(c) Veterans' preference procedures shall apply when selecting candidates under this section. Preference eligibles who meet the criteria for distinguished scholar appointments shall be considered ahead of other preference eligibles.

(d) An appointment made under this authority shall be a career-conditional appointment in the competitive civil service.

§9835. Travel and transportation expenses of certain new appointees

"(a) In this section, the term 'new appointee' means—

"(1) a person newly appointed or reinstated to Federal service to the Administration to—

"(A) a career or career-conditional appointment;

"(B) a term appointment;

"(C) an excepted service appointment that provides for noncompetitive conversion to a career or career-conditional appointment;

"(D) an entry-level limited term Senior Executive Service appointment;

"(E) an appointment made under section 20(b)(2)(A)(i) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A));

"(F) an appointment to a position established under section 3104; or

"(G) an appointment to a position established under section 5108; or

"(2) a student trainee who, upon completion of academic work, is converted to an appointment in the Administrations to which the trainee is identified in paragraph (1) in accordance with an appropriate authority.

(b) The Administrator may pay the travel, transportation, and relocation expenses of a new appointee to the same extent, in the same manner, and subject to the same conditions as the payment of such expenses to employees transferred in the interests of the United States Government under section 6303; and

§9836. Annual leave enhancements

"(a) In this section—

"(1) the term 'newly appointed employee' means an individual who is first appointed—

"(i) regardless of tenure, as an employee of the Federal Government for each full biweekly pay period.

"(ii) whose limited emergency or limited term appointment is approved in advance by the Office of Personnel Management for the performance of duties at a location other than the home base of the individual.

"(iii) as an employee of the Federal Government following a break in service of at least 90 days after that individual's last period of Federal employment, other than—

"(I) employment under the Student Educational Employment Program administered by the Office of Personnel Management;

"(II) employment as a law clerk trainee;

"(III) employment under a short-term temporary appointment authorized pursuant to student appointments of vacation from the educational institution at which the student is enrolled;

"(IV) employment under a provisional appointment of the new appointment is permanent and immediately follows the provisional appointment; or

"(V) employment under a temporary appointment that is neither full-time nor the principal employment of the individual;

"(b) The term 'period of qualified non-Federal service' means any period of service performed by an individual that—

"(i) was performed in a position the duties of which were directly related to the duties of the position in the Administration to which that individual will fill as a newly appointed employee; and

"(ii) except for this section, would not otherwise be service performed by an employee for purposes of section 6303.

"(c) The term 'directly related to the duties of the position' means duties and responsibilities in such a nature or degree that work which require similar qualifications.

(b) For purposes of section 6303, the Administrator may deem a period of qualified non-Federal service performed by a newly appointed employee to be a period of service of equal length performed as an employee.

(1) A period deemed by the Administrator under paragraph (1) shall continue to apply to the employee during—

"(A) the period of Federal service in which the demeaning is made; and

"(B) any subsequent period of Federal service.

(c) Notwithstanding section 6303(a), the annual leave accrual rate for an employee of the Administration in a position paid under section 5376 or 5383, or for an employee in an equivalent category whose rate of basic pay is greater than the rate payable at GS-15, step 10, shall be 1 day for each full biweekly pay period.

(2) The accrual rate established under this paragraph shall continue to apply to the employee during—

"(A) the period of Federal service in which such accrual rate first applies; and

"(B) any subsequent period of Federal service.

§9837. Limited appointments to Senior Executive Service positions

(a) In this section—

"(1) the term 'career reserved position' means a position in the Administration designated under section 3312(b) which may be filled only by—

"(A) a career appointee; or

"(B) a limited emergency appointee or a limited term appointee.

(b) If, immediately before entering the career reserved position, was serving under a career or career-conditional appointment outside the Senior Executive Service, or

"(i) whose limited emergency or limited term appointment is approved in advance by the Office of Personnel Management;

"(ii) the term 'limited emergency appointee' has the meaning given under section 3312; and

"(2) the term 'limited term appointee' means an individual appointed to a Senior Executive Service position in the Administration to meet a bona fide temporary need, as determined by the Administrator.

"(B) The number of career reserved positions which shall be filled by an appointee as described under subsection (a)(1)(B) may not exceed 10 percent of the total number of Senior Executive Service positions allocated to the Administration.
“(1) the Administrator may appoint an individual to any Senior Executive Service position in the Administration as a limited term appointee under this section for a period of—
(A) a position the duties of which will expire at the end of such term; or
(B) 1 year or less to a position the duties of which are continuing; and

“(2) in rare circumstances, the Administrator may authorize an extension of a limited appointment under—
(A) paragraph (1)(A) for a period not to exceed 2 years; and
(B) paragraph (1)(B) for a period not to exceed 1 year.

“(d) A limited term appointee who has been appointed in the Administration from a career or career-condition appointment outside the Senior Executive Service shall have reemployment rights in the agency from which appointed, or in another agency, under requirements and conditions established by the Office of Personnel Management. The Office shall have the authority to direct such placement in any agency.

“(e) Notwithstanding section 3394(b) and section 3395—

“(1) a limited term appointee serving under a term prescribed under this section may be reappointed to a position in the Administration, the duties of which will expire at the end of a term of 4 years or less; and

“(2) a limited term appointee serving under a term prescribed under this section may be reappointed to a position in the Administration, except that the appointee may not serve in 1 or more positions in the Administration under such appointment for a period of 1 year, except that in rare circumstances, the Administrator may approve an extension up to an additional 1 year.

“(f) A limited term appointee may not serve more than 2 consecutive years under any combination of limited appointments.

“(g) Notwithstanding section 5384, the Administrator may authorize performance awards to limited term appointees in the Administration in the same amounts and in the same manner as career appointees.

§9838. Superior qualifications pay

“(a) In this section the term ‘employee’ means an employee as defined under section 2105 who is employed in the Administration.

“(b) Notwithstanding section 5334, the Administrator may set the pay of an employee paid under a general Schedule at any step within the pay range for the grade of the position, based on the superior qualifications of the employee, or the special need of the Administration.

“(c) If an exercise of the authority under this section relates to a current employee selected for another position within the Administration, a determination shall be made that the employee’s contribution in the new position will exceed that in the former position, before setting pay under this section.

“(d) Pay as set under this section is basic pay for such purposes as pay set under section 5334.

“(e) If the employee serves for at least 1 year in the position for which the pay determination under this section was made, or in a successor position, the pay earned under such position may be used in succeeding actions to set pay under section 33.

“(f) The Administrator may waive the restrictions in subsection (e), based on criteria established in the plan required under subsection (g).

“(g) Before setting any employee’s pay under this subsection, the Administrator shall submit to the Office of Personnel Management, that includes—

“(1) criteria for approval of actions to set pay under this section;

“(2) the level of approval required to set pay under this section;

“(3) all types of actions and positions to be covered;

“(4) the relationship between the exercise of authority under this section and the use of other pay incentives; and

“(5) a process to evaluate the effectiveness of this section.

(b) Technical and conforming amendments.

(1) Table of chapters.—The table of chapters for subchapter I of part III of title 5, United States Code, is amended by adding after the item relating to chapter 97 the following:

‘‘98. National Aeronautics and Space Administration.’’

(2) Compensation for certain excepted personnel.—Subsection (c)(2) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A)(ii)) is amended by—

(A) inserting ‘‘striking the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended.’’; and

(B) inserting ‘‘the rate of basic pay payable for level III of the Executive Schedule.’’

(3) Compensation clarification.—Section 209 of title 18, United States Code, as amended by section 209(g)(2) of the E-Government Act of 2002 (Public Law 107-347; 116 Stat. 2932), is amended by—

(A) striking at the end the following:

‘‘(ii) This section does not permit an employee of a private sector organization, while assigned to the National Aeronautics and Space Administration under section 9832 of title 5, from continuing to receive pay and benefits from that organization in accordance with section 9832 of the title.’’;

(B) inserting ‘‘the end and inserting

‘‘(2) in rare circumstances, the Administrator may authorize an extension of a limited term appointee who has been appointed in the Administration from a career or career-condition appointment outside the Senior Executive Service, for a period not to exceed 1 year, except that in rare circumstances, the Administrator may approve an extension up to an additional 1 year.

Mr. ENSIGN. Mr. President, I ask unanimous consent that the amendment (No. 2214) be agreed to, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements relating to this measure be printed in the RECORD.

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

The bill (S. 1537) was read the third time and passed, as follows:

S. 1537

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

SECTION 1. CONVEYANCE OF PROPERTY IN POPE COUNTY, ARKANSAS.

(a) Conveyance on condition subsequent.—Not later than 90 days after the date of enactment of this Act, subject to valid existing rights and the condition stated in subsection (c), the Secretary of Agriculture, acting through the Chief of the Forest Service (referred to in this section as the ‘‘Secretary’’), shall convey to the New Hope Cemetery Association (referred to in this section as the ‘‘Association’’), all right, title, and interest of the United States in and to the parcel of land described in subsection (b).

(b) Description of land.—The parcel of land to be conveyed is—

(1) a parcel of National Forest System land (including any improvements on the land) that—

(A) is known as ‘‘New Hope Cemetery Tract 6696c’’;

(B) consists of approximately 1.1 acres; and

(3) is more particularly described as a portion of the SE ¼ of the NW ¼ of section 30, T. 11 N., R. 17W., Pope County, Arkansas.

(c) Condition on use of land.—(1) In general.—The Association shall use the parcel conveyed under subsection (a) as a cemetery.

(2) Reversion.—If the Secretary, after notice to the association and an opportunity for a hearing, makes a finding that the association has used or permitted the use of the parcel for any purpose other than the purpose specified in paragraph (1), and the association fails to discontinue that use, title to the parcel shall, at the discretion of the Secretary, revert to the United States, to be administered by the Secretary.
AUTHORIZING TO SELL OR EXCHANGE CERTAIN ADMINISTRATIVE SITES AND OTHER LAND

Mr. ENSIGN. Mr. President, I ask unanimous consent that the Committee on Agriculture be discharged from further consideration of S. 33 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 33) to authorize the Secretary of Agriculture to sell or exchange all or part of certain administrative sites and other land in the Ozark-St. Francis and Ouachita National Forests and to use funds derived from the sale or exchange to acquire, construct, or improve administrative sites.

There being no objection, the Senate proceeded to consider the bill.

