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House of Representatives

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

DESIGNATION OF SPEAKER PRO TEMPORE

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

WASHINGTON, DC,
July 23, 2002.

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

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

MORNING HOUR DEBATES

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

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

TOBACCO SMUGGLING ERADICATION ACT OF 2002

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

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

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

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

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

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

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

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

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

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

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

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While, unfortunately, the Bush Administration has been largely an obstacle rather than a force for constructive international action to address nicotine addiction, I am pleased that next week in New York City, the United States will host the International Conference on Illicit Tobacco Trade. I encourage the Administration to actively support this Tobacco-Smuggling Eradication Act, which the American Lung Association and a number of other major public health groups have said ''makes good sense as a matter of law enforcement, health policy and international leadership.''

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

COMBATTING CHRONIC WASTING DISEASE

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

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

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

Well, Mr. Speaker, if there was not so much going on, it would, indeed, be front page news. This disease, called chronic wasting disease, has now been found in nine States. It has now been found in Canada, and it is spreading. It could have a devastating impact on the culture, on the environment, and on the economy of so many States.

If there is good news to report this morning, it is, first, that Congress has recently secured more funds to help in this battle. For example, last week in a colloquy that I held with the chairman of the Subcommittee of the Interior of the Committee on Appropriations, that chairman pledged to me that he would help us get another $4 million to help us all in this battle against chronic wasting disease.

Secondly, guided by legislation that I authored with the gentleman from Colorado (Mr. MCINNIS) and the gentleman from Wisconsin (Mr. RYAN), and supported by most Members, Republican and Democrat, from Wisconsin, the administration has now developed a comprehensive plan to fight chronic wasting disease over the long haul. That plan will mean more research and more money to the States.

But Mr. Speaker, there is one area in which we have made painfully little progress. That is providing enough testing resources for chronic waste disease. Research is good, study is good, but what our hunters will really want, what they really need, are enough testing facilities to tell them whether their deer are safe. It is that simple, Mr. Speaker. We are falling short.

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

But Mr. Speaker, each year in Wisconsin alone some 600,000 deer hunters will take to the woods. They will bag in a good year as many as 400,000 deer in Wisconsin alone. That means our testing capacity will be dangerously short. We need more testing to reassure our hunters. We need more testing to diagnose the extent of the epidemic.

Mr. Speaker, I am convinced this is a health crisis, it is an environmental crisis, and I know it is an economic crisis for States like mine, States like Wisconsin.

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

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

HEALTH CARE IN LOS ANGELES COUNTY

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

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

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

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

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

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

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

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

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

Unfortunately, CMS decided this past January that they would change the

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

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

Right now, funding for another Federal program, known as the Disproportionate Share Hospital program, or DSH, is also scheduled to be cut. Cuts in the DSH program will cost California $183 million, and L.A. County can potentially get a hit of $37 million. That would ruin our safety net.

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

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

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

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

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

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

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

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

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

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

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

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

CORPORATE GREED

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

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

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

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

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

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

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

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

It is a pretty difficult sell to claim this when we consider that the drug industry has topped, or in terms of profitability, it has been the most profitable industry in America for 20 years running, return on price, return on sales, return on equity. While the overall profits of Fortune 500 companies declined 53 percent last year, the top 10 drugmakers increased profits by 33 percent last year.

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

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

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

After this bill then passed the committee and passed the House of Representatives, the drug industry spent,

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

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

Now, why is this? Why should the drug industry have this kind of influence here? Well, over the last 12 years, the drug industry's lobbying expenditures have increased 800 percent. In the 2000 election cycle, the drug industry contributed $26 million to candidates running for office, the overwhelming majority of which to Republicans. The industry contributed $625,000 to the Bush-Cheney inaugural. So far in this election cycle, the drug industry has contributed $14.6 million in political donations, the vast majority of which to Republicans.

This may explain, Mr. Speaker, why the administration is working so hard for the drug industry, but it begs the question: Is what is good for the drug industry in the best interests of the American people?

DEPARTMENT OF HOMELAND SECURITY, WHO NEEDS IT?

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

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

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

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

A clear understanding of private property and an owner's responsibility to protect it has been seriously undermined. This was especially true for the airline industry. The benefit of gun ownership and second amendment protections were prohibited. The government was given the responsibility for airline safety through FAA rules and regulations, and it failed miserably.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

What Democrats said then and continue to say is that we need a prescription drug benefit under Medicare that guarantees the plan a benefit, a generous benefit, 80 percent of the cost paid for by the Federal Government, that guarantees that benefit to every American, or to every senior, I should say, to everyone who is eligible for Medicare, and that is basically under Medicare, an expansion of Medicare, and that addresses the issue of price by saying that the Secretary of Health and Human Services will basically negotiate for the 30 or 40 million Americans who are under Medicare to reduce price maybe 30 or 40 percent.

Now, the reason that the Democratic bill did not get a chance, and the reason the Republican bill, which is private subsidies for insurance companies, passed, is not only because the Republicans are in the majority, but because

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

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

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

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

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

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

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

We must point this out on a regular basis.

RECESS

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

Accordingly (at 9 o'clock and 34 minutes a.m.), the House stood in recess until 10 a.m.

□ 1000

AFTER RECESS

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

PRAYER

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

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

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

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

THE JOURNAL

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

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

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

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

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

Mr. MCNULTY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

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

The point of no quorum is considered withdrawn.

PLEDGE OF ALLEGIANCE

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

Mr. MCNULTY led the Pledge of Allegiance as follows:

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

INTRODUCTION OF CAPTAIN JEFF STRUECKER AS GUEST CHAPLAIN

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

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

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

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

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

Mr. Speaker, it is a pleasure to have Chaplain Jeff Struecker as Chaplain today in the United States House of Representatives.

HONORING GUEST CHAPLAIN JEFF STRUECKER

(Mr. HAYES asked and was given permission to address the House for 1 minute.)

Mr. HAYES. Mr. Speaker, ''Struecker felt his own heart sink. His vehicles were all shot up. The rear of his Humvee was splattered with Pila's blood and brains. When the body was pulled out, it did not even look like Pila anymore. The top of his head was gone and his face was grotesquely swollen and disfigured. Struecker's men were freaking out.''

This is the scene Mark Bowden describes in his novel retelling the horrors of the firefight in Somalia. Here today leading us in prayer is a hero and a survivor of this vicious fight, Captain Jeff Struecker, currently serving at Ft. Bragg in my district in North Carolina. Captain Struecker is a model citizen and soldier for us all. A devoted husband and father of five, Jeff has experienced combat in such places as Panama, Kuwait, and Somalia and has received numerous medals honoring his service.

Entering the ministry during his service at Fort Benning, Jeff has provided inspiration and ministered to many in the past few years. He states that the experience in Mogadishu called him to God, as it was his faith that gave him the strength to fight the rest of the night. This ''bullet-proof faith,'' to use Jeff's words, would serve as example to all of us about the power of God. We are lucky to have Chaplain Struecker here with us today. May God bless him and his family and the men and women that currently fight for our freedom.

COMMENDING SARAH AHN

(Mr. LAMPSON asked and was given permission to address the House for 1 minute.)

Mr. LAMPSON. Mr. Speaker, I rise to commend a very brave and very smart little girl by the name of Sarah Ahn. Sarah Ahn is the playmate and friend of Samantha Runnion, the girl who was snatched when playing near her Stanton, California home. I commend Sarah Ahn because she was the only eyewitness to such a horrible crime and gave the police the details about Samantha's kidnapper that ultimately led to his arrest. While this event was obviously extremely tragic, Sarah Ahn proved to everyone that children need not be victims.

Her story of bravery is one of many that I have heard about children saving or being key witnesses in abduction cases. One of the most wonderful stories I have ever heard was of an elementary school girl who kept insisting that a boy in her class was the one on the missing children's card, the Advo card, that they got at their home. Her persistence caused her mother to ultimately call the police, tell the story and learn that the little boy had indeed been abducted. He was returned to his family.

Mr. Speaker, I want to urge every parent to encourage your children to be aware of what is going on around them. Listen to your kids when they tell you that something might be wrong and trust them. Sarah Ahn is an inspiration to every one of us.

RECOGNIZING MIAMI JOB CORPS CENTER

(Ms. ROS-LEHTINEN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. ROS-LEHTINEN. Mr. Speaker, today I recognize the Miami Job Corps Center for all of its hard work in providing quality training programs and employment opportunities for our South Florida youth. I want to send special thanks to the center's director, Luis Cerezo, whose generous devotion to our community's young people has made this organization a great success.

Through the Miami Job Corps Center, young adults in our community have been able to participate in mentoring programs and job fairs which have reinforced employability and interviewing skills, leadership training, dress code and business etiquette. In particular, one project with the School for Integrated Academics and Technologies provides student trainees the opportunity to finish their high school studies in a classroom-based, high-tech environment which will better prepare them to achieve in the working world.

I again want to thank all of the dedicated workers of the Miami Job Corps Center for giving our community's young people greater opportunities for success.

CORPORATE ACCOUNTABILITY AND THE ECONOMY

(Ms. SOLIS asked and was given permission to address the House for 1 minute.)

Ms. SOLIS. Mr. Speaker, each weekend when I go home to my district, the issue I hear the most about is with respect to the economy. President Bush has told the American public that our economy is fundamentally sound. I question that terminology. I question it because in my own district, one of the largest cities that I represent, the city of El Monte, we have upwards of 9 percent unemployment. In the city of South El Monte, it goes beyond. It is 11 percent. People are wondering what is happening to them there. In Baldwin Park, unemployment rates are 8.2 percent. In South El Monte again, it is 11 percent. And it is not just about the unemployed. It is about jobs and it is about the potential for these people to have a place to stay, to live, to raise their families.

Each day brings more layoffs and each week brings new news that yet another corporate scandal is upon us. The collapse of WorldCom has serious implications for not only those that work for that company but also the many people and organizations who invested millions in that company. The California Public Employees Retirement System, CALPERS, which provides retirement and health benefit services to 1.3 million public employees and nearly 2,500 employers, has estimated a loss at $433 million because of the collapse of WorldCom.

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

TIME TO SEND AN ENERGY BILL TO THE PRESIDENT

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

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

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

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

Illinois has faced job loss and unstable gas prices as we wait for Congress to pass an energy bill that provides some relief for the small independent refineries of our country. Mr. Speaker, it is time to send an energy bill to the President.

SUPPORTING THE PRACTITIONERS OF FALUN GONG

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

Ms. SANCHEZ. Mr. Speaker, today I rise in support of practitioners of Falun Gong. Falun Gong, also known as Falun Dafa, is a peaceful spiritual

discipline that is rooted in Chinese culture and based on beliefs in truthfulness, benevolence and forbearance.

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

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

□ 1015

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

PREPARING FOR NEW CHALLENGES FOR AMERICA

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

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

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

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

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

FINDING A CURE FOR LOU GEHRIG'S DISEASE

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

Mr. WILSON of South Carolina. Mr. Speaker, every day in America 15 people are diagnosed with Lou Gehrig's disease, amounting to more than 5,600 people each year. The average life expectancy for people with this disease is only 2 to 5 years from the time of diagnosis.

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

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

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

STOPPING PARTIAL-BIRTH ABORTIONS

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

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

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

They say in their article, ''The centers necessary for pain perception develop early in the second trimester.''

Mr. Speaker, most partial-birth abortions happen in the second and third trimesters. Dr. Sprang and Dr. Neerhof say the vast majority of partial-birth abortions are performed on near-viable babies. They say, ''When infants of similar gestational ages are delivered, pain management is an important part of the care rendered to them in the intensive care nursery. But in a partial-birth abortion, pain management is not provided for the fetus, who is literally within inches of being delivered.''

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

UNITED NATIONS POPULATION FUND AND ABORTION

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

Mr. PENCE. Mr. Speaker, the common accusation in Washington, D.C. is that we say one thing and then do another. It was back in the campaign of 2000 and in March of this year that President George W. Bush pledged to the American people that he would not permit taxpayer dollars to be used to fund abortion. Specifically, in March of this year the President said, ''I said we are not going to use taxpayer money to fund abortion. I am going to make sure we are not using taxpayer money to fund abortion.''

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

This institution gave more than $34 million to the United Nations Family Planning Fund, despite overwhelming evidence presented before House committees and the House Permanent Select Committee on Intelligence that China was engaged in forced and coercive abortion practices.

I rise today to extol the President of the United States for being a man as good as his word, for standing with the American people in their fundamental belief in the dignity and the sanctity of human life.

APPLAUDING PRESIDENT BUSH FOR REDIRECTING UNFPA FUNDING TO PROTECT HUMAN RIGHTS

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

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

For over 20 years, Mr. Speaker, the U.N. Population Fund (UNFPA) has enabled facilitated, and shamelessly whitewashed terrible crimes against humanity, especially crimes against women, and the United States will now no longer have any part in subsidizing them. In refusing to fund the UNFPA, our President and our country have taken the side of the oppressed and have refused to cooperate with the oppressor. The United States will now no longer directly or indirectly fund the brutal, oppressive Chinese Government's violence against women.

Mr. Speaker, as Secretary of State Colin Powell said yesterday, UNFPA funds have provided crucial technical support that has made China's barbaric program more effective. That means that as a result of UNFPA's complicity with China's antilife program more women are targeted for forced abortions.

Mr. Speaker, tens of millions of children have been slaughtered and their mothers have been robbed by the state of their children. The UNFPA for over 20 years has aggressively defended the indefensible, this barbaric policy that makes brothers and sisters illegal and makes women the victims of population control cadres.

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

Thank you President Bush.

JOURNAL VOTE

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

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

Mr. MCNULTY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

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

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 339, nays 45, answered ''present'' 1, not voting 49, as follows:

[Roll No. 326]

YEAS—339

Ackerman
Akin
Allen
Andrews
Armey
Baca
Bachus
Baker
Baldacci
Ballenger
Barcia
Barr
Bartlett
Barton
Bass
Becerra
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop
Blagojevich
Blumenauer
Blunt
Boehlert
Boehner
Boozman
Boswell
Boucher
Boyd
Brady (TX)
Brown (FL)
Brown (OH)
Brown (SC)
Bryant
Burr
Burton
Buyer
Camp
Cannon
Cantor
Capito
Capps
Cardin
Carson (IN)
Castle
Chabot
Chambliss
Clayton
Clement
Clyburn
Coble
Collins
Combest
Conyers
Cooksey
Cox
Coyne
Crenshaw
Crowley
Culberson
Cunningham
Davis (CA)
Davis (FL)
Davis, Jo Ann
Davis, Tom
Deal
DeGette
Delahunt
DeLauro
DeMint
Diaz-Balart
Dicks
Dingell
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Eshoo
Etheridge
Evans
Everett
Farr
Ferguson
Flake
Fletcher
Foley
Forbes
Ford
Fossella
Frank
Frost
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Gordon
Goss
Graham
Graves
Green (WI)
Greenwood
Grucci
Gutierrez
Hall (OH)
Hall (TX)
Hansen
Harman
Hart
Hastings (WA)
Hayes
Hayworth
Herger
Hill
Hilleary
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jenkins
John
Johnson (CT)
Johnson (IL)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (RI)
Kerns
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kirk
Kleczka
Knollenberg
Kolbe
LaFalce
LaHood
Lampson
Langevin
Lantos
Larson (CT)
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (KY)
Lipinski
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Maloney (NY)
Manzullo
Markey
Mascara
Matheson
Matsui
McCarthy (NY)
McCollum
McGovern
McHugh
McInnis
McIntyre
McKeon
McKinney
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller, Gary
Miller, Jeff
Mink
Mollohan
Moran (KS)
Murtha
Myrick
Nadler
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Obey
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Pence
Peterson (PA)
Petri
Pickering
Pitts
Pombo
Pomeroy
Portman
Price (NC)
Putnam
Quinn
Radanovich
Rahall
Rangel
Regula
Rehberg
Reyes
Reynolds
Rivers
Rodriguez
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryan (WI)
Sanders
Sandlin
Sawyer
Saxton
Schakowsky
Schiff
Schrock
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stearns
Stenholm
Sullivan
Sununu
Sweeney
Tanner
Tauscher
Tauzin
Terry
Thomas
Thornberry
Thune
Thurman
Tiahrt
Tiberi
Toomey
Towns
Turner
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watson (CA)
Watt (NC)
Watts (OK)
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn

NAYS—45

Aderholt
Baird
Baldwin
Borski
Brady (PA)
Condit
Costello
Crane
DeFazio
English
Fattah
Filner
Green (TX)
Gutknecht
Hefley
Hilliard
Kennedy (MN)
Kucinich
Larsen (WA)
Latham
LoBiondo
McDermott
McNulty
Miller, George
Moore
Oberstar
Olver
Peterson (MN)
Ramstad
Sabo
Sanchez
Schaffer
Stark
Strickland
Stupak
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Weller

ANSWERED ''PRESENT''—1

Tancredo

NOT VOTING—49

Abercrombie
Barrett
Bentsen
Bonilla
Bonior
Bono
Callahan
Calvert
Capuano
Carson (OK)
Clay
Cramer
Cubin
Cummings
Davis (IL)
DeLay
Deutsch
Ehrlich
Emerson
Engel
Frelinghuysen
Granger
Hastings (FL)
Hyde
Jefferson
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Lewis (GA)
Linder
Lynch
Maloney (CT)
McCarthy (MO)
McCrery
Miller, Dan
Moran (VA)
Morella
Phelps
Platts
Pryce (OH)
Riley
Ryun (KS)
Stump
Taylor (NC)
Traficant
Wexler
Young (AK)
Young (FL)

□ 1045

Mr. RANGEL changed his vote from ''nay'' to ''yea.''

So the Journal was approved.

The result of the vote was announced as above recorded.

Stated for:

Mr. BARRETT of Wisconsin. Mr. Speaker, because of commitments in my home state of Wisconsin, I was unable to vote on rollcall No. 326. Had I been present, I would have voted ''yea'' on rollcall No. 326.

Mr. ABERCROMBIE. Mr. Speaker, yesterday and this morning, I was unavoidably detained and I was unable to vote on rollcall No. 326. Had I been present, I would have voted ''yea.''

Mr. MALONEY of Connecticut. Mr. Speaker, I was absent on Tuesday, July 23, 2002, and missed rollcall vote No. 326. Had I been present, I would have voted ''yea'' on rollcall No. 326.

□ 1045

DISAPPROVAL OF NORMAL TRADE RELATIONS TREATMENT TO PRODUCTS OF VIETNAM

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

The Clerk read the title of the joint resolution.

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

H. J. RES. 101

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

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

Is there a Member in support of the joint resolution?

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

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

The Chair recognizes the gentleman from California (Mr. THOMAS).

Mr. THOMAS. Mr. Speaker, I ask unanimous consent to yield one half of my time to the gentleman from Michigan (Mr. LEVIN), the ranking member

of the Subcommittee on Trade on the Committee on Ways and Means and that he be permitted to yield that time as he sees fit.

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

There was no objection.

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

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

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

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

There was no objection.

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

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

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

There was no objection.

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

Mr. Speaker, we discuss this resolution every year and my position has not changed. I do not oppose eventual normalization of trade relations with Vietnam. We have done that with all of our former enemies. I oppose doing it at this time, Mr. Speaker, for very practical reasons. The latest report from the Department of Defense MIA office is that we have found the wreckage of two more United Nations military planes; a C–130 with nine on board and an A–6 with two aboard. And pending examination of those remains, we have the prospect of the return of 11 more American soldiers who have been missing in action in Vietnam for literally decades. And when did we get that news about those findings? July 2 in the year 2002. Three weeks ago!