Mr. ENSIGN. Mr. President, I ask unanimous consent that the bill be read three times and passed; that the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements relating to this measure be printed in the Record.

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

The bill (S. 33) was read the third time and passed, as follows:

SEC. 1. SALE OR EXCHANGE OF LAND.

(a) In General.—The Secretary of Agriculture may sell or exchange all or part of certain administrative sites and other land in the Ozark-St. Francis and Ouachita National Forests and to use funds derived from the sale or exchange to acquire, construct, or improve administrative sites.

(b) Applicable Authorities.—Except as otherwise provided in this Act, any sale or exchange of land described in subsection (a) shall be subject to laws (including regulations) applicable to the conveyance and acquisition of land for National Forest System purposes.

(c) Cash Equalization.—Notwithstanding any other provision of law, the Secretary may accept cash equalization payments in excess of 25 percent of the total value of the land described in subsection (a) from any exchange under subsection (a).

(d) Solicitations of Offers.—

(1) In General.—In carrying out this Act, the Secretary may use solicitations of offers for the sale of such administrative sites and such terms and conditions as the Secretary may prescribe.

(2) Rejection of Offers.—The Secretary may reject any offer under this Act if the Secretary determines that the offer is not adequate or not in the public interest.

SEC. 2. DISPOSITION OF FUNDS.

Any funds received by the Secretary through sale or by cash equalization from an exchange—

(1) shall be deposited into the fund established by Public Law 90-128 (commonly known as the "Sisk Act") (16 U.S.C. 484a); and

(2) shall be available for expenditure, without further act of appropriation, for the acquisition, construction, or improvement of administrative facilities, land, or interests in land for the national forests in the States of Arkansas and Oklahoma.

SEC. 3. AUTHORIZATION OF APPRAISATIONS.

There are authorized to be appraised such sums as are necessary to carry out this Act.

ADJUSTING BOUNDARIES OF GREEN MOUNTAIN NATIONAL FOREST

Mr. ENSIGN. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of S. 1499 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1499) to adjust the boundaries of Green Mountain National Forest.

There being no objection, the Senate proceeded to consider the bill.

Mr. ENSIGN. Mr. President, I ask unanimous consent that the bill be read three times and passed; that the motion to reconsider be laid upon the table; and that any statements relating to the bill be printed in the Record.

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

The bill (S. 1499) was read the third time and passed, as follows:

S. 1499

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

SECTION 1. GREEN MOUNTAIN NATIONAL FOREST

(a) In General.—The boundaries of the Green Mountain National Forest are modified to include all parcels of land depicted on four maps entitled "Green Mountain Expansion Area Map I" and "Green Mountain Expansion Area Map II", each dated...
February 20, 2003, which shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Washington, District of Columbia.

(b) MANAGEMENT.—Federally owned land delineated on the maps acquired for National Forest purposes shall continue to be managed in accordance with the laws (including regulations) applicable to the National Forest System.

(c) LAND AND WATER CONSERVATION FUND.—For the purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460c–9), the boundaries of the Green Mountain National Forest, as adjusted by this Act, shall be considered to be the boundaries of the national forest as of January 1, 1965.

NATIONAL VETERINARY MEDICAL SERVICES ACT

Mr. ENSIGN. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of H.R. 1367 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I am wondering if the Senator from Nevada is qualified to talk about a bill such as this.

Mr. ENSIGN. Mr. President, this is legislation that I authored and was very proud to have authored. This is the bill that is going to help protect large cats from being owned in a place such as New York and kept in apartments.

Mr. REID. I ask that the Senator from Nevada be listed as cosponsor of this important legislation.

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

Without objection, the clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1367) to authorize the Secretary of Agriculture to conduct a loan repayment program regarding the provision of veterinary services in shortage situations, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, will the Senator withhold? We have had a very difficult day. I was trying to add a little levity to it. Senator ENSIGN is, of course, a veterinarian. He is the acting majority leader. I thought he was moving a bill dealing with veterinarians. I should bring to the attention of the American public, we have a veterinarian sitting in the Senate.

Mr. ENSIGN. Mr. President, I ask unanimous consent that the bill be read three times and passed, and that any statements relating to the bill be printed in the Record.

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

The bill (H.R. 1367) was read the third time and passed.

THE CALENDAR

Mr. ENSIGN. Mr. President, I ask unanimous consent that it be in order for the Senate to proceed en bloc to the consideration of the following calendar items: Calendar No. 41, S. 425; Calendar No. 255, S. 391; Calendar No. 256, S. 434; Calendar No. 257, S. 435; Calendar No. 258, S. 452; Calendar No. 259, S. 714; Calendar No. 460, S. 1003; Calendar No. 261, H.R. 622; and Calendar No. 262, H.R. 1012.

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

WIND CAVE NATIONAL PARK BOUNDARY REVISION ACT OF 2003

The bill (S. 425) to revise the boundary of the Wind Cave National Park in the State of South Dakota, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 425.

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 "Wind Cave National Park Boundary Revision Act of 2003."

SEC. 2. DEFINITIONS.

In this Act:

(1) MAP.—The term "map" means the map entitled "Wind Cave National Park Boundary Revision", numbered 108/80,030, and dated 1 June 2002.

(2) PARK.—The term "Park" means the Wind Cave National Park in the State.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(4) STATE.—The term "State" means the State of South Dakota.

SEC. 3. LAND ACQUISITION.

(a) AUTHORITY.—

(1) IN GENERAL.—The Secretary may acquire the land or interest in land described in subsection (b)(1) for addition to the Park.

(2) MEANS.—An acquisition of land under paragraph (1) may be made by donation, purchase from a willing seller with donated or appropriated funds, or exchange.

(b) BOUNDARY.—The boundary of the Park shall be adjusted to reflect the acquisition of land under subsection (a)(1).

SEC. 4. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer any land acquired under section 3(a)(1) as part of the Park in accordance with laws (including regulations) applicable to the Park.

(b) TRANSFER OF ADMINISTRATIVE JURISDICTION.—

WILD SKY WILDERNESS ACT OF 2003

The Senate proceeded to consider the bill (S. 391) to enhance ecosystem protection and the range of outdoor opportunities protected by statute in the Skykomish River valley of the State of Washington by designating certain lower-elevation Federal lands as wilderness, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

Strike the parts shown in black brackets and insert the parts shown in italic.]
trees in Washington, with diameters of eight feet and larger.

[5] These diverse, thickly forested mountain slopes and valleys of mature and old-growth trees in the Skykomish River valley harbor nearly the full complement of the original wildlife and fish species found by settlers of the 19th century, including moun-
tain goats, black-tailed deer, as well as rare and endangered wildlife such as northern spotted owls and goshawks, Chinook and Coho salmon, and Bull trout.

[6] An ecologically and topographically diverse wilderness area in the Skykomish River valley accessible in all seasons of the year by users and providers of various kinds, such as hikers, horse riders, hunters, anglers, and educational groups, but also to the many who cherish clean water and clean air, fish and wildlife (including endangered species such as wild salmon), and pristine mountain and riverside scenery.

(b) STATEMENT OF POLICY.—Congress hereby declares that it is the policy of the United States:

[1] To better serve the diverse wilderness and environmental education needs of the people of Washington State, by making available to the public, as areas for recreation and for the propagation of knowledge of natural resources, certain lands within the Skagit River and Puget Sound basins which are not currently protected in the wilderness system,

[2] To provide additional lands adjacent to the Henry M. Jackson Wilderness designated by the Wilderness Act of 2003 (Public Law 96-539), in further tribute to the ecologically enlightened vision of the distinguished Senator from the State of Wash-

[3] To protect additional lands adjacent to

[4] To exceed the legal description and map. The map and description shall have the same force and effect as if included in this Act, except that the Secretary of Agriculture may make such reasonable restrictions as the Secretary of Agriculture determines to be desirable.

(e) EVERGREEN MOUNTAIN LOOKOUT.—The designation under this Act shall not preclude the operation and maintenance of the existing Evergreen Mountain Lookout in the same manner and degree in which the operation and maintenance of such lookout was occurring as of the date of enactment of this Act.

SEC. 3. AUTHORIZATION FOR LAND ACQUISITION.

(a) IN GENERAL.—The Secretary of Agriculture is authorized to acquire lands and inter-


The Secretary of Agriculture shall exchange lands of interest in lands, as gen-

[6] SEC. 5. ADMINISTRATION PROVISIONS.

(a) IN GENERAL.—Subject to valid existing rights, lands designated and managed by this Act shall be managed by the Secretary of Agriculture in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act, except that, with respect to any wilderness areas designated by this Act, the Wilderness Act to the effective date of the Wilderness Act, the Secretary of Agriculture shall be deemed to be a reference to the Senate to which the committee amendments were agreed to.

The bill (S. 391), as amended, was read the third time and passed, as fol-

(b) APPRAISAL.—Valuation of private lands shall be determined without reference to any restriction on access to use which arise out of designation as a wilderness area as a re-

(c) APPRAISAL.—Consistent with section 5(a) of the Wilderness Act (Public Law 88-577; 16 U.S.C. 1134(a)), the Secretary of Agriculture shall [assure] ensure adequate access to pri-

(d) APPRAISAL.—Consistent with section 5(a) of the Wilderness Act (Public Law 88-577; 16 U.S.C. 1131 et seq.) and this Act, except that, with respect to any wilderness areas designated by this Act, any reference in the Wilderness Act to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act.
shall ensure adequate access to private U.S.C. 1134(a)), the Secretary of Agriculture occurring as of the date of enactment of this section to maintain an existing telemetry site to monitor snow pack on 1.82 acres on the Venatchee National Forest in the State of Washington, the Secretary shall accept such lands. Any public land order withdrawing land and the improvements to be sold, excepted from the Secretary under this Act shall be subject to the laws applicable to the conveyance and acquisition of land for the National Forest System. The market value of the Secretary and Natural Resources, with an amendment to the Secretary determines that the Secretary may reject any offer made under this section if the Secretary determines that the offer is not adequate or not in the public interest. The Secretary may solicit offers for the sale or exchange of land under this section on terms, conditions and procedures as the Secretary determines to be in the best interests of the United States.