I ask the question again: Can we not wait until we get as full an accounting as possible of our missing in action in Vietnam before we proceed further with this trade relationship? Where are our priorities?

And I do get emotional about this. There is an anniversary coming up on August 9. August 9, 1970, my brother, H.M.3 William F. McNulty, a medic in the Navy, transferred to the Marine Corps, was out in the field in Quang Nam province patching up his buddies. He stepped on a land mine and he lost his life. But his body was recovered. And he was brought back home, and we had a wake and a funeral and a burial. Our family suffered a tremendous loss, but we had some closure.

I have always wondered how terrible it must be for an MIA family, never exactly knowing what happened to their loved one—not for a day, a week, a month or a year, but for decades. And so, Mr. Speaker, until we get as complete an accounting as possible of all of those who are missing in action from the Vietnam War, I will continue to support this resolution.

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

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

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

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

Because the BTA is now in force, the Jackson-Vanik waiver provides U.S. firms with greater access to the Vietnamese market of over 80 million people, the 14th most populous country in the world. Over the first 4 months of 2002, two-way trade between the United States and Vietnam was up over 60 percent from the same period last year. The Jackson-Vanik waiver also enables U.S. exporters doing business in Vietnam to have access to U.S. trade financing programs, provided that Vietnam meet the relevant program criteria.

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

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

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

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

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

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

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

Vietnam sparks deep emotions, and very understandably. Our relationship with Vietnam is a complicated one. The war left deep and enduring impacts on both nations and surely on ours. Although for many years we pursued a policy of isolation of Vietnam, we have been following in recent years a path of engagement and pressuring. As mentioned, in 1994 we lifted the trade embargo. In 1995 we opened a U.S. embassy. In 1998 the President first waived the Jackson-Vanik prohibitions. Last year, as mentioned, Congress approved the U.S. Vietnam bilateral trade agreement. That agreement has been successful in some important respects, increasing trade both imports and exports.

Notably the government of Vietnam has continued to cooperate in helping to locate U.S. servicemen and women missing in Vietnam. Just last year, nine Vietnamese citizens died helping in the search for U.S. POWs and MIAs. Our continuing engagement with Vietnam has been critical in helping to secure Vietnam's assistance with these efforts.

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

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

labor continue to be wide spread in Vietnam.

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

□ 1100

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

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

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

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

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

After hearing the gentleman from Michigan's (Mr. LEVIN) description of how human rights has not been improved and how things are still just as repressive, it seems to me that he has just provided enough arguments for us to say why are we doing the same old policy if it is not working and the Vietnamese, that the Vietnamese Communist have just signed another agreement, as my friend, the gentleman from Illinois (Mr. CRANE) has just said, big deal, they have signed agreements for 20 years and broken all of them. This is no reason we should continue down a path that has kept the Vietnamese people in chains and in slavery and in abject poverty.

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

By voting yes on H.J. Res. 101, thus denying normal trade relations for Vietnam, we send a message to the gang of thugs that rule Vietnam that they must once and for all not just make agreements but start some real political reform. Let us see something happening rather than just talk before we normalize relations with them. Only this will allow the Vietnamese people to enjoy some prosperity, some peace and some liberty, but they have been denied this by the regime that holds them in its grip.

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

Hanoi has recently, in fact, initiated a new campaign of censorship. They have even outlawed the watching of satellite TV. Give me a break, and we are going to treat them like we do democratic societies? The primary cause for the fact that their country is making any headway economically is their lack of democracy and freedom and the fact that it is a Communist dictatorship that we are talking about. If we wish Vietnam to succeed, we have got to do more than just wink and nod when they make another agreement, yet they will then violate again and again.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. MCNULTY. Mr. Speaker, I think the gentleman is incorrect. I do not

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

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

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

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

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

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

This discussion today about the Jackson-Vanik waiver is really about immigration and family reunification and visas between countries.

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

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

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

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

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

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

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

Today, in this Chamber for my colleagues, this vote is about whether they are helping us to bring families together and they are not. They are not doing a good job.

□ 1115

So I would ask my colleagues, please vote for this resolution. It is time we stood up and we asked for more. This is about families. This is about mothers and fathers who have been here for 10 or 15 years and want their children who are still in Vietnam.

Mr. LEVIN. Mr. Speaker, I yield 3 minutes to the very distinguished gentleman from California (Mr. GEORGE MILLER).

(Mr. GEORGE MILLER of California asked and was given permission to revise and extend his remarks.)

Mr. GEORGE MILLER of California. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise in opposition to the resolution.

The United States and Vietnam have had a long and sometimes difficult history. Today, that relationship is one of increasing cooperation, best symbolized by the expanded trade, growing tourism, liberalized emigration policies and improvements in the standard of living of the Vietnamese people. As in the past, this record warrants waiving Jackson-Vanik trade restrictions, as requested by Democratic and Republican Presidents alike.

The passage of the Bilateral Trade Agreement last year played a major role in building a new relationship between our people. The Vietnamese government has made continued efforts toward economic, legal and labor reforms in the 10 months since the BTA was approved. Trade between our countries is growing, there is continued full cooperation on the important POW-MIA issues, and the Vietnamese government has moved forward by enacting legal reforms in the areas of intellectual property, investment, transparency and labor. Reimposing trade restrictions at this point would represent an enormous and unnecessary step backwards in this flourishing relationship.

Earlier this year, I visited Vietnam for the third time and had an opportunity to meet with representatives of local business and labor unions, the National Assembly, the International Labor Organization, and American business people who are investing in Vietnam. As a critic of many other trade agreements that are insensitive to the legitimate needs of working people, I reiterated my message of support for closer trade and economic relationships between our countries, with the expectation that working men and women would benefit from these policies.

My support for the BTA and for Jackson-Vanik waivers has never been, and is not today, unconditional. Trade needs to work for more than corporations and shareholders: it must also uplift workers and their families through decent wages, fair working conditions, safe workplaces, and basic, internationally recognized labor rights. Trade can and must be an important tool for uplifting the conditions and rights of workers around the world to internationally recognized standards.

The National Assembly of Vietnam has just completed rewriting a labor code which expands the rights of workers with respect to hiring and termination, severance, workers' compensation, and protections for women workers. These are significant reforms, and through the Labor Memorandum of Understanding we signed at the time of the BTA, I expect that the U.S. Government, together with international groups like the ILO, which has opened

a new office in Hanoi, and Social Accountability International, will continue to work with the Vietnamese to expand labor protections and upgrade labor standards.

By our own standards and those recognized by the signatories of the ILO, Vietnam still falls short on several core human rights conventions, especially the right of free association which is the core to a genuine independent trade union movement. During my visit to Vietnam, I continued to emphasize the need for truly independent trade unions and a legally protected collective bargaining policy.

The United States should continue to carefully monitor progress on this crucial topic, as will international unions and the ILO itself, because free unions are the measure of true worker democracy, in Vietnam, in Cambodia, in Mexico and, for that matter, in much of the United States where labor organizing is often inadequately protected by current law. Unquestionably, we would like to have these political reforms as well as liberalization of the economic system.

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

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

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

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

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

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

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

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

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

Mr. COYNE. Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from Illinois (Mrs. BIGGERT).

Mrs. BIGGERT. Mr. Speaker, I thank the gentleman from Illinois for yielding me this time.

Mr. Speaker, I rise today to urge my colleagues to oppose the resolution disapproving the President's extension of the Jackson-Vanik waiver for Vietnam. It has been 8 years since we ended our trade embargo and began the process of normalizing relations with Vietnam. Over these few years, good progress has been made. From its accounting of U.S. POWs and MIAs, to its movement to open trade with the world, to its progress on human rights, Vietnam has moved in the right direction. Vietnam is not there yet, but Vietnam is moving in the right direction.

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

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

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

Mr. EVANS. Mr. Speaker, I thank the gentleman for yielding me this time, and I urge my colleagues to oppose the resolution before us.

I have heard several people talk about what this is all about and to make a good faith attempt to try to set the limits of the debate and to move forward. But what I think I can add to this debate is that I have been to Vietnam and seen the work of the Joint Task Force on Full Accounting, our military presence tasked with looking for our missing-in-action.

I visited these young men and women, and they are among the bravest and most motivated soldiers I have ever met. Everyday, from the jungle battle sites to the excavation of crash sites on mountain summits, they put their lives in harm's way to find our missing. It is talking with them that it was clear to me their mission was one that they totally believed in.

Last year, seven Americans of this task force, along with nine Vietnamese, lost their lives in a helicopter crash on the way to a recovery mission. We should not forget these American heroes, or soldiers, who gave their lives to accomplish the mission they had believed was their highest duty and honor. If we pass this resolution of disapproval, we would be hindering this mission. The only way to carry this out is to be in Vietnam. Maintaining that presence means honoring our promises to Vietnam. Passing this resolution would send the wrong signal to the Vietnamese, not to mention the brave Americans who are still searching, as we meet here today, in the rice paddies and mountains of Vietnam.

This is the fifth year that this House will vote on a resolution of disapproval. Since we first voted on this, the House has each time, with growing and overwhelming support, voted down this resolution. With last year's passage of the Bilateral Trade Agreement, we are truly embracing a successful policy that will advance our Nation's interests and goals of achieving a more open and cooperative Vietnam. Let us stay the course. Please vote against this resolution.

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

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

I rise in support of America's continued trade with Vietnam. In the 1870s, the French moved into Southeast Asia, particularly Vietnam, isolated that country, demeaned the people and took away their dignity. That lasted until 1940. The Japanese moved in, isolated Vietnam from the rest of the world, demeaned the population, and took away their dignity. In 1945, the French moved back in and did the same thing. So for well over a century the Vietnamese were isolated from the rest of the world, could not exchange information, had no trade, had no expertise or skill to understand the nature of a nation having its own sovereignty, knew nothing about World War II which we fought to have a nation determine its own destiny, and there has been trouble in the 1950s and in the 1960s and the 1970s, and then the United States finally decided that in order to help the

Vietnamese gain some dignity, to have a sense of the international community, they needed the skills, the expertise, and, yes, the hope, and so what we have been doing over the last so many years is expanding the horizon for the Vietnamese people so they have what it takes to change their government from the inside while we make strong attempts to change their government from the outside, especially through the requirements of the trading agreements. Take the trading agreements away, take Americans away from the landscape of Vietnam, and the Vietnamese people go back to that isolation. They go back to the demeaning effects of what communism can do when no one reaches in to wrestle that juggernaut.

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

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

□ 1130

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

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

According to the State Department's report on religious international freedom, a Roman Catholic priest, Father Ly, has been in prison for several years and it is almost like nobody knows who Father Ly is, because he testified at a hearing held by the U.S. Commission on International Religious Freedom.

Vietnam persecutes believers. It abuses those who fought alongside those in the United States. This Congress and this administration want to now give them normal trade relations. Vietnam should not get normal trade relations until its human rights record substantially improves.

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

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

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

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

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

This year's annual vote to disapprove the President's waiver comes less than a year after the historic vote to approve normal trade relations. We have seen solid progress and accomplishments since 1998 in my tenure in the House. Progress has not just been in economic opportunity for American companies in Vietnam and doing business in Vietnam, although those are important, particularly given these troubled economic times, we have seen progress in terms of the growing prosperity of the Vietnamese people, an 8 percent increase in per capita income in just this last year alone, and a tenfold increase in private firms that are doing business in Vietnam. We have seen progress in assuring continued progress and repatriating the remains of hundreds of Americans missing in action in Vietnam. I was there 2 years ago with President Clinton and watched men and women from both countries working to make sure that we are answering these questions.

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

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

But the fact is this is a government in transition. The old guard took over a year to figure out that they could accept yes for an answer and approve the bilateral trade agreement.

Mr. Speaker, I have experienced firsthand the warmth of the Vietnamese people, 80 percent of whom were mere children or were not even born during the Vietnam War. I have seen their eagerness to embrace American innovation and American values. I strongly urge that we continue with our progress by rejecting this resolution today.

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

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

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

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

While we are constantly told that the government of Vietnam is making

progress in the area of human rights, I continue to hear about political persecuting and unwarranted detentions from my friends in the Vietnamese community. Later today, the Human Rights Caucus will be holding a hearing on freedom of expression in Vietnam.

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

Amnesty International and Human Rights Watch have detailed cases, and their list of abuses is long. The U.S. State Department and humanitarian groups have reported that the Vietnam human rights situation has actually worsened in 2001, especially with regard to ethnic minorities like the Montagnards. There are reports of harassment of prominent dissidents in Vietnam, and Hanoi still implements strict control over the press.

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

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

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

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

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

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

I was in Vietnam just a year ago. It had been 10 years since my last visit, and the changes which have taken place are very, very dramatic in Vietnam. This is a country that is clearly on the edge of making huge progress economically; and as it does, I think one can predict with absolute certainty that there will be progress on the political front as well.

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

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

Mr. ROHRABACHER. Mr. Speaker, I yield myself 3 minutes.

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

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

Let us address this. Why should we be subsidizing with our tax dollars the building of factories in Vietnam, a communist dictatorship, so that some of our profiteers, our businessmen who would like to make profit off labor that does not have a right to quit, does not have a right to complain or unionize, does not have any competition, we are going to have slave labor basically over there manufacturing in companies and in plants that have been built by the American taxpayers' subsidy.

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

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

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

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

Mr. MCNULTY. Mr. Speaker, I yield 1 minute to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, why do we not put this in historical context? Why do we not remember the Vietnamese people who fought alongside our young men and women for freedom and justice? This is not a trade bill. This is, frankly, rewarding those who continue to punish those hard-working, dedicated freedom fighters in Vietnam and punish their families who are here in the United States, refusing to allow their families to reunite with my own constituents and constituents across this Nation who work hard every day in our communities and cannot see their family members.

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

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

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

The SPEAKER pro tempore (Mr. FOSSELLA). The gentleman from Illinois (Mr. CRANE) will close, the gentleman from New York (Mr. MCNULTY) will be in support, the gentleman from Michigan (Mr. LEVIN), and the gentleman from California (Mr. ROHRABACHER).

Mr. MCNULTY. Mr. Speaker, I suggest that the order will be the reverse of what the Chair just outlined.

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

The SPEAKER pro tempore. The Chair was designating from the close backward. The gentleman from Illinois (Mr. CRANE) has the right to close.

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

The SPEAKER pro tempore. The gentleman is correct. The gentleman from Illinois (Mr. CRANE) has 2½ minutes remaining, the gentleman from New York (Mr. MCNULTY) has 3 minutes remaining, the gentleman from Michigan (Mr. LEVIN) has 2 minutes remaining, and the gentleman from California (Mr. ROHRABACHER) has 1½ minutes remaining.

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

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

Mr. Speaker, I understand that the big money interests want us to have a free trade agreement with Vietnam because it works in their interest. How wonderful it is for them to throw American workers out on the street so they can move to Vietnam and China and Mexico and pay desperate people 20 cents an hour, and they can make all kinds of profits while American workers lose their jobs. The truth is our current trade policy is a disaster. In the last 4 years under NAFTA and MFN with China and trade agreements with Vietnam, we have lost millions of factory jobs. In fact, we have lost 10 percent of our manufacturing base.

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

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

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

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

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

I would also point out to my colleagues that this body passed the Vietnam Human Rights Act, which I introduced, overwhelmingly last year, 410 to one. The Vietnamese Government has moved Heaven and Earth in the other body to put a hold on that legislation which simply looks for human rights improvements. They have not happened, I say to my colleagues. We need to step up to the plate and say, despite the expectations that might have been there, they have not been realized. Human rights continue to be trashed.

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

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

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

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

JULY 17, 2002.

DEAR SECRETARY POWELL: I am writing on behalf of the U.S. Commission on International Religious Freedom, which urges you to raise prominently the protection of religious freedom in Vietnam during your upcoming participation at the ASEAN Regional Forum in July 2002. We also urge you to impress your Vietnamese officials that improvements in the protection of religious freedom in Vietnam are critical to continuing progress in U.S.-Vietnam relations.

Since the Congress ratified the U.S.-Vietnam Bilateral Trade Agreement (BTA) in September 2001, the protection of religious freedom in Vietnam continues to be minimal at best. In February 2002, the Commission sent a delegation to visit that country. Despite the increase in religious practice continues its repressive policy toward all religious and their followers in Vietnam.

Key Vietnamese religious dissidents remain under house arrest or imprisoned, including two senior leaders of the outlawed Unified Buddhist Church of Vietnam (UBCV) ? Most Venerable Thich Huyen Quang and Venerable Thich Quang Do ? and a Hoa Buddhist leader, Mr. Le Quang Liem. Mr. Quang has been denied access to much needed medical treatment. in addition, Father Thaddeaus Nguyen Van Ly, who last year submitted written testimony to the Commission, was sentenced to 15 years in prison after having been convicted on charges of ''undermining state unity'' and ''slandering the government.'' During the Commission's visit, Vietnamese officials refused the delegation's requests to meet with these and other religious leaders who were either in prison or under house arrest.

Government officials continue to harass leaders of unregistered religious organizations and their followers, particularly unregistered Protestant fellowships, as well as clergy members of officially recognized religious groups who oppose government interference in their activities. At the same time, Vietnamese authorities have refused to register some religious groups. For example, the Vietnamese government has refused to register or permit any activity of Baha'i adherents, whose membership in Vietnam before 1976 counted close to 200,000. Meanwhile, provincial and local officials continue to force Hmong Christians in northwestern Vietnam to renounce their faith. Hmong Christian leaders have been arrested and beaten, and their followers are not allowed to meet in homes and conduct worship. Catholic bishops continue to have limits imposed on them by the government regarding the number of candidates who can be admitted to study for the priesthood as well as the number of qualified men who are allowed to be ordained to the priesthood.

Although the government recognized the Evangelical Church of Vietnam in the South in April 2001, that recognition apparently has not been extended to the Montagnards who reside in the Central Highlands. Government repression of religious freedom for Monagnard Christians, coupled with an ongoing land dispute between the Montagnards and the government, led to unrest and government crackdown in February 2001 that ultimately resulted in the flight to Cambodia of over 1,000 Montagnards. Nonetheless, it appears that the Vietnamese government continues to violate the right to religious freedom of Montagnard Christians in the Central Highlands through arrests and the closing of churches.

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

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

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

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

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

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

(5) Return confiscated religious properties.

(6) Permit domestic Vietnamese religious organizations and individuals to interact with foreign organizations and individuals.

(7) Permit domestic Vietnamese religious and other non-governmental organizations to distribute their own and donated aid.

(8) Support exchanges between Vietnamese religious communities and U.S. religious and other non-governmental organizations concerned with religious freedom in Vietnam.

In its May 2001 report, the Commission also recommended that the U.S. government continue to support the ASEAN Human

Rights Working Group, and that it should encourage the Vietnamese government to join the working group by establishing a national working group. The Commission urges you to take this opportunity to engage officials of the ASEAN working group in serious discussions about the promotion of human rights, including religious freedom, among ASEAN member states. Moreover, we urge you to impress upon Vietnamese officials that the establishment of a national working group by their government would be an important sign of Vietnam's commitment to protecting religious freedom and other human rights.

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

Respectfully,

FELICE GAER,
Chair.

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

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

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

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

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

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

Mr. Speaker, the vote today if it succeeds relates not only to subsidies. It would revoke the bilateral trade agreement that was passed here by a very substantial margin just last year. I think those who voted in favor of that bilateral trade agreement have no reason today to change their vote. Those who have voted against this resolution in the past have no reason to change their vote. We will see in the future what happens, for example, with the textile agreement, and I have already made clear the position of many of us. But today we should remain on the course of both engagement and pressure.