IDAHO PANHANDLE NATIONAL FOREST IMPROVEMENT ACT OF 2003

The Senate proceeded to consider the bill (S. 434) to authorize the Secretary of Agriculture to sell or exchange all or part of certain parcels of National Forest System land in the State of Idaho and use the proceeds derived from the sale or exchange for National Forest purposes, which had been reported by the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

"(a) PEACEFUL USE.—The Secretary is authorized to use helicopter access to construct and maintain a joint Forest Service and Snohomish County telecommunications repeater site, in compliance with a Forest Service approved communications site plan, for the purposes of improving communications for safety, health, and emergency services."

The market value of the land conveyed by the Secretary under this Act, any public land order withdrawing land; and (f) shall be equal to the market value of the land; and (2) may include cash, improved or unimproved land, or land with improvements conveyed in accordance with specifications of the Secretary.

The market value of the Secretary, may accept a cash equalization payment in excess of 25 percent of the value of land exchanged under subsection (a).

SOLICITATIONS OF OFFERS.—The Secretary may solicit offers for the sale or exchange of land under this section on terms, conditions and procedures as the Secretary may prescribe. The Secretary may reject any offer made under this section if the Secretary determines that the offer is not adequate or not in the public interest. The Secretary may solicit offers for the sale or exchange of land under subsection (a) at public or private sale, including a sale in accordance with such terms, conditions, and procedures as the Secretary determines to be in the best interests of the United States.

SALES OR EXCHANGE OF ADMINISTRATIVE SITES.

(1) in General.—The Secretary may, under such terms and conditions as the Secretary may prescribe, sell or exchange any or all right, title and interest of the United States in and to the following National Forest System land:

(a) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds of a sale or exchange under section 3(a) in the fund established under Public Law 90-271, 81 Stat. 504a, commonly known as the "Sisk Act:" (b) USE OF PROCEEDS.—Funds deposited under subsection (a) shall be available to the Secretary, without further appropriation:

(1) for the acquisition of, construction of, or rehabilitation of existing facilities for, a new ranger station in the Silver Valley portion of the Panhandle National Forest; or,

(2) to the extent that the amount of funds deposited exceeds the amount needed for the purpose described in paragraph (1), for the acquisition, construction, or rehabilitation of other facilities in the Panhandle National Forest.

METHODS OF SALE.

This Act may be cited as the "Idaho Panhandle National Forest Improvement Act of 2003."
(2) Withdrawal.—Subject to valid existing rights, all land described in section 3(a) is withdrawn from location, entry, and patent under the mining laws of the United States.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Idaho Panhandle National Forest Improvement Act of 2003.”

SEC. 2. DEFINITION OF SECRETARY.

In this Act, the term “Secretary” means the Secretary of Agriculture.

SEC. 3. SALE OR EXCHANGE OF ADMINISTRATIVE SITES.

(a) In general.—The Secretary may, under such terms and conditions as the Secretary may prescribe, sell or exchange any or all right, title, and interest of the United States in and to the following National Forest System land and improvements:

(1) Granite-Reeder Bay, Priest Lake Parcel, T61N, R4E, Boise Principal Meridian, section 17, 5½N½E¼ (80 acres, more or less).

(2) Shoshone work camp (including easements for utilities), T50N, R4E, Boise Principal Meridian, section 13, 5½E½S½E½ (60 acres, more or less), and 5½S½W½S½E½ (19 acres, more or less).

(b) Descriptions.—The Secretary may modify the descriptions in subsection (a) to correct errors or to make minor adjustments to the parcels in order to facilitate the conveyance of the parcels.

(c) Consideration.—Consideration for a sale or exchange of land under subsection (a) shall be subject to the laws applicable to the conveyance and acquisition of land for the National Forest System.

(d) Applicable law.—Except as otherwise provided in this Act, any sale or exchange of National Forest System land under subsection (a) shall be subject to the laws applicable to the conveyance and acquisition of land for the National Forest System.

(e) Valuation.—The market value of the land and the improvements to be sold or exchanged under this Act shall be determined by an appraiser that is acceptable to the Secretary and is selected pursuant to the Uniform Appraisal Standards and the Uniform Appraisal Guidelines for Federal Land Acquisitions.

(f) Cash Equalization.—Notwithstanding section 5 of the Uniform Appraisal Standards and the Uniform Appraisal Guidelines for Federal Land Acquisitions, the Secretary may accept a cash equalization payment in excess of 25 percent of the value of land exchanged under subsection (a).

(g) Solicitations of Offers.—

(1) In General.—The Secretary may solicit offers for the sale or exchange of land under this section on such terms and conditions as the Secretary may prescribe.

(2) Rejection of Offers.—The Secretary may reject an offer made under this section if the Secretary determines that the offer is not adequate or not in the public interest.

(h) Methods of Sale.—The Secretary may sell land under subsection (a) at public or private sale (including at auction), in accordance with any terms, conditions, and procedures that the Secretary determines to be in the best interests of the United States.

SEC. 4. DISPOSITION OF FUNDS.

(a) Deposit of Proceeds.—The Secretary shall deposit the proceeds of a sale or the cash equalization payment, if any, from an exchange under section 3(a) in the fund established under Public Law 90-171 (commonly known as the “Sisk Act”) (16 U.S.C. 484a).

(b) Amounts Deposited.—Amounts deposited under subsection (a) shall be available to the Secretary, without further appropriation—

(1) for the acquisition of, construction of, or rehabilitation of existing facilities for, a new ranger station in the Silver Valley portion of the Panhandle National Forest; or

(2) to the extent that the amount of funds deposited exceeds the amount needed for the purpose described in paragraph (1), for the acquisition, construction, or rehabilitation of other facilities in the Panhandle National Forest.

(c) Nondistribution of Proceeds.—Proceeds from the sale or exchange of land under this Act shall not be paid or distributed to States or counties under any provision of law, or otherwise treated as money received from a national forest, for purposes of—

(1) the Act of May 23, 1908 (16 U.S.C. 500);

(2) section 13 of the act of March 11, 1911 (commonly known as the “Weeks Law”) (16 U.S.C. 500); or

(3) the Act of March 4, 1913 (16 U.S.C. 501).

SEC. 5. ADMINISTRATION.

(a) In General.—Land transferred to or otherwise acquired by the Secretary under this Act shall be managed in accordance with—

(1) the Act of March 1, 1911 (commonly known as the “Weeks Law”) (16 U.S.C. 480 et seq.); and

(2) other laws relating to the National Forest System.

(b) Exemption From Property Management Regulations.—Part 195 of title 7, Code of Federal Regulations (or any successor regulation), shall not apply to any actions taken under this Act.

(c) Withdrawals and Revocations.—

(1) Withdrawal.—Subject to valid existing rights, all land described in section 3(a) is withdrawn from—

(A) location, entry, and patent under the mining laws; and

(B) the operation of the mineral leasing, mineral materials, and geothermal leasing laws.

(2) Revocation of Public Land Orders.—As of the date of this Act, any public land order withdrawing land described in section 3(a) from public land status under the public land laws is revoked with respect to any portion of the land conveyed by the Secretary under this section.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 434), as amended, was read the third time and passed.

SANDPOINT LAND AND FACILITIES CONVEYANCE ACT OF 2003

The Senate proceeded to consider the bill (S. 435) to provide for the conveyance by the Secretary of Agriculture of the Sandpoint Federal Building and adjacent land, Sandpoint, Idaho, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

[S. 435]

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 “Sandpoint Land and Facilities Conveyance Act of 2003.”

SEC. 2. CONVEYANCE OF SANDPOINT FEDERAL BUILDING AND ADJACENT LAND, SANDPOINT, IDAHO.

(a) Transfer of Administrative Jurisdiction.—Not later than 30 days after the date of the enactment of this Act, the Administrator of General Services shall transfer to the Secretary of Agriculture, without reimbursement, administrative jurisdiction over the Sandpoint Federal Building and approximately 3.17 acres of land in Sandpoint, Idaho, as depicted on the map entitled “Sandpoint Federal Building, Sandpoint, Idaho, located in the City of Sandpoint, Idaho, approximately 1.5 miles north of U.S. Route 95, 90 degrees west of 108 degrees west of the Sandpoint meridian, more or less,” as recorded in the office of the Recorder of Sandpoint, Idaho, on September 13, 2002, and recorded among the real property records of the County of Bonner, State of Idaho.

(b) Assumption and Repayment of Debt.—As of the date on which administrative jurisdiction of the property is transferred under subsection (a), the Secretary shall assume the obligation of the Administrator of General Services to repay the Federal Finance Bank, pursuant to the Second Amended and Restated Note executed by the Administrator of General Services, dated September 13, 2002, and recorded among the real property records of the County of Bonner, State of Idaho, in the amount of $5,364,800. The Secretary may repay the debt using—

(1) the proceeds of the conveyance of the property under this section;

(2) amounts appropriated to the Forest Service for the rental, upkeep, and maintenance of facilities; and

(3) any other unobligated appropriated amounts available to the Secretary.

(c) Conveyance of Property.—

(1) CONVEYANCE AUTHORIZED.—The Secretary may convey, sell, or otherwise transfer the right, title, and interest of the United States in and to the property transferred to the Secretary under subsection (a) without consideration to the entity acquiring the property.

(2) Solicitations of Offers.—The Secretary may solicit offers for the conveyance of the property under this section on such terms and conditions as the Secretary may prescribe. The Secretary may reject any offer made under this section if the Secretary determines that the offer is not adequate or not in the public interest.

(3) Conditions of Sale.—If the property is conveyed under subsection (c) by sale, the purchaser shall pay to the Secretary an amount equal to the fair market value of the property as determined under paragraph (3). At the election of the Secretary, the consideration may be in the form of cash or other consideration, including the construction of administrative facilities for the National Forest System in Bonner County, Idaho.

(4) CONDITIONS OF EXCHANGE.—If the property is conveyed in exchange for construction of administrative facilities, the conveyance shall be subject to—

(A) construction of the administrative facilities in accordance with terms or conditions that the Secretary may prescribe, including the construction of final building permits on the property to the Federal Finance Bank.

(B) completion of the administrative facilities in a manner satisfactory to the Secretary;

(C) the condition that the exchange be an equal value exchange, or if the value of the property and the administrative facilities are not equal, as determined under paragraph (3), that the value of the property be equalized in accordance with paragraph (3); and

(D) any requirements of the Secretary that the entity acquiring the property assume any liabilities on the property to the Federal Finance Bank.