I urge opposition to this resolution.

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

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

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

Freedom is not free. We have paid a tremendous price for it. That is why I try not to let a day go by without remembering with deepest gratitude all of those who, like my brother Bill and tens of thousands of others through the years, gave their lives in service to this country. And it's why I'm thankful for people like J. Leo O'Brien, whose funeral I attended yesterday. Leo was part of what we call ''the greatest generation''—those who served in World War II. Leo served, put his life on the line for all of us, for our families, and for all that we hold dear, and thankfully came home and rendered outstanding service in the community. He then raised a beautiful family to carry on in his fine tradition. That is what America is all about. Veterans are the reason why, when I get up in the morning, the first two things I do are to thank God for my life and then veterans for my way of life.

And so, Mr. Speaker, on behalf of all 1,442 Americans missing in action in Vietnam and their families, I support this resolution.

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

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

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

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

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

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

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

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

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

Last fall, Congress enacted legislation that ratified a U.S.-Vietnam bilateral trade agreement and extended normal trade relations to Vietnam. As in the case of China and some other countries, an annual review of Vietnam's trade status is required by the Jackson-Vanik amendment to the 1974 Trade Act.

If this resolution was adopted, Vietnam could not receive U.S. government credits, or credit or investment guarantees, such as those provided by the Overseas Private Investment Corporation (OPIC), the Export-Import Bank and the U.S. Agriculture Department. In addition, imports from Vietnam would be subject to much higher tariffs and duties. These measures, which we grant to countries with which we have normal trade relations, would severely damage our trade with Vietnam.

The trade fostered by normal trade relations with Vietnam, relations that require a Jackson-Vanik waiver, are necessary for the United States to more effectively push for reform in Vietnam. As a result of the normalizing of

trade and diplomatic relations with Vietnam, Hanoi has made major progress on freedom of emigration, including helping with last year's resettlement of 3,000 former boat people held in refugee camps throughout Asia. In addition, Vietnam has steadily improved cooperation in locating U.S. servicemen missing in action. Finally, the very act of trading with the United States, and the desire to increase that trade, is resulting in the beginning of meaningful economic reforms in Vietnam.

This is a lesson that sadly, this Administration has not applied to relations with Cuba. There we have had a decades long trade embargo, and economic sanctions, that has done nothing, absolutely nothing, to loosen or undermine the hold of the Castro regime on the Cuban people. I urge the Administration to review the success of its actions on trade with Vietnam and apply that lesson to trade with Cuba. We will improve human rights and the economic situation of the Cuban people faster with a policy of trade engagement than with maintaining the status quo policy of failed trade sanctions.

In the meantime, we must continue to maintain normal trade relations with Vietnam. Perhaps another year's successful trade with Vietnam will convince the Administration that normalizing trade relations with Cuba will also be advantageous to the people of Cuba.

Mr. GILMAN. Mr. Speaker, I want to thank the distinguished Chairman of the Ways and Means Committee the gentleman from California, Mr. THOMAS and the Ranking Minority Member Congressman RANGEL and the Chairman of the Trade Subcommittee Congressman CRANE and its Ranking Minority Member Congressman LEVIN for bringing H.J. Res. 101 to the Floor. I want to commend Congressman ROHRABACHER for crafting this important resolution. The effect of this resolution would be to withdraw the President's Jackson-Vanik waiver for Vietnam.

Jackson-Vanik requires that a country permits free emigration of its citizens. According to Human Rights Watch, with regard to the exodus of Montagnards refugees to Cambodia, the Vietnamese government did everything that it could to prevent such an exodus. Human Rights Watch reported ''the Vietnamese government began to tightly restrict freedom of movement throughout the Central Highlands. Montagnards arriving at the UNHCR sites in Cambodia reported that strict travel bans had been instituted throughout the highlands with police posted on the roads to stop movement of people and in the hamlets to prevent travel and communication between villages.'' The report goes on to state that ''Areas from which large numbers of people had attempted to flee to Cambodia faced particularly heavy surveillance and extra travel restrictions.''

Mr. Speaker, human rights organizations also inform us that security police recruited villagers to report on anyone who attended Christian meetings and even those who conducted family prayers in their own homes. Why should we award a dictatorship that attempts to prevent our war time allies from freely emigrating and persecutes people for praying?

Jackson-Vanik also sets down conditions to deny MFN to any country with a nonmarket economy. According to the Country Commercial Guide of the U.S. Commercial Service and the U.S. Department of State ''State-Owned Enterprises continue to dominate the industrial economy of Vietnam . . . The government's protectionist approach to these loss-making companies has long stood in the way of further trade reform and investment liberalization.'' The report goes on to state that ''The government has organized around 2,000 State-owned Enterprises into 17 so-called 'general corporations' (or conglomerates) and 77 'special corporations', thereby reinforcing monopoly or privileged conditions in industries that account for approximately 80 percent of the productive capacity of the state sector.''

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

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

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to the order of the House of Monday, July 22, 2002, the joint resolution is considered read for amendment and the previous question is ordered.

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

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

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

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

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

The yeas and nays were ordered.

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

GENERAL LEAVE

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

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

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

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

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

IMPROVING ACCESS TO LONG-TERM CARE ACT OF 2002

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

The Clerk read as follows:

H.R. 4946

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

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the ''Improving Access to Long-Term Care Act of 2002''.

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

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

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 (relating to additional itemized deductions) is amended by redesignating section 223 as section 224 and by inserting after section 222 the following new subsection:

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

''(a) IN GENERAL.—In the case of an individual, there shall be allowed as a deduction an amount equal to the applicable percentage of eligible long-term care premiums (as defined in section 213(d)(10)) paid during the taxable year by the taxpayer for coverage for the taxpayer and the spouse and dependents of the taxpayer.

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

''For taxable years beginning in calendar year—	The applicable percentage is—
2003, 2004, and 2005	25
2006 and 2007	30
2008 and 2009	35
2010 and 2011	40
2012 and thereafter	50.

''(c) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

''(1) IN GENERAL.—If the modified adjusted gross income of the taxpayer for the taxable year exceeds $20,000 (twice the preceding dollar amount, as adjusted under paragraph (2), in the case of a joint return) the amount which would (but for this subsection) be allowed as a deduction under subsection (a) shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which would be so allowed as such excess bears to $20,000 ($40,000 in the case of a joint return).

''(2) ADJUSTMENTS FOR INFLATION.—

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

''(i) such dollar amount, multiplied by

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2002' for 'calendar year 1992' in subparagraph (B) thereof.

''(B) ROUNDING.—If any amount as adjusted under subparagraph (A) is not a multiple of

$1,000, such amount shall be rounded to the nearest multiple of $1,000 (or if such amount is a multiple of $500, such amount shall be rounded to the next highest multiple of $500).

''(3) MODIFIED ADJUSTED GROSS INCOME.—For purposes of paragraph (1), the term 'modified adjusted gross income' means adjusted gross income determined—

''(A) without regard to this section and sections 911, 931, and 933, and

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

''(d) LIMITATION BASED ON SUBSIDIZED COVERAGE.—

''(1) IN GENERAL.—Subsection (a) shall not apply to premiums paid for coverage of any individual for any calendar month if—

''(A) for such month such individual is covered by any insurance which is advertised, marketed, or offered as long-term care insurance under any health plan maintained by any employer of the taxpayer or of the taxpayer's spouse, and

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

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

''(e) COORDINATION WITH OTHER DEDUCTIONS.—Any amount taken into account under subsection (a) shall not be taken into account in computing the amount allowable as a deduction under section 162(l) or 213(a).

''(f) MARRIED COUPLES MUST FILE JOINT RETURN.—

''(1) IN GENERAL.—If the taxpayer is married at the close of the taxable year, the deduction shall be allowed under subsection (a) only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

''(2) MARITAL STATUS.—For purposes of paragraph (1), marital status shall be determined in accordance with section 7703.

''(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this section, including regulations requiring employers to report to their employees and the Secretary such information as the Secretary determines to be appropriate.''.

(b) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES.—Subsection (a) of section 62 is amended by inserting after paragraph (18) the following new item:

''(19) PREMIUMS ON QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS.—The deduction allowed by section 223.''.

(c) CONFORMING AMENDMENTS.—

(1) Sections 86(b)(2)(A), 135(c)(4)(A), 137(b)(3)(A), 219(g)(3)(A)(ii), and 221(b)(2)(C)(i) are each amended by inserting ''223,'' after ''222,''.

(2) Section 222(b)(2)(C)(i) is amended by inserting ''223,'' before ''911''.

(3) Section 469(i)(3)(F)(iii) is amended by striking ''and 222'' and inserting ''222, and 223''.

(d) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 is amended by striking the last item and inserting the following new items:

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

''Sec. 224. Cross reference.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

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

(a) IN GENERAL.—Section 151 (relating to allowance of deductions for personal exemptions) is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and by inserting after subsection (c) the following new subsection:

''(d) ADDITIONAL EXEMPTION FOR DEPENDENTS WITH LONG-TERM CARE NEEDS IN TAXPAYER'S HOME.—

''(1) IN GENERAL.—Except as provided in paragraph (2), an exemption of the exemption amount for each qualified family member of the taxpayer.

''(2) PHASE-IN.—In the case of taxable years beginning in calendar years before 2012, the amount of the exemption provided under paragraph (1) shall not exceed the applicable limitation amount determined in accordance with the following table:

''For taxable years beginning in calendar year—	**The applicable limitation amount is—**
2003 and 2004	$500
2005 and 2006	1,000
2007 and 2008	1,500
2009 and 2010	2,000
2011	2,500.