(3) Valuation.—The value of the property to be conveyed under subsection (c), and the value of any administrative facility in exchange for the property, shall be determined by an appraisal that conforms to the Uniform Appraisal Standards for Federal Land Acquisitions and is acceptable to the Secretary.

(4) Equalization of Values.—Notwithstanding any other provision of law, the Secretary shall accept a cash equalization payment in excess of 25 percent of the value of the property conveyed under subsection (c).
SEC. 1. DISPOSITION OF FUNDS.

(a) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds derived for the conveyance of the property under this section in the Treasury of the United States to be credited to Public Law 90–171 (commonly known as the ‘‘Sisk Act’’; 16 U.S.C. 480a).

(b) USE OF PROCEEDS.—Amounts deposited under subsection (a) shall be available to the Secretary, without further appropriation and until expended, for—

(1) the acquisition, construction, or improvement of administrative facilities and associated land; and

(2) the acquisition of land and interests in land from the National Forest System in the Northern Region of the Forest Service in the State of Idaho.

(c) LIMITATIONS.—Funds deposited under subsection (a) shall not be paid or distributed to States or counties under any provision of law, or otherwise considered moneys received from units of the National Forest System for purposes of—

(1) the Act of May 23, 1908 (16 U.S.C. 500); or

(2) section 13 of the Act of March 1, 1911 (16 U.S.C. 500), commonly known as the ‘‘Weeks Law’’; or

(3) [the fourteenth paragraph under the heading ‘‘Forest Service’’ in] the Act of March 4, 1913 (16 U.S.C. 501).

(d) MANAGEMENT OF LANDS ACQUIRED BY THE UNITED STATES.—Subject to valid existing rights, the Secretary shall manage any land acquired in accordance with the Act of March 1, 1911 (16 U.S.C. 480 et seq., commonly known as the ‘‘Weeks Law’’) and other laws relating to the National Forest System.

(e) APPLICABLE LAW.—Except as otherwise provided in this section, the conveyance of property under this section shall be subject to the laws applicable to conveyances of National Forest System land. Part 1955 of title 3, Code of Federal Regulations, shall not apply to any action carried out under this section.

The committee amendments agreed to.

The bill (S. 435), as amended, was read the third time and passed, as follows:

SEC. 2. CONVEYANCE OF SANDPOINT FEDERAL BUILDING AND ALIGNED LAND, SANDPOINT, IDAHO.

(a) TRANSFER OF ADMINISTRATIVE JURISDICTION.—Not later than 30 days after the date of the enactment of this Act, the Administrator of General Services shall transfer to the Secretary of Agriculture, without reimbursement, administrative jurisdiction over the Sandpoint Federal Building and approximately 3.17 acres of land in Sandpoint, Idaho, as depicted on the map entitled ‘‘Sandpoint Building,’’ dated September 12, 2002, on file in the Office of the Chief of the Forest Service and the Office of the Supervisor, Idaho Panhandle National Forest, Coeur d’Alene, Idaho.

(b) ASSUMPTION AND REPAYMENT OF DEBT.—As of the date on which administrative jurisdiction of the property is transferred under subsection (a), the Secretary shall assume the obligation of the Administrator of General Services to repay to the Federal Finance Bank the debt incurred with respect to the transfer of such property. The Secretary may repay the debt using—

(1) the proceeds of the conveyance of the property under this section; and

(2) any moneys deposited by the Administrator of General Services to the Forest Service for the rental, upkeep, and maintenance of facilities; and

(3) any other unobligated appropriated amounts available to the Secretary.

(b) CONVEYANCE OF PROPERTY.—

(1) CONVEYANCE AUTHORIZED.—The Secretary, in the name of the United States, may convey, sell, or exchange, all right, title, and interest of the United States in and to the property transferred to the Secretary under subsection (a). The conveyance may be made in accordance with subsection (c).

(2) SOLICITATIONS OF OFFERS.—The Secretary may solicit offers for the conveyance of the property under this section on such terms and conditions as the Secretary may prescribe. The Secretary may reject any offer made under this section if the Secretary determines that the offer is not adequate or not in the public interest.

(c) CONDITIONS OF SALE.—If the property is conveyed under subsection (b) by sale, the purchaser shall pay to the Secretary an amount equal to the fair market value of the property as determined under paragraph (3).

(1) the Act of March 23, 1908 (16 U.S.C. 500); or

(2) the Act of May 23, 1908 (16 U.S.C. 500).

(d) MANAGEMENT OF LANDS ACQUIRED BY THE UNITED STATES.—Subject to valid existing rights, the Secretary shall manage any land acquired in accordance with terms or conditions that the Secretary may prescribe, including final building design and costs;

(1) the Act of March 4, 1913 (16 U.S.C. 501); or

(2) the Act of March 1, 1911 (16 U.S.C. 480).

(e) APPLICABLE LAW.—Except as otherwise provided in this section, the conveyance of property under this section shall be subject to the laws applicable to conveyances of National Forest System land. Part 1955 of title 3, Code of Federal Regulations, shall not apply to any action carried out under this section.

COMMEMORATION AND INTERPRETATION OF THE COLD WAR

The Senate proceeded to consider the bill (S. 452) to require that the Secretary of the Interior conduct a study to identify sites and resources, to recommend alternatives for commemorating and interpreting the Cold War, and for other purposes, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment, as follows:

[Insert the part shown in italic.]

S. 452

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

SECTION 1. COLD WAR STUDY.

(a) SUBJECT OF STUDY.—The Secretary of the Interior, in consultation with the Secretary of Defense, the Secretary of Energy, State historic preservation offices, State and local officials, Cold War scholars, and other interested organizations and individuals, shall conduct a National Historic Landmark theme study to identify sites and resources in the United States that are significant to the Cold War. In conducting the study, the Secretary of the Interior shall—

(1) consider the inventory of sites and resources associated with the Cold War completed by the Secretary of Defense pursuant to section 202(b)(9) of the Fiscal Year 1991 Department of Defense Appropriations Act (Public Law 101–511; 104 Stat. 1906); and

(2) consider historical studies and research of Cold War sites and resources such as intercontinental ballistic missiles, nuclear weapons sites (such as the Nevada test site), flight training centers, manufacturing facilities, communications and command centers (such as Cheyenne Mountain, Colorado), defensive radar networks (such as the Distant Early Warning Line), and strategic and tactical crafts, and

(3) inventory and consider nonmilitary sites and resources associated with the people, events, and social aspects of the Cold War.

(b) CONTENTS.—The study shall include—

(1) recommendations for commemorating and interpreting the Cold War study site or sites;

(A) sites for which studies for potential inclusion in the National Park System should be authorized;

(B) sites for which new national historic landmarks should be nominated; and

(C) other appropriate designations;

(2) recommendations for cooperative arrangements with Federal, State, local historic preservation offices, and other entities; and

(3) recommendations for other purposes, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment, as follows:

[Insert the part shown in italic.]

S. 452

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SEC. 1. CONVEYANCE OF A PARCEL OF LAND IN DOUGLAS COUNTY, OREGON.

(a) IN GENERAL.—(1) CONVEYANCE.—The Secretary of the Interior shall convey, without consideration and subject to valid existing rights, to Douglas County, Oregon (referred to in this section as the “County”), all right, title, and interest of the United States in and to the parcel described in paragraph (2) for use by the County for recreational purposes.

(2) PARCEL.—The parcel referred to in paragraph (1) is the parcel of real property consisting of approximately 66.8 acres under the administrative jurisdiction of the Bureau of Land Management in the County, as depicted on the map entitled “Umpqua River Lighthouse and Coast Guard Museum Master Plan Site” as dated April 17, 2002.

(b) PURPOSES OF CONVEYANCE.—The purposes of the conveyance under subsection (a) are to improve management of and recreational access to the Oregon Dunes National Recreation Area by—

(1) improving public safety and reducing traffic congestion along Salmon Harbor Drive (County Road No. 251) in the County;

(2) providing a staging area for off-highway vehicles; and

(3) facilitating policing of unlawful camping and parking along Salmon Harbor Drive and adjacent areas.

(c) REVERSIONARY INTEREST.—(1) IN GENERAL.—The Secretary determines that the parcel conveyed under subsection (a) is not being used by the County for a recreational purpose.

(2) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

The Senate proceeded to consider the bill (S. 714) to provide for the conveyance of a small parcel of Bureau of Land Management land in Douglas County, Oregon, to the county to improve management of and recreational access to the Oregon Dunes National Recreation Area, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

[SN15870]

COMMERCIAL OUTFITTER HUNTING CAMPS ON THE SALMON RIVER

The Senate proceeded to consider the bill (S. 1003) to clarify the intent of Congress with respect to the continued use of established commercial outfitter hunting camps on the Salmon River, as had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

[SN15870]

EXCHANGE OF CERTAIN LANDS IN THE COCONINO AND TONTO NATIONAL FORESTS IN ARIZONA

The Senate proceeded to consider the bill (H.R. 622) to provide for the exchange of certain lands in the Coconino and Tonto National Forests in Arizona, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

[SN15870]
In general.—Upon receipt of a binding offer from DPSHA to convey title acceptable to the Secretary to the land described in subsection (b), the Secretary shall convey title to DPSHA for the conveyance to DPSHA all right, title, and interest of the United States in and to the land described in subsection (b).

(b) Non-Federal land.—The land described in this subsection is the approximately 106 acres of land adjacent to the Montezuma Castle National Monument, as generally depicted on the map entitled “Montezuma Castle Contiguous Lands” identified in section 3(d)(1) of the Act, and the values of such land shall be equal or equalized as determined by the Secretary through an appraisal performed by a qualified appraiser mutually agreed to by the Secretary and DPSHA and in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (U.S. Department of Justice, December 2000), and section 206(d) of FLPMA (43 U.S.C. 1716(d)). If the values are not equal, the Secretary shall convey Federal lots from the conveyance to MCJV in the following order and priority, as necessary, until the values of Federal and non-Federal land are within the 25 percent cash equalization limit of 206(b) of FLPMA (43 U.S.C. 1716(b)):

(1) Lot 3.
(2) Lot 4.
(3) Lot 9.
(4) Lot 10.
(5) Lot 11.
(6) Lot 8.

(c) Cash Equalization.—Any difference in value remaining after compliance with subsection (d) shall be equalized by the payment of cash to the Secretary or MCJV, as the circumstances dictate, in accordance with section 206(d) of FLPMA (43 U.S.C. 1716(d)).