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

''(A) who is—

''(i) the spouse of the taxpayer, or

''(ii) a dependent of the taxpayer with respect to whom the taxpayer is entitled to an exemption under subsection (c),

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

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

''(4) INDIVIDUALS WITH LONG-TERM CARE NEEDS.—For purposes of this subsection, the term 'individual with long-term care needs' means, with respect to any taxable year, an individual who has been certified, during the 39½-month period ending on the due date (without extensions) for filing the return of tax for the taxable year (or such other period as the Secretary prescribes), by a physician (as defined in section 1861(r)(1) of the Social Security Act) as being, for a period which is at least 180 consecutive days—

''(A) an individual who is unable to perform (without substantial assistance from another individual) at least 2 activities of daily living (as defined in section 7702B(c)(2)(B)) due to a loss of functional capacity, or

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

''(5) IDENTIFICATION REQUIREMENT.—No exemption shall be allowed under this subsection to a taxpayer with respect to any qualified family member unless the taxpayer includes, on the return of tax for the taxable year, the name and taxpayer identification of the physician certifying such member. In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required.

''(6) SPECIAL RULES.—Rules similar to the rules of paragraphs (2), (3), and (4) of section 21(e) shall apply for purposes of this subsection.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1(f)(6)(A) is amended by striking ''151(d)(4)'' and inserting ''151(e)(4)''.

(2) Section 1(f)(6)(B) is amended by striking ''151(d)(4)(A)'' and inserting ''151(e)(4)(A)''.

(3) Section 3402(f)(1)(A) is amended by striking ''151(d)(2)'' and inserting ''151(e)(2)''.

(4) Section 3402(r)(2)(B) is amended by striking ''151(d)'' and inserting ''151(e)''.

(5) Section 6012(a)(1)(D)(ii) is amended—

(A) by striking ''151(d)'' and inserting ''151(e)'', and

(B) by striking ''151(d)(2)'' and inserting ''151(e)(2)''.

(6) Section 6013(b)(3)(A) is amended by striking ''151(d)'' and inserting ''151(e)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 4. ADDITIONAL CONSUMER PROTECTIONS FOR LONG-TERM CARE INSURANCE.

(a) ADDITIONAL PROTECTIONS APPLICABLE TO LONG-TERM CARE INSURANCE.—Subparagraphs (A) and (B) of section 7702B(g)(2) of the Internal Revenue Code of 1986 (relating to requirements of model regulation and Act) are amended to read as follows:

''(A) IN GENERAL.—The requirements of this paragraph are met with respect to any contract if such contract meets—

''(i) MODEL REGULATION.—The following requirements of the model regulation:

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

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

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

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

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

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

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

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

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

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

''(XI) Section 25 (relating to prohibition against preexisting conditions and probationary periods in replacement policies or certificates).

''(XII) The provisions of section 26 relating to contingent nonforfeiture benefits, if the policyholder declines the offer of a nonforfeiture provision described in paragraph (4).

''(ii) MODEL ACT.—The following requirements of the model Act:

''(I) Section 6C (relating to preexisting conditions).

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

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

''(B) DEFINITIONS.—For purposes of this paragraph—

''(i) MODEL PROVISIONS.—The terms 'model regulation' and 'model Act' means the long-term care insurance model regulation, and

the long-term care insurance model Act, respectively, promulgated by the National Association of Insurance Commissioners (as adopted as of October 2000).

''(ii) COORDINATION.—Any provision of the model regulation or model Act listed under clause (i) or (ii) of subparagraph (A) shall be treated as including any other provision of such regulation or Act necessary to implement the provision.

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

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

''(1) REQUIREMENTS OF MODEL PROVISIONS.—

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

''(i) Section 9 (relating to required disclosure of rating practices to consumer).

''(ii) Section 14 (relating to application forms and replacement coverage).

''(iii) Section 15 (relating to reporting requirements), except that the issuer shall also report at least annually the number of claims denied during the reporting period for each class of business (expressed as a percentage of claims denied), other than claims denied for failure to meet the waiting period or because of any applicable preexisting condition.

''(iv) Section 22 (relating to filing requirements for advertising).

''(v) Section 23 (relating to standards for marketing), including inaccurate completion of medical histories, other than paragraphs (1), (6), and (9) of section 23C, except that—

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

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

''(vi) Section 24 (relating to suitability).

''(vii) Section 29 (relating to standard format outline of coverage).

''(viii) Section 30 (relating to requirement to deliver shopper's guide).

The requirements referred to in clause (vi) shall not include those portions of the personal worksheet described in Appendix B of the model regulation relating to consumer protection requirements not imposed by section 4980C or 7702B.

''(B) MODEL ACT.—The following requirements of the model Act must be met:

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

''(ii) Section 6G (relating to outline of coverage).

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

''(iv) Section 6J (relating to policy summary).

''(v) Section 6K (relating to monthly reports on accelerated death benefits).

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

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

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

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

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

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

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to expenses incurred after the date of the enactment of this Act.

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

(a) IN GENERAL.—Paragraph (1) of section 4132(a) (defining taxable vaccine) is amended by redesignating subparagraphs (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and (M), respectively, and by inserting after subparagraph (H) the following new subparagraph:

''(I) Any vaccine against hepatitis A.''

(b) EFFECTIVE DATE.—

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

(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

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

(a) IN GENERAL.—Subparagraph (B) of section 220(c)(2) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clause:

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

''(I) such plan shall be treated as a high deductible health plan for purposes of this section,

''(II) subsection (b)(2)(A) shall be applied by substituting '100 percent' for '65 percent' with respect to such individual,

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

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

''(V) the limitation which would (but for this subclause) apply under subsection (b)(1) with respect to such individual for any taxable year shall be reduced (but not below zero) by the amount which would (but for subsection 106(b)) be includible in such individual's gross income for the taxable year.''.

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

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Arizona (Mr. HAYWORTH) and the gentleman from California (Mr. STARK) each will control 20 minutes.

The Chair recognizes the gentleman from Arizona (Mr. HAYWORTH).

□ 1200

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

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

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

Soaring costs and rising demand for long-term care services could deplete personal savings and exhaust government entitlement programs. It is essential that people are encouraged to plan and take some personal responsibility for their future needs. Therefore, it is my privilege to bring forward this legislation, the Improving Access to Long-Term Care Act of 2002 as a critical first step toward helping in the emerging long-term care crisis.

First of all, this legislation provides immediate tax relief to assist individuals in acquiring and maintaining long-term care for themselves, especially health care, which is so vital, for themselves, their spouses and their dependents.

H.R. 4946 would provide an above-the-line deduction for eligible long-term care insurance premiums. Under current law, individuals may claim an itemized deduction for the cost of eligible qualified long-term care insurance premiums, but only to the extent that such premiums, combined with the taxpayer's additional medical expenses, exceed 7.5 percent of adjusted gross income.

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

The deduction is available to individuals with adjusted gross income between $20,000 and $40,000, and twice that amount for married couples filing a joint return. This amount will be adjusted annually for inflation. This bill, Mr. Speaker, provides targeted relief for those taxpayers who really need it.

Although financing is the cornerstone of the long-term care issue, we must also look at supporting family caregivers. H.R. 4946 would add an additional personal exemption for home caregivers of family members. This bill provides immediate tax relief to those

taxpayers who assume the responsibility of providing for the care and support of individuals with long-term care needs.

Under current law, individuals are entitled to a personal exemption deduction of $3,000 in 2002 for the taxpayer, the taxpayer's spouse and each dependent. This bill provides the taxpayer with an additional personal exemption for each qualified family member with long-term needs.

This legislation, Mr. Speaker, has been updated to include additional consumer protections for long-term care insurance policies. A qualified long-term care insurance contract is one that meets certain consumer protection requirements promulgated by the National Association of Insurance Commissioners, or NAIC. This bill updates the consumer protection provisions to reflect changes made to the Long-Term Care Insurance Model Act by the NAIC. Groups that support the addition of the additional consumer protection provisions include AARP, the American Council of Life Insurers and the Health Insurance Association of America.

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

Mr. Speaker, our Nation is in dire need of comprehensive long-term care reform. By 2040, the number of Americans 64 and older will more than double. Without long-term care reform, these changing demographics will drive spending for Social Security, Medicare and Medicaid to consume nearly 75 percent of all Federal revenue by the year 2030.

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

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

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

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

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

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

Mr. Speaker, I believe firmly that we need to do something about the long-term care issue, but we have had precious little debate as to whether private insurance is the right approach. Even if you think it is a good idea to promote the purchase of private long-term care insurance, the real question is whether or not this bill before us today will do any good.

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

Now, mind you, you are talking about individuals with $20,000 worth of income. It is questionable whether those people are even buying life insurance. The average amount of life insurance in this country is less than $8,000. Why my colleagues on the other side of the aisle think that people who already are under-insured and are young enough to afford this would begin to buy long-term care insurance escapes me.

But let us suppose that the bill works as the Joint Tax Committee has informed us they think it might. In the year 2003, what would happen? Six thousand people would newly purchase long-term care insurance, and, of course, we would spend $19 million to get them to do that. That is approximately $3,200 per insured person of your hard-earned taxpayer money to just get these 6,000 people to buy policies, and I am not sure we would all agree that the policies are any good.

It gets better. Why, in 2004, you would get 12,000 people, and it would cost them only $1,000 that year. But in 2005, you get 18,000 people, and it costs $7,780 a person. That is more than the premiums.

Now, why are we wasting the taxpayer's money? This is some insurance salesman run amuck and writing a bill, which even the insurance salesmen, if you triple their commissions, they would not get that much money. It is a terribly inefficient way.

The net result is let us get all the way out to 2012, when this turkey is full grown and ready for the table. In 2012, the Joint Tax Committee estimates that 100,000 people will become new purchasers of long-term care insurance at a modest cost of $561 million. That is $5,600 a person.

Now, you guys are going to bribe people with $5,600 to buy long-term care insurance, which most of the people supporting this, I wish they would raise their hands, I do not buy long-term care insurance and I bet none of my Republican colleagues have purchased the long-term care insurance, which is now available through the House of Representatives. That is another turkey. If we are not buying it, why should we be spending the taxpayer's money to encourage the public to buy in?