(1) The Secretary shall determine the values of the lands to be transferred to MCJV or DPSHA due to hazardous substances as may be required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9621(h)) for remedial or corrective action relating to hazardous substances as may be necessary in the future.

(2) Administration of acquired land.—Upon their acquisition by the United States, the “Montezuma Castle Contiguous Lands” identified in section 3(d)(1) of the Act shall be transferred to the administration of the National Park Service, and shall thereafter be permanently incorporated in, and administered by the Secretary of the Interior as part of, the Montezuma Castle National Monument.

The committee amendments were agreed to.

The bill (H.R. 622), as amended, was read the third time and passed.

CARTER G. WOODSON HOME NATIONAL HISTORIC SITE ACT

The Senate proceeded to consider the bill (H.R. 1012) to establish the Carter
G. Woodson Home National Historic Site in the District of Columbia, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

"[Strike the part shown in black brackets and insert the part shown in italic.]

H.R. 1012

B e i t 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 "Carter G. Woodson Home National Historic Site Establishment Act of 2002." ]

SEC. 2. FINDINGS AND PURPOSE. — (a) FINDINGS. — The Congress finds that:

(1) Dr. Carter G. Woodson, the son of a slave who earned a Ph.D. degree from Harvard University, dedicated his life to educating the American public about the extensive and positive contributions of African Americans to the nation's history and culture;

(2) Through the Association, Dr. Woodson, the father of African-American history, founded and to facilitate interpretation of the historic site not later than three years after the date on which funds are made available for that purpose.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS. — [There are authorized to be appropriated such sums as are necessary to carry out this Act.]

SECTION 1. SHORT TITLE. — This Act may be cited as the "Carter G. Woodson Home National Historic Site Act."
The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1006) to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species. There being no objection, the Senate proceeded to consider the bill.

Mr. ENSIGN. I ask unanimous consent that the Inhofe amendment at the desk be adopted, the bill, as amended, be read the third time and passed, the motions to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 2215) was agreed to, as follows:

On page 2, strike lines 11 through 14 and insert the following:

"(g) PROHIBITED WILDLIFE SPECIES.—The term 'prohibited wildlife species' means any live species of lion, tiger, leopard, cheetah, jaguar, or cougar or any hybrid of such species."

On page 3, line 1, strike 'live animal of a'.

On page 3, strike lines 20 through 22 and insert the following:

"(A) is licensed or registered, and inspected, by the Animal and Plant Health Inspection Service or any other Federal agency with respect to such species;"

On page 4, line 12, insert 'listed in section 2(g)' after 'animals'.

On page 4, line 14, insert 'listed in section 2(g)' after 'animals'.

On page 5, line 3, strike the quotation marks and the following period.

On page 5, between lines 3 and 4, insert the following:

"(S) AUTHORIZATION OF APROPRIATIONS.—There is authorized to be appropriated to carry out subsection (a)(2)(C) $3,000,000 for each of fiscal years 2004 through 2008."

The bill (H.R. 1006), as amended, was read the third time and passed.

PRESEVING INDEPENDENCE OF FINANCIAL INSTITUTION EXAMINATIONS ACT OF 2003

Mr. ENSIGN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1947, which was introduced earlier today.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1947) to prohibit the offer of credit by a financial institution to a financial institution examiner, and for other purposes. There being no objection, the Senate proceeded to consider the bill.

Mr. HATCH. Mr. President, I rise to join my friend and distinguished colleague, Senator LEAHY, in the introduction of the Preserving Independence of Financial Institution Examiners Act of 2003. This bill modifies two criminal statutes, sections 212 and 213 of title 18 of the United States Code, which impose criminal penalties on bank examiners who are offered, or who accept, a loan or gratuity from a financial institution they are examining. These revisions are needed to reflect the changes in our national banking system.

When originally enacted, the criminal statutes were designed to ensure that bank examiners were not subjected to undue and improper influences from the subject banks. With the increased consolidation and globalization of the banking industry, it is difficult in today's banking economy for examiners, particularly those who examine credit card banks, to obtain nationally available credit cards. The statutes, which were originally enacted in 1948, include no exception for bank examiner business transactions that were never intended to fall within the ambit of the statutes. The proposed legislation provides an exception to the statutes for bank examiners who hold everyday credit cards and residential home mortgage loans from the banks they are examining. The exceptions are narrow and the purposes of the statutes to prohibit such conflicts of interest will remain intact.

I want to thank Senator LEAHY for his willingness to address this problem. I urge my colleagues to support this measure and quickly pass it.

Mr. LEAHY. Mr. President, today's passage of the Preserving Independence of Financial Examinations Act of 2003 is another piece of bipartisan work on a needed legislative reform. I am pleased to have seen its passage so swiftly through the U.S. Senate and I thank my friend from Utah, Senator HATCH, for his assistance and advice.

The bill provides a logical and necessary modification to important, but outdated, criminal statutes originally written to ensure the objectivity and integrity of financial institution examinations. Sections 212 and 213 of title 18 of the United States Code, first drafted in 1948, appropriately provide criminal penalties for bank examiners who are offered, or who accept, a loan or gratuity from the financial institution they are examining. This bill exempts from the law's reach ordinary credit card and residential home mortgage loans sought and held by bank examiners in their everyday lives.

Several factors supported the proposed blanket credit card and residential loan exceptions. Most important, consolidation within the banking industry made it increasingly difficult for examiners to obtain nationally available credit cards and mortgage loans and for the banking agencies to assign examiners to work.

The Leahy-Hatch bill strictly defines the circumstances under which the exceptions to the criminal statute apply with a keen eye on preserving the independence of financial institution examinations and the original legislative intent of the statute.

I thank Senator HATCH for his assistance in this bill forward and making it possible for bank examiners to engage in everyday business without fear of prosecution. I also thank our friends in the banking agencies, including the Federal Reserve Bank, the Office of Thrift Supervision and the Federal Deposit Insurance Corporation for bringing this important issue to our attention.

Mr. ENSIGN. Mr. President, I further ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements relating to this measure be printed in the RECORD.

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

The bill (S. 1947) was read the third time and passed, as follows:

S. 1947

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 "Preserving Independence of Financial Institution Examinations Act of 2003."

SEC. 2. OFFER AND ACCEPTANCE OF CREDIT.

(a) IN GENERAL.—Except as provided in subsection (b), whoever, being an officer, director or employee of a financial institution, makes or grants any loan or gratuity, to any examiner or assistant examiner who examines or has authority to examine such bank, branch, agency, organization, corporation, association, or institution—

(1) shall be fined under this title, imprisoned not more than 1 year, or both; and

(2) may be fined a further sum equal to the money so loaned or gratuity given.

(b) REGULATIONS.—A Federal financial institution regulatory agency may prescribe regulations establishing additional limitations on the application for and receipt of credit under this section and the application and receipt of residential mortgage loans under this section, after consulting with each other Federal financial institution regulatory agency.

(c) DEFINITIONS.—In this section:

(1) EXAMINER.—The term 'examiner' means any person—

(A) appointed by a Federal financial institution regulatory agency or pursuant to the laws of any State to examine a financial institution; or

(B) elected under the law of any State to conduct examinations of any financial institutions.

(2) FEDERAL FINANCIAL INSTITUTION REGULATORY AGENCY.—The term 'Federal financial institution regulatory agency' means—

(A) the Office of the Comptroller of the Currency;

(B) the Board of Governors of the Federal Reserve System;

(C) the Office of Thrift Supervision;

(D) the Federal Deposit Insurance Corporation;

(E) the Federal Housing Finance Board;

(F) the Farm Credit Administration;

(G) the Farm Credit System Insurance Corporation;

(H) the Federal Home Loan Bank Board;

(I) the Federal Home Loan Bank System;

(J) the National Credit Union Administration;

(K) the Office of Thrift Supervision;

(L) the Office of Thrift Supervision of the National Credit Union Administration;

(M) the Corporation for National Service;

(N) the Corporation for National and Community Service;

(O) the Farm Credit System Insurance Corporation;

(P) the Federal Home Loan Bank System; and

(Q) the National Credit Union Administration.

(3) FINANCIAL INSTITUTION.—The term 'financial institution' does not include a credit union or a Federal Reserve Bank, a Federal home loan bank, or a depository institution holding company.

(4) LOAN.—The term 'loan' does not include any credit card account established under an open end consumer credit plan or a loan secured by residential real property.
that is the principal residence of the examiner, if—

(A) the applicant satisfies any financial requirements for the credit card account or residential real property loan that are generally applicable to all applicants for the same type of credit card account or residential real property loan;

(B) the terms and conditions applicable with respect to such account or residential real property loan, and any credit extended to the examiner under such account or residential real property loan, are no more favorable generally to the examiner than the terms and conditions that are generally applicable to credit card accounts or residential real property loans offered by the same financial institution to other borrowers; and

(C) with respect to residential real property loans, the loan is with respect to the primary residence of the applicant.

"§213. Acceptance of loan or gratuity by financial institution examiner"

(a) in general.—Whoever, being an examiner or assistant examiner, accepts a loan or gratuity from any bank, branch, agency, organization, corporation, association, or institution examined by the examiner or from any person connected with it, shall—

(1) be fined under this title, imprisoned not more than 1 year, or both;

(2) may be fined a further sum equal to the money so loaned or gratuity given; and

(3) shall be disqualified from holding office as an examiner.

(b) definitions.—In this section, the terms "examiner", "Federal financial institution regulator", "Federal financial institution regulator agency", "financial institution", and "loan" have the same meanings as in section 122.

SEC. 2. EXTENSION OF PROGRAM.

The American Dream Downpayment Assistance Act, originally introduced by my colleague on the Banking Committee, Senator ALLARD. This bill authorizes $200 million for a downpayment assistance program targeted to first-time, low-income homeowners. I support this legislation, and I appreciate the efforts of the Senator from Colorado, as well as Chairman SHELBY. I also note that the bill includes important provisions to expand the supply of affordable rental housing. Senator CORZINE amended the bill to raise the FHA multifamily loan limits to account for the rising costs of producing rental housing. This amendment will facilitate the annual construction of up to 6,000 units of multifamily housing affordable to working families around the country. This is an important contribution to the legislation we are considering.

Likewise, Senator JOHNSON has contributed a provision to make the FHA single family adjustable rate mortgage, ARMs, insurance program more effective. ARMs are an important tool in helping families achieve homeownership, and the Johnson amendment will be a welcome addition to the FHA program.

Finally, I would like to thank Senator STABENOW for bringing to the attention of the committee the special needs of a growing segment of our population, families headed by grandparents. This legislation includes an amendment that will create a demonstration program to examine how existing HUD programs can better serve these families. It also requires HUD to study ways in which barriers to existing programs for these families may be reduced.

I want to thank Chairman SHELBY, as well as Senators ALLARD and REED, chair and ranking member of the Housing Subcommittee, for all their work on this legislation and for their willingness to work in a bipartisan way to produce a good final product. I also want to thank Chairman BANKSTOCK, and the other members of the House Financial Services Committee for their contributions to this process and this product.

I support passage of the American Dream Downpayment Assistance Act and urge it passage.

Mr. ENSIGN. I ask unanimous consent that the substitute amendment at the desk be agreed to, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, and any statements related to the bill be printed in the Record.

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

The amendment (No. 2216) was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The bill (S. 811), as amended, was read the third time and passed.

EXTENSION OF NATIONAL FLOOD INSURANCE PROGRAM

Mr. ENSIGN. I ask that the Chair now lay before the Senate the House message to accompany S. 1768. The President pro tempore laid before the Senate the following message:

Resolved, That the bill from the Senate (S. 1768) entitled "An Act to extend the national flood insurance program", do pass with the following amendment:

Strike out all after the enacting clause and insert:

SEC. 1. SHORT TITLE.

This Act may be cited as the "National Flood Insurance Program Reauthorization Act of 2004".

SEC. 2. EXTENSION OF PROGRAM.

(a) EXTENSION.—The National Flood Insurance Act of 1968 is amended as follows:

(1) AUTHORITY FOR CONTRACTS.—In section 1319 (42 U.S.C. 4026), by striking "December 31, 2003" and inserting "March 31, 2004".

(2) BORROWING AUTHORITY.—In the first sentence of section 1309(a) (42 U.S.C. 4016(a)), by striking "December 31, 2003" and inserting "the date specified in section 1319".

(3) EMERGENCY IMPLEMENTATION.—In section 1336(a) (42 U.S.C. 4056(a)), by striking "December 31, 2003" and inserting "the date specified in section 1319".

(4) AUTHORIZATION OF APPROPRIATIONS FOR STUDIES.—In section 1376(c) (42 U.S.C. 4127(c)), by striking "December 31, 2003" and inserting "the date specified in section 1319".

(b) EFFECTIVE DATE.—The amendments made by this section shall be considered to have taken effect on December 31, 2003.

Mr. ENSIGN. I ask unanimous consent that the Senate concur in the House amendment, the motion to reconsider be laid upon the table, and that any statements related to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.
SEC. 2. AMENDMENTS TO PUBLIC LAW 106–303.  
(a) SHORT TITLE.—This Act may be cited as the "GAO Human Capital Reform Act of 2003".  
(b) AMENDMENT OF TITLE 31.—Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision of title 31, United States Code.
"(A) the number of officers and employees who are assigned to private sector organizations at any one time to not more than 30;"

and

"(B) the number of employees from private sector organizations who are assigned to the Office at any one time to not more than 30;"

"(3) shall require that an employee of a private sector organization to which such employee is assigned may not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which such employee is assigned;"

"(4) shall require that, before approving the assignment of an officer or employee to a private sector organization, the Comptroller General shall determine that the assignment is an effective use of the Office's funds, taking into account the best interests of the Office and the costs and benefits of alternative methods of achieving the same results and objectives;"

"(5) shall not allow any assignment under this subsection to commence after the end of any 5-year period beginning on the date of the enactment of this Act;"

"(i) An employee of a private sector organization assigned to the Office under the executive exchange program shall be considered to be an employee of the Office for purposes of—"

"(1) chapter 73 of title 5;"

"(2) sections 201, 203, 205, 207, 208, 209, 603, 605, 606, 607, 643, 653, 654, 1905, and 1913 of title 18;"

"(3) sections 1343, 1344, and 1349(b) of this title;"

"(4) chapter 171 of title 28 (commonly referred to as the Federal Tort Claims Act) and any other Federal tort liability statute;"


"(6) section 1043 of the Internal Revenue Code of 1986; and"

"(7) section 2, 3, 4, 6, and 7 of this Act;"

"(B) a review of all actions taken under section 7 of this Act, as well as the number of private sector employees participating in such program and a review of the general nature of the work performed by the individuals participating in such program;"

"(C) a process for ensuring ongoing performance management, the implementation and operation of the performance management system;"

"(D) effective transparency and accountability measures to ensure that the management of the system is fair, credible, and equitable, including appropriate independent reasonable, reviews, internal assessments, and employee surveys; and"

"(E) a means to ensure that adequate agency resources are allocated for the design, implementation, and administration of the performance measurement system;"

SEC. 10. CONSULTATION.

Before the implementation of any changes authorized under this Act, the Comptroller General shall consult with any interested groups or associations representing officers and employees of the General Accounting Office.
(B) of Public Law 106–303 (5 U.S.C. 5597 note) is amended by striking paragraph (2) and inserting the following:

"(2)(A) subsection (2)(G) of such section shall be applied by construing which a student loan repayment benefit or is to be paid under section 5379 of title 5, United States Code;

(B) subsection (2)(G) of such section, shall include any employee who, during the 36-month period preceding the date of separation of that employee, was engaged in service for which a student loan repayment benefit was or is to be paid under section 5379 of title 5, United States Code;

(c) SENSE OF CONGRESS.—

(1) VOLUNTARY EARLY RETIREMENT AUTHORITY.—Section 1 of Public Law 106–303 (5 U.S.C. 6336 note) is amended by adding at the end the following:

"(e) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the General Accounting Office workforce and not downsize the General Accounting Office workforce.

(2) VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—Section 2 of Public Law 106–303 (5 U.S.C. 5597 note) is amended by adding at the end the following:

"(f) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the General Accounting Office workforce and not downsize the General Accounting Office workforce.".

SEC. 3. ANNUAL PAY ADJUSTMENTS.

(a) OFFICERS AND EMPLOYEES GENERALLY.—(Paragraph (3) of section 732(c) is amended to read as follows:

"(3) except as provided under section 733(a)(3) of this title, basic rates of officers and employees of the Office shall be adjusted, at the discretion as determined by the Comptroller General, and in making that determination the Comptroller General shall consider—

(A) the principle that equal pay should be provided for work of equal value within each local pay area;

(B) the need to protect the purchasing power of officers and employees of the Office, taking into consideration the Consumer Price Index or other appropriate indices;

(C) any existing pay disparities between officers and employees of the Office and non-Federal employees in each local pay area;

(D) the pay rates for the same levels of work for officers and employees of the Office and non-Federal employees in each local pay area;

(E) the appropriate distribution of agency funds between annual adjustments under this section and performance-based compensation; and

(F) such other criteria as the Comptroller General determines appropriate, including but not limited to, the level of funding for the Office, amounts allocated for performance-based compensation, and the extent to which the Office may be needed in fulfilling its mission and accomplishing its strategic plan, notwithstanding any other provision of this paragraph, an adjustment under this paragraph shall not be applied in the case of any officer or employee whose performance is not at a satisfactory level, as determined by the Comptroller General for purposes of such adjustment.

(b) OFFICERS AND EMPLOYEES IN THE OFFICE SENIOR EXECUTIVE SERVICE.—Subparagraph (B) of section 733(a)(3) is amended to read as follows:

"(B) adjusted annually by the Comptroller General after taking into consideration the factors listed under section 732(c)(3) of this title, except that an adjustment under this subparagraph shall not be applied in the case of any officer or employee whose performance is not at a satisfactory level, as determined by the Comptroller General for purposes of such adjustment.".

(c) CONFORMING AMENDMENT.—Section 732(b)(6) is amended by striking "title 5, except as provided under subsection (c)(3) of this section and section 733(a)(3) of title 5." of this title.

SEC. 4. PAY RETENTION.

(a) (Paragraph (3) of section 732(c) is amended to read as follows:

"(3) the Comptroller General shall prescribe regulations under which an officer or employee of the Office shall be entitled to pay retention if, as a result of any reduction-in-force or other workforce adjustment procedure, position reclassification, or other appropriate circumstances as determined by the Comptroller General, such officer or employee is placed in or holds a position in a lower grade or band with a maximum rate of basic pay that is less than the rate of basic pay payable to the officer or employee immediately before the reduction in grade or band;

(B) shall provide that the officer or employee shall be entitled to continue receiving the rate of basic pay that was payable to the officer or employee immediately before the reduction in grade or band until such time as the retained rate becomes less than the maximum rate for the grade or band of the position held by the officer or employee;

(B) shall include provisions relating to the minimum period of time for which an officer or employee must have served or for which the position must have been classified at the higher grade or band in order for pay retention to apply, the events that terminate the right to pay retention (apart from the one described in section (d)), and any other exclusions based on the nature of an appointment; in prescribing regulations under this subparagraph, the Comptroller General shall be guided by the provisions of sections 5362 and 5363 of title 5.

SEC. 5. RELocation BENEFITS.

Section 731 is amended by adding after subsection (e) the following:

"(f) The Comptroller General shall prescribe regulations under which officers and employees of the Office may, in appropriate circumstances, be reimbursed for any relocation expenses under subchapter II of chapter 57 of title 5 for which they would not otherwise be eligible, but only if the Comptroller General determines that the transfer giving rise to such relocation is of sufficient benefit or value to the Office to justify such reimbursement.

SEC. 6. INCREASED ANNUAL LEAVE FOR KEY EMPLOYEES.

Section 731 is amended by adding after subsection (f) (as added by section 5 of this Act) the following:

"(g) The Comptroller General shall prescribe regulations under which key officers and employees of the Office who have served less than 3 years of service may accrue leave in accordance with section 6303(a)(2) of title 5, in those circumstances in which the Comptroller General determines such increased annual leave is appropriate for the recruitment or retention of such officers and employees. Such regulations shall define key officers and employees and set forth the factors in determining which officers and employees should be allowed to accrue leave in accordance with this subsection.

SEC. 7. EXECUTIVE EXCHANGE PROGRAM.