Now, the bill gets better, of course. We have an additional personal exemption for caregivers. This sounds nice. It allows the taxpayer caring for a chronically ill loved one to get an additional personal exemption to defray some of the cost. It phases in very slowly, starting with a $500 exemption in 2003 and eventually going to $2,500. But it mostly benefits wealthy people anyway, because if you do not have any tax liability, this personal exemption does little or nothing for you.

Of course, the third one is the grandfather gobbler of all turkeys, and that is Medicare MSAs, which were written into law right after we wrote in Medicare+Choice. This one is so successful that not one, not one company offers them, not one person has ever asked to buy one. They just do not exist. They are zip, zero, nada. This is the turkey of all turkeys.

Then what they are going to do is allow Medicare beneficiaries, people my age, Mr. Speaker, to take $6,000 a year and deduct it, which nobody else can do, and pop it into an IRA, and save it there and let the income accumulate tax free, and when it is all done, I can spend it on anything I want with no penalties. I do not have to spend it on health care.

It is a new $6,000 IRA only for us old fogies. Now, if you are trying to encourage my children to save for long-term care, maybe we could do something like that for them. But why give it to me? Long-term care is far too expensive. I should have already saved by now.

So what you have here is a grand campaign scheme which throws away $5.5 billion of the taxpayer's money on something that is next to worthless, that only benefits insurance companies who have a bankrupt product that they cannot sell.

So here we go again, the Republicans subsidizing large corporations to the disadvantage of the poor and the disadvantage of the taxpayers to accomplish precious little.

The bill will go nowhere. You will see it on campaign statements if it passes muster today. But I hope it does not. It

is useless, it is worthless, and it is a tremendous waste of the taxpayer's money.

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

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

The question comes from the gentleman from California in a very interesting fashion in terms of public policy, why do this? Well, I think it is worth noting that in fiscal year 2000 Medicare and Medicaid provided $82.1 billion, 60 percent of the money spent, of the $123 billion, spent on long-term care services.

□ 1215

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

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

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

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

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

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

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

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

Mr. STARK. Mr. Speaker, I am pleased to yield 4 minutes to the gentlewoman from Florida (Mrs. THURMAN).

Mrs. THURMAN. Mr. Speaker, I thank the gentleman from California for yielding me this time.

I want to talk, first of all, a little bit about long-term care and what it means to folks in and around. One reason was mentioned just about nursing home care, but there are other reasons for long-term care. We are talking about home health care, we are talking about people that might want assisted living, areas that many of our seniors are moving in those directions today. We always want to think that we give them the best quality.

So over the years, the Congress has talked about this issue. We also, in the last year or so, were able to pass on to retirees from the Federal Government, as well as Federal employees that are now serving, the ability to buy long-term care. It just seems to me that in some ways, we need to be starting to work with those folks that are 44, 50 years old, so they can start looking at ways to plan for their retirement, and so that they are not dependent on their families for the cost of this. Because that has a negative effect on the families that they are trying to put through college or that they are trying to help to buy their first home, or to do the things that all of us want to be able to do for our families without burdening them with us, who might end up needing some long-term care.

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

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

The other area, for those that have chosen to keep a loved one at home and that have to take off from work or need to provide somebody to come in to give them the tax credit, I think ours was a little bit more generous with that.

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

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

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

Mr. HAYWORTH. Mr. Speaker, I yield myself 30 seconds to thank the gentlewoman for her well-intentioned critique and also the work that she has done on a bipartisan basis with the gentlewoman from Connecticut (Mrs. JOHNSON).

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

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

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

This will provide immediate tax relief to assist individuals in getting, and

in keeping, long-term health care for themselves, for their parents, and for their dependents. I am pleased, too, that this bill incorporates legislation that I introduced, the Orphan Drug Tax Credit Act of 2001.

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

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

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

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

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

Currently, some 5.2 million Americans over the age of 65 and 4.6 million Americans under the age of 65 need assistance with daily activities. The increased life expectancy of the baby boomer generation will increase this need for long-term care. A man aged 65 today can expect to live another 15 years, and a woman aged 65 can expect to live another 19 years.

But the cost of long-term care insurance can be prohibitive. The cost of long-term care insurance varies dramatically, according to the age of the consumer. On average, a basic plan premium can cost a 50-year-old $385 annually; $1,007 annually for a 65-year old; $4,100 for a 79-year old, if they can find the coverage.

Now, some of us worked to begin this approach at trying to tax and encourage long-term care insurance and, under HIPAA, individuals can deduct long-term care premiums, but only if the taxpayer itemizes deductions and that medical cost that exceeds 7.5 percent of adjusted gross income.

We had sought in a bipartisan way to expand upon this with H.R. 831, creating an above-the-line deduction for long-term care. I joined the gentlewoman from Connecticut (Mrs. JOHNSON), the gentleman from Louisiana (Mr. MCCRERY), and the gentlewoman from Florida (Mrs. THURMAN) in sponsoring that legislation. I am very disappointed that budget constraints do not allow us to move on that legislation, because I believe that would have been much more significant in providing relief to those that accept the responsibility to insure themselves against the cost of long-term care.

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

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

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

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

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

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

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

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

Now, undergirding all of this is the notion, Mr. Speaker, that the House has already put in place an incremental approach to long-term health care policy and insurance. One of the challenges we confront in a legislative body in a very real way is how to capture the ideal and move something that is real. With carte blanche, with a blank check certainly we could have embraced a bill six times more costly; and I champion the provisions, but the challenge we face is fitting this in to budget parameters. Again, the question comes up, who will this benefit?

I would point out that a married couple filing jointly would find the economics of this to be between $40,000 and $80,000 a year. Not an inconsiderable sum.

Mr. Speaker, we all know of families who fit within those parameters. I shared in committee my aunt and uncle, my cousin with Down syndrome. They fit precisely into this frame work. So I do not think we get anywhere by characterizing side steps, small steps. The fact is, Mr. Speaker,

we will take a positive step forward with approval of this legislation.

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

The SPEAKER pro tempore (Mr. ISAKSON). The gentleman from California (Mr. STARK) has 2½ minutes remaining. The gentleman from Arizona (Mr. HAYWORTH) has 7 minutes remaining.

Mr. STARK. Mr. Speaker, I yield 1½ minutes to the gentleman from Wisconsin (Mr. KLECZKA).

Mr. KLECZKA. Mr. Speaker, let me thank the gentleman from California (Mr. STARK) for recognizing me for a short time.

This bill was before the Committee on Ways and Means a short time ago. And after listening to the debate, I come down on the same side as my colleague from Florida (Mrs. THURMAN), who indicates that the long-term care insurance is something that I think we should not only consider but also encourage. We find that the population in the country is living longer. We also find that long-term care is something that many people are going to be in need of, and so to encourage people today where they can get a premium rate that is somewhat reasonable versus waiting until you are 55 or 60 years old is something this Congress should be involved in.

The other provision of the bill deals with the personal exemption to those who provide home care to dependents. Again, we should thank and encourage these people to stay home. The option is to put your relative in a nursing home or assisted living which will cost much more.

The thing I think is not a fatal flaw in the bill, but one is kind of like a turkey as referred to by the gentleman from California (Mr. STARK), that is the MSAs for Medicare+Choice. We tried this failed policy before with the general population. We found that the only people buying MSAs were doctors and attorneys; and to now subject the Medicare+Choice elderly to an MSA is ridiculous. They are the ones who need not only the Medicare program, a supplemental, but also a drug benefit.

It is not fatal. I will be supporting the bill, but it is bad policy.

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

Mr. Speaker, I continue to suggest that this is a waste of money. Three and a half million or more people have long-term care, they will get no benefit from this. In its final year we will spend $561 million to get 100,000 people more in. That is a marginal benefit.

If we really wanted to have long-term care, we might redesign a Federal program much like Social Security that people would like, they could afford. It is a social insurance program; and as it is with MSAs and with Medicare+Choice, these are failed programs. They are not working. Companies that issue them are going broke. People are not signing up. Why we continue to beat these dead horses and waste good taxpayers' money year after year escapes me.

I would hope we could come back. We recognize that there is a problem. Let us solve it in a way that is more than campaign rhetoric. Let us solve it with a program that does the job for all Americans regardless of their income, and then we can be proud of our work.

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

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

Mr. Speaker, I thank you for this debate; and it does point up some basic differences that exist between the gentleman from California (Mr. STARK) and many of us on the majority side. It is interesting to hear the call for nationalized insurance, and certainly that is one philosophical point of view that one can offer here.

I think it is important not to lose sight of our goal. Indeed, this House has acted in incremental fashion before to put in place long-term care insurance. Indeed, already close to 5.5 million Americans have these policies. We expect them to grow in short time to 11.5 million Americans. That is a significant portion of our population. And we need to offer an opportunity for this to grow even larger because the question comes, who will be responsible as our society continues to age? Will we see up to 75 percent of funds coming into the government dealing with questions of health and old age for the American populace? Or commensurate with our national heritage and our primary philosophy in this country, does it not make sense to provide for self-sufficiency? The challenge has been noted. Budgetary restraints have kept us from the ideal, but we deal with the real here today.

While we thank those who, on a bipartisan basis, have offered a long-term care model, this legislation is substantially less in cost, but can have a pronounced impact for working Americans in need of relief of long-term care and the ability to take advantage of these policies. Mindful of the critiques offered in committee, we reached out in this legislation incorporating the consumer protection language offered in a previous bill, in H.R. 831, and so we have been mindful of that and we will continue to work where we have the ability to expand this further as we deal with what may be contemplated in the other body. But, again, this is an important step. This House dare not ignore this or spurn this because we will send the wrong message to the American people if we choose to do this.

So, Mr. Speaker, I invite you to join me in bipartisan support of H.R. 4946; and with this long-term care bill, we can take another important step forward.