Section 731 is amended by adding after subsection (g) (as added by section 6 of this Act) the following:

"(h) The Comptroller General may by regulation establish an executive exchange program under which officers and employees of the Office may be assigned to private sector organizations, and employees of private sector organizations may be assigned to the Office, to further the institutional interests of the Office or Congress, including for the purpose of providing training to officers and employees of the Office. Regulations to carry out any such program:

(1) shall include provisions (consistent with sections 702 through 704 of title 5) as to matters concerning—

(A) the duration and termination of assignments;

(B) reimbursements; and

(C) restrictions, entitlements, benefits, and obligations of program participants;

(2) shall limit—

(A) the number of officers and employees who may be assigned to private sector organizations at any one time to not more than 15; and

(B) the number of employees from private sector organizations who are assigned to the Office at any one time to not more than 30;

(3) shall require that an employee of a private sector organization assigned to the Office may not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which such employee was assigned;

(4) shall require that, before approving the assignment of an officer or employee to a private sector organization, the Comptroller General shall determine that such assignment is an effective use of the Office's funds, taking into account the best interests of the Office and the costs and benefits of alternative methods of achieving the same results and objectives; and

(5) shall not allow any assignment under this subsection to commence after the end of the fiscal year in which the enactment of this subsection.

(1) an employee of a private sector organization assigned to the Office under the executive exchange program shall be considered to be an employee of the Office for purposes of—

(1) chapter 73 of title 5;

(2) sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18;

(3) sections 1343, 1344, and 1345(b) of this title;

(4) chapter 171 of title 28 (commonly referred to as the Federal Tort Claims Act) and any other Federal tort liability statute;

(5) the Ethics in Government Act of 1978 (5 U.S.C. App.);

(6) section 1043 of the Internal Revenue Code of 1986; and


SEC. 8. REDESIGNATION.

(a) IN GENERAL.—The General Accounting Office is hereby redesignated the Government Accountability Office.

(b) REFERENCES.—Any reference to the General Accounting Office in any other provision of this Act shall be deemed to be a reference to the Government Accountability Office.

SEC. 9. PERFORMANCE MANAGEMENT SYSTEM.

(Paragraph (1) of section 732(d) is amended to read as follows:

"(1) for a system to appraise the performance of officers and employees of the General Accounting Office that meets the requirements of section 4302 of title 5 and in addition includes—

(A) a link between the performance management system and the agency's strategic plan;

(B) adequate training and retraining for supervisors, managers, and employees in the
SEC. 11. REPORTING REQUIREMENTS.

(a) ANNUAL REPORTS.—The Comptroller General shall include—

(1) in each report submitted to Congress under section 719(a) of title 31, United States Code, during the 5-year period beginning on the date of enactment of this Act, a summary of all pay adjustments for officers and employees of the Office, and the manner in which such methodologies applied under section 3 of this Act, except that nothing may by regulation delay the effective date of such adjustment taking effect on or after that date.

(b) PAY ADJUSTMENTS.—(1) IN GENERAL.—Section 732(h)(3)(A) is amended by striking "reduction force" and inserting "reduction in force".

(c) ADDITIONAL REPORTING.—(A) A report containing a summary of the information included in the annual reports required under subsection (a); (B) recommendations for any legislative changes in section 2, 3, 4, 6, 7, 9, or 10 of this Act; and (C) any assessment furnished by the General Accounting Office Personnel Appeals Board or any committees or associations representing officers and employees of the Office for inclusion in such report.

SEC. 12. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

(b) PAY ADJUSTMENTS.—(1) I NTERIM AUTHORITIES.—In connection with any pay adjustment taking effect under section 732(c) or 733(a) of title 31, United States Code, before October 1, 2005, the Comptroller General may make regulations providing that such adjustment not be applied in the case of any officer or employee whose performance is not at a satisfactory level, as determined by the Comptroller General, for purposes of such adjustment taking effect on or after that date.

(2) INTERIM AUTHORITIES.—If the Comptroller General provides for a delayed effective date under subparagraph (A) with respect to any group of officers or employees, paragraph (2) shall, for purposes of such group, be applied by substituting such date for "October 1, 2005".

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 108-12

Mr. ENSIGN. Mr. President, as in executive session, I ask unanimous consent that the injuction of secrecy be removed from the following treaty transmitted to the Senate on November 24, 2003, by the President of the United States:


Mr. ENSIGN. I further ask unanimous consent that the Treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

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

The message of the President is as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty Between the United States of America and Japan on Mutual Legal Assistance in Criminal Matters, signed at Washington on August 5, 2003, for submission to the Senate for its advice and consent to the Treaty.

The Treaty is one of a series of modern mutual legal assistance treaties negotiated by the United States in order to counter criminal activities more effectively. The Treaty should be an effective tool to assist in the investigation and prosecution of a wide variety of crimes. The Treaty is self-executing.

The Treaty provides for a broad range of cooperation in criminal matters. Mutual assistance available under the Treaty includes: taking testimony, statements, or items; examining places, persons, or places; locating or identifying persons, items, places; providing items from governmental departments or agencies; inviting persons to testify in the requesting Party; transferring persons in custody for testimony or other purposes; assisting in proceedings related to forfeiture and immobilization of assets; and any other form of assistance permitted under the laws of the requested Party and agreed upon by the Central Authorities of the two Contracting Parties.

I recommend that the Senate give early and favorable consideration to the Treaty, and give its advice and consent to ratification.

GEORGE W. BUSH.  

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 94-201, as amended by Public Law 105-275, appoints Dr. Daniel Botkin, of California, as a member of the Board of Trustees of the American Folklife Center of the Library of Congress, vice Susan Barksdale Howorth, of Mississippi.
November 24, 2003

CONGRESSIONAL RECORD — SENATE

S15879

These are hard-working young men and women who help us each day with a broad range of tasks. They do really pretty much everything from preparing these desks today—as you look around here and see what is on these desks, you can see that that can be a huge task—and running errands for Members, errands that we greatly depend upon as we try to juggle our various responsibilities of the day, to making copies of amendments literally just one after another. In fact, you see the copies of the Medicare legislation on the desks today. When you look at them, you know that somebody has generated each and every one of those copies. The duties really go on and on.

In the middle of my talk last night, I was speaking from this desk. And I thought, I have to get rid of this. How will I do it? I was thinking, and all of a sudden the page came and slipped it away so I could continue my discussion at the time.

I think them and praise the tremendous work they do each and every day. This past week we have had very busy days. It has been unusual working through last week, through Saturday, through Sunday, through Monday, today. Very late seems to be the norm these last few days, as we have really worked to complete our work before the holidays. It is the pages who have been with us in the past few days where we had not anticipated being here this late.

We have had very special pages with us. I will slip out in a few minutes as we close down, and they will still be here as they tidy up for early tomorrow morning. They will soon be out for their Thanksgiving holiday as well. I really do I want to thank them, several of whom are sitting right here looking at me on the floor tonight. I thank them for their hard work these last several days: Yael Bortnick, Emily Holmgren, Ferrell Oxley, Sarah Smith, Melissa Meyer. But I thank them again today—Margaret Ledyd, and Krista Warner. In particular, I want to thank Melissa Meyer. But I thank them again for their tremendous work.

AUTHORIZING PRODUCTION OF RECORDS

Mr. Frist. Mr. President, I ask unanimous consent that the Senate proceed to consider the resolution.

Mr. FRIST. Mr. President, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs has received requests from various law enforcement and regulatory officials and agencies for assistance in pending investigations for copies of records that the subcommittee obtained during its recent investigation into the role of accountants, lawyers, and financial professionals in the tax shelter industry.

This resolution would authorize the chairman and ranking member of the Permanent Subcommittee on Investigations, acting jointly, to provide investigative records, obtained by the subcommittee in the course of its investigation, in response to these requests.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 274) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. Res. 274

Whereas, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs has been conducting an investigation into the role of accountants, lawyers, and financial professionals in the tax shelter industry;

Whereas, the Subcommittee has received requests from law enforcement and regulatory officials and agencies for access to records of the Subcommittee’s investigation;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it;

Resolved, That the Chairman and Ranking Minority Member of the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, acting jointly, are authorized to provide law enforcement and regulatory entities and officials, court-appointed officials, and other entities or individuals duly authorized by Federal, State, or local governmental records of the Subcommittee’s investigation into the role of accountants, lawyers, and financial professionals in the tax shelter industry.

Adjournment until 8:15 A.M. tomorrow

Mr. Frist. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

In closing, I want to congratulate the chairman and ranking member of the Finance Committee who have worked to bring this legislation to completion.

Also announce that we are continuing our efforts to finish action on the remaining appropriations bills. It is my hope that we will be able to move forward with the appropriations process tomorrow. I have more to say about this tomorrow, but Senators should expect the possibility of additional votes tomorrow.

ORDERS FOR TUESDAY, NOVEMBER 24, 2003

Mr. Frist. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 8:15 a.m., Tuesday, November 25. I further ask that following the prayer and 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 then resume consideration of the conference report to accompany H.R. 1, the Medicare Prescription Drug Modernization Act, as provided under the previous order. I further ask unanimous consent that the final 10 minutes prior to the 9:15 a.m. vote be equally divided between the two leaders, with the majority leader in control of the final 5 minutes.

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

PROGRAM

Mr. Frist. Mr. President, tomorrow morning there will be 1 hour of debate prior to the vote adoption of the conference report to accompany H.R. 1, the Medicare Prescription Drug Modernization Act. We have had 3 days of vigorous debate on this monumental legislation. Tomorrow it will culminate in a historic vote. I do thank all Senators who have participated in the discussion, and I particularly congratulate the chairman and ranking member of the Finance Committee who have worked to bring this legislation to completion.

Also announce that we are continuing our efforts to finish action on the remaining appropriations bills. It is my hope that we will be able to move forward with the appropriations process tomorrow. I have more to say about this tomorrow, but Senators should expect the possibility of additional votes tomorrow.

ADJOURNMENT UNTIL 8:15 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 11:12 a.m., adjourned until 8:15 a.m., Tuesday, November 25, 2003.

NOMINATIONS

Executive nomination received by the Senate November 24, 2003:

THE JUDICIARY

Jane J. Boyle, of Texas, to be United States District Judge for the Northern District of Texas, Vice JERRY L. BUCHMEYER, Retired.
Chamber Action

Routine Proceedings, pages S15669–S15879

Measures Introduced: Fifteen bills and two resolutions were introduced, as follows: S. 1936–1950, and S. Res. 273–274.

Measures Reported:


Report to accompany S. 710, to amend the Immigration and Nationality Act to provide that aliens who commit acts of torture, extrajudicial killings, or other specified atrocities abroad are inadmissible and removable and to establish within the Criminal Division of the Department of Justice an Office of Special Investigations having responsibilities under that Act with respect to all alien participants in war crimes, genocide, and the commission of acts of torture and extrajudicial killings abroad. (S. Rept. No. 108–209)


S. 573, to amend the Public Health Service Act to promote organ donation, with an amendment in the nature of a substitute.

S. 606, to provide collective bargaining rights for public safety officers employed by States or their political subdivisions.

S. 1881, to amend the Federal Food, Drug, and Cosmetic Act to make technical corrections relating to the amendments by the Medical Device User Fee and Modernization Act of 2002, with an amendment in the nature of a substitute.

Measures Passed:

NASA Workforce Flexibility Act: Senate passed S. 610, to amend the provisions of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel provisions relating to the National Aeronautics and Space Administration, after agreeing to the committee amendment in the nature of a substitute, and the following amendment proposed thereto:

Ensign (for Voinovich/Carper) Amendment No. 2214, in the nature of a substitute.

New Hope Cemetery: Committee on Agriculture, Nutrition, and Forestry was discharged from further consideration of S. 1537, to direct the Secretary of Agriculture to convey to the New Hope Cemetery Association certain land in the State of Arkansas for use as a cemetery, and the bill was then passed.

Ozark Land Exchange: Committee on Agriculture, Nutrition, and Forestry was discharged from further consideration of S. 33, to authorize the Secretary of Agriculture to sell or exchange all or part of certain administrative sites and other land in the Ozark-St. Francis and Ouachita National Forests and to use funds derived from the sale or exchange to acquire, construct, or improve administrative sites, and the bill was then passed.

Green Mountain National Forests Boundaries: Committee on Agriculture, Nutrition, and Forestry was discharged from further consideration of S. 1499, to adjust the boundaries of Green Mountain National Forest, and the bill was then passed.

National Veterinary Medical Services Act: Committee on Agriculture, Nutrition, and Forestry was discharged from further consideration of H.R. 1367, to authorize the Secretary of Agriculture to conduct a loan repayment program regarding the provision of veterinary services in shortage situations, and the bill was then passed, clearing the measure for the President.

Wind Cave National Park Boundary Revision Act: Senate passed S. 425, to revise the boundary of the Wind Cave National Park in the State of South Dakota.

Wild Sky Wilderness Act: Senate passed S. 391, to enhance ecosystem protection and the range of outdoor opportunities protected by statute in the Skykomish River valley of the State of Washington by designating certain lower-elevation Federal lands.
as wilderness, after agreeing to the committee amendments.

**Idaho Panhandle National Forest Improvement Act:** Senate passed S. 434, to authorize the Secretary of Agriculture to sell or exchange all or part of certain parcels of National Forest System land in the State of Idaho and use the proceeds derived from the sale or exchange for National Forest System purposes, after agreeing to the committee amendment in the nature of a substitute.

**Sandpoint Land and Facilities Conveyance Act:** Senate passed S. 435, to provide for the conveyance by the Secretary of Agriculture of the Sandpoint Federal Building and adjacent land in Sandpoint, Idaho, after agreeing to the committee amendments.

**Cold War Study:** Senate passed S. 452, to require that the Secretary of the Interior conduct a study to identify sites and resources, to recommend alternatives for commemorating and interpreting the Cold War, after agreeing to the committee amendment.

**Oregon Dunes National Recreation Area Act:** Senate passed S. 714, to provide for the conveyance of a small parcel of Bureau of Land Management land in Douglas County, Oregon, to the county to improve management of and recreational access to the Oregon Dunes National Recreation Area, after agreeing to the committee amendments.

**Salmon River Commercial Outfitting Act:** Senate passed S.1003, to clarify the intent of Congress with respect to the continued use of established commercial outfitter hunting camps on the Salmon River, after agreeing to the committee amendment.

**Coconino and Tonto National Forests Act:** Senate passed H.R. 622, to provide for the exchange of certain lands in the Coconino and Tonto National Forests in Arizona, after agreeing to the committee amendments.

**Carter G. Woodson Home National Historic Site Establishment Act:** Senate passed H.R. 1012, to establish the Carter G. Woodson Home National Historic Site in the District of Columbia, after agreeing to the committee amendment in the nature of a substitute.

**Captive Wildlife Safety Act:** Senate passed H.R. 1006, to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species, after agreeing to the following amendment proposed thereto:

Ensign (for Inhofe/Jeffords) Amendment No. 2215, to make certain modifications to improve the bill.

**Preserving Independence of Financial Institution Examinations Act:** Senate passed S. 1947, to prohibit the offer of credit by a financial institution to a financial institution examiner.

**American Dream Downpayment Act:** Committee on Banking, Housing, and Urban Affairs was discharged from further consideration of S. 811, to support certain housing proposals in the fiscal year 2003 budget for the Federal Government, including the downpayment assistance initiative under the HOME Investment Partnership Act, and the bill was then passed, after agreeing to the following amendment proposed thereto.

Ensign (for Shelby) Amendment No. 2216, in the nature of a substitute.

**GAO Human Capital Reform Act:** Senate passed S. 1522, to provide new human capital flexibilities with respect to the GAO, after agreeing to the committee amendments.

**Authorizing Document Production:** Senate agreed to S. Res. 274, to authorize the production of records by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs.

**Medicare Prescription Drug, Improvement, and Modernization Act Agreement:** Senate continued consideration of the conference report to accompany H.R. 1, to amend title XVIII of the Social Security Act to provide for a voluntary prescription drug coverage program under the Medicare program, to modernize, strengthen, and improve the Medicare program, to amend the Internal Revenue Code of 1986 to allow a deduction to individuals for amounts contributed to health savings accounts, to amend the Federal Food, Drug, and Cosmetic Act with respect to abbreviated applications for the approval of new drugs and the importation of prescription drugs.

By 70 yeas to 29 nays (Vote No. 457), three-fifths of those Senators duly chosen and sworn, having voted in the affirmative, Senate agreed to the motion to close further debate on the conference report.

During consideration of this measure today, Senate also took the following action:

By 61 yeas to 39 nays (Vote No. 458), three-fifths of those Senators duly chosen and sworn, having voted in the affirmative, Senate agreed to the motion to waive sections 311(A)(2) and 302(f) of the Congressional Budget Act of 1974, with respect to the
conference report to accompany H.R. 1. Subsequently, the point of order that the conference report was in violation of sections 311(A)(2) and 302(f) of the Congressional Budget Act of 1974, was not sustained, and thus falls.

A unanimous-consent agreement was reached providing for further consideration of the conference report at 8:15 a.m., on Tuesday, November 25, 2003, with a vote on adoption of the conference report to occur at 9:15 a.m.

National Flood Insurance Program Reauthorization Act: Senate concurred in the amendment of the House to S. 1768, to extend the national flood insurance program, clearing the measure for the President.

Removal of Injunction of Secrecy: The injunction of secrecy was removed from the following treaty:


   The treaty was transmitted to the Senate today, considered as having been read for the first time, and referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed.

Appointments:

   American Folklife Center of the Library of Congress: The Chair, on behalf of the President pro tempore, pursuant to Public Law 94–201, as amended by Public Law 105–275, appointed Dr. Daniel Botkin, of California, as a member of the Board of Trustees of the American Folklife Center of the Library of Congress, vice Susan Barksdale Howorth, of Mississippi.

Nominations Received: Senate received the following nomination:

   Jane J. Boyle, of Texas, to be United States District Judge for the Northern District of Texas.

Enrolled Bills Signed:

Additional Cosponsors:

Statements on Introduced Bills/Resolutions:

Additional Statements:

Amendments Submitted:

Privilege of the Floor:

Record Votes: Two record votes were taken today. (Total—458)

Adjournment: Senate met at 9 a.m. and adjourned at 11:12 p.m. until 8:15 a.m. on Tuesday, November 25, 2003. (For Senate’s Program, see the remarks of the Acting Majority Leader in today’s Record on page S15879.)

Committee Meetings

(Committees not listed did not meet)

No committee meetings were held.
House of Representatives

Chamber Action
The House was not in session today. It will meet at 12 p.m. Tuesday, November 25 in pro forma session.

Committee Meetings
No committee meetings were held.

NEW PUBLIC LAWS
(For last listing of Public Laws, see DAILY DIGEST, p. D1294)
H.R. 3054, to amend the Policemen and Firemen’s Retirement and Disability Act to permit military service previously performed by members and former members of the Metropolitan Police Department of the District of Columbia, the Fire Department of the District of Columbia, the United States Park Police, and the United States Secret Service to count as creditable service for purposes of calculating retirement annuities payable to such members upon payment of a contribution by such members. Signed on November 22, 2003. (Public Law 108–133).

COMMITTEE MEETINGS FOR TUESDAY, NOVEMBER 25, 2003
(Committee meetings are open unless otherwise indicated)

Senate
No meetings/hearings scheduled.

House
No committee meetings are scheduled.
Next Meeting of the SENATE
8:15 a.m., Tuesday, November 25

Senate Chamber

Program for Tuesday: Senate will continue consideration of the conference report to accompany H.R. 1, to amend title XVIII of the Social Security Act to provide for a voluntary prescription drug coverage program under the Medicare program, to modernize, strengthen, and improve the Medicare program, to amend the Internal Revenue Code of 1986 to allow a deduction to individuals for amounts contributed to health savings accounts, to amend the Federal Food, Drug, and Cosmetic Act with respect to abbreviated applications for the approval of new drugs and the importation of prescription drugs, with a vote on adoption of the conference report to occur at 9:15 a.m.

Next Meeting of the HOUSE OF REPRESENTATIVES
12 p.m., Tuesday, November 25

House Chamber

Program for Tuesday: The House will meet in pro forma session.

NOTICE
Effective January 1, 2004, the subscription price of the Congressional Record will be $503 per year or $252 for six months. Individual issues may be purchased at the following costs: Less than 200 pages, $10.50; Between 200 and 400 pages, $21.00; Greater than 400 pages, $31.50. Subscriptions in microfiche format will be $146 per year with single copies priced at $3.00. This price increase is necessary based upon the cost of printing and distribution.

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