Mr. BENTSEN. Mr. Speaker, I rise today in strong support of H.R. 4946, Improving Access to Long Term Care Act. As an original cosponsor of similar legislation, I am pleased that the House of Representatives is today considering legislation to improve the lives of long term care patients and their families.

Under this bill, individuals would be permitted to deduct a percentage of their long term care expenses depending on their income. This income tax deduction would be available for both individuals and married couples. Under this bill, individuals and married couples could deduct an above-the-line deduction of 25 percent beginning in 2003. This deduction would increase to 50 percent of the cost of these plans by 2011. In order to protect taxpayers, this tax deduction is limited to moderate and low income families. The deduction would be available for those individual taxpayers whose adjusted gross income is between $20,000 and $40,000 and the deduction would be available for married couples whose adjusted gross income is between $40,000 and $80,000 annually. The value of the deduction would be indexed for inflation so that as the cost of these premiums increase, the deduction would also increase. The Joint Committee on Taxation has estimated that this provision will cost $648 million over five years.

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

Another important provision in this measure would provide a new personal tax exemption for home care givers of long term care patients. In a time when many families make personal sacrifices in order to keep their loved ones at home, we should be helping these families to cope with the financial burden for such home-based care. Under the bill, a taxpayer who is a care giver for a loved one would be eligible for a personal tax exemption of $500 beginning in 2003 and increasing by $500 every two years until it reaches $2000 in 2010. This tax exemption would be available for individuals whose adjusted gross income is less than $137,300 and would be available for married couples whose adjusted gross income is less than $206,000 annually. In order to encourage all Americans to use these exemptions, the cap of these exemptions would be repealed in 2010. The Joint Tax Committee estimates that this provision will save families $787 million over five years. It is my hope that this exemption will help many caregivers who choose to care for their families in their own homes, rather than the more expensive institution-based care of nursing homes and long term facilities.

I believe we must encourage families to purchase long term care insurance. Without such incentives, the federal government will face a

crisis in the future as more Americans need long term care services. This bill is an important first step in our effort to making long term care insurance plans more affordable and accessible.

Mr. SPRATT. Mr. Speaker, few would question the goals of H.R. 4946. Most of us see the need to provide assistance to those burdened by the costs of long-term care. However, once again we are approaching an issue with fiscal impact in a vacuum, without a plan to guide us.

Republicans claim that this bill is consistent with their budget resolution, because the resolution provided for some tax relief. But the House has already adopted tax bills totaling $43.145 billion through fiscal year 2007. The 2003 budget resolution provided for only $27.853 billion over five years. Attached is a table compiled by the House Budget Committee Democratic staff that documents these figures.

There is no room for these tax cuts under the fiscal plan that is supposed to be our guide. Either these tax cuts are not real, and we are passing tax bills that will never become law; or the 2003 House Republican budget is not real, and we are about to tax cut our way even deeper into deficit, and spend even more of the Social Security Trust Fund surplus.

We continue to consider legislation without any coherent Republican budget plan. The Republicans claim that their budget provides tight fiscal management. But then the Republican leadership again and again schedules legislation that violates their own budget.

Mr. Speaker, as we speak, we are sliding deep into deficit. It is time for all of us to sit down together and hammer out a real budget that saves Social Security, pays down the debt, and protects national priorities.

COSTS OF TAX BILLS PASSED BY THE HOUSE THUS FAR

Title	2002–2007	2002–2012	Bill No.	Status
Clergy Housing Clarification Act	−0.007	−0.033	H.R. 4156	Enacted into Law.
Energy Tax Policy Act	22.759	33.521	H.R. 4	Passed the House.
Encouraging Work and Supporting Marriage Act	0.907	0.908	H.R. 4626	Passed the House.
Expansion of Adoption Benefits	0.000	0.401	H.R. 4800	Passed the House.
Holocaust Restitution Tax Fairness Act	0.000	0.003	H.R. 4823	Passed the House.
Marriage Penalty Tax Bill	0.000	42.000	H.R. 4019	Passed the House.
Retirement Savings Security Act	0.000	6.105	H.R. 4931	Passed the House.
Armed Forces Tax Fairness Act	0.069	0.156	H.R. 5063	Passed the House.
Pension Security Act	10.440	24.615	H.R. 3762	Passed the House.
Tax Relief Guarantee Act	8.977	373.712	H.R. 586	Passed the House.
Grand total	43.145	481.388		
Concurrent Resolution on the Budget	27.853	N.A.	H. Con. Res. 353	
Available	−15.292	−481.388		
Improving Access to Long-Term Care Act	1.501	5.487	H.R. 4946	On the Floor.

Mr. SHAYS. Mr. Speaker, I rise in strong support of H.R. 4946, the Improving Access to Long-Term Care Act.

H.R. 4946 phases in tax deductions for individuals who pay 50 percent of their long-term care costs. The deduction can be used for the taxpayer, a spouse or a dependent. The challenge of caring for a loved one over years and, in some cases, decades can literally break families apart and exhaust a lifetime of savings. Many families do not use private long-term care insurance to help protect against financial and emotional strain. I am a strong advocate for making private long-term care more affordable and support providing incentives—including tax deductions—for the purchase of private long-term care insurance.

Under the current system Medicare doesn't pay for long term care and seniors are forced to ''spend down'' their assets to qualify for Medicaid, which provides $33 billion in long term care services each year. This has serious financial repercussions for retirees and taxpayers who pay for long term care assistance through public programs.

As the Baby Boom generation retires, the financial burden will consume more of the public resources. In the coming decade, people over age 65 will represent up to 20 percent or more of the population, and the proportion of the population composed of individuals who are over age 85, who are most likely to be in need of long-term care, may double or triple.

I urge my colleagues to vote for this crucial legislation.

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. HAYWORTH) that the House suspend the rules and pass the bill, H.R. 4946, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

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

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

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

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

There was no objection.

NATIONAL AVIATION CAPACITY EXPANSION ACT OF 2002

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

The Clerk read as follows:

H.R. 3479

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

TITLE I—NATIONAL AVIATION CAPACITY EXPANSION

SEC. 101. SHORT TITLE.

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

SEC. 102. FINDINGS.

Congress finds the following:

(1) O'Hare International Airport consistently ranks as the Nation's first or second busiest airport with nearly 34,000,000 annual passengers enplanements, almost all of whom travel in inter-state or foreign commerce. The Federal Aviation Administration's most recent data, compiled in the Airport Capacity Benchmark Report 2001, projects demand at O'Hare to grow by 18 percent over the next decade. O'Hare handles 72,100,000 passengers annually, compared with 64,600,000 at London Heathrow International Airport, Europe's busiest airport, and 36,700,000 at Kimpo International Airport, Korea's busiest airport, 7,400,000 at Narita International Airport, Japan's busiest airport, 23,700,000 at Kingsford-Smith International Airport, Australia's busiest airport, and 6,200,000 at Ezeiza International Airport, Argentina's busiest airport, as well as South America's busiest airport.

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

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

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

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

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

(7) Future Governors of Illinois could stop the O'Hare capacity enhancement project by refusing to issue a certificate required for such project under the Illinois Aeronautics Act, or by refusing to submit airport improvement grant requests for the project, or by improperly administering the State implementation plan process under the Clean

Air Act (42 U.S.C. 7401 et seq.) to prevent construction and operation of the project.

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

(9) Because of the importance of O'Hare to the national air transportation system and the growing congestion at the airport and because of the expenditure of Federal funds for a master-planning grant for expansion of capacity at O'Hare, it is important to the national air transportation system, interstate commerce, and the efficient expenditure of Federal funds, that the city of Chicago's proposals to the Federal Aviation Administration have an opportunity to be considered for Federal approval and possible funding, that the city's requests for changes to the State implementation plan to allow such projects not be denied arbitrarily, and that, if the Federal Aviation Administration approves the project and funding for a portion of its cost, the city can implement and use the project.

(10) Any application submitted by the city of Chicago for expansion of O'Hare should be evaluated by the Federal Aviation Administration and other Federal agencies under all applicable Federal laws and regulations and should be approved only if the application meets all requirements imposed by such laws and regulations.

(11) As part of the agreement between the city and the State allowing the city to submit an application for improvement of O'Hare, there has been an agreement for the continued operation of Merrill C. Meigs Field by the city, and it has also been agreed that, if the city does not follow the agreement on Meigs Field, Federal airport improvement program funds should be withheld from the city for O'Hare.

(12) To facilitate implementation of the agreement allowing the city to submit an application for O'Hare, it is desirable to require by law that Federal airport improvement program funds for O'Hare be administered to require continued operation of Merrill C. Meigs Field by the city, as proposed in the agreement.

(13) To facilitate implementation of the agreement allowing the city to submit an application for O'Hare, it is desirable to enact into law provisions of the agreement relating to noise and public roadway access. These provisions are not inconsistent with Federal law.

(14) If the Federal Aviation Administration approves an airport layout plan for O'Hare directly related to the agreement reached on December 5, 2001, such approvals will constitute an action of the United States under Federal law and will be an important first step in the process by which the Government could decide that these plans should receive Federal assistance under chapter 471 of title 49, United States Code, relating to airport development.

(15) The agreement between the State of Illinois and the city of Chicago includes agreement that the construction of an airport in Peotone, Illinois, would be proposed by the State to the Federal Aviation Administration. Like the O'Hare expansion proposal, the Peotone proposal should receive full consideration by the Federal Aviation Administration under standard procedures for approving and funding an airport improvement project, including all applicable safety, utility and efficiency, and environmental review.

(16) Gary/Chicago Airport in Gary, Indiana, and the Greater Rockford Airport, Illinois, may alleviate congestion and provide additional capacity in the greater Chicago metropolitan region. Like the O'Hare airport expansion proposal, expansion efforts by Gary/Chicago and Greater Rockford airports should receive full consideration by the Federal Aviation Administration under standard procedures for approving and funding an airport capacity improvement project, including all applicable safety, utility and efficiency, and environmental reviews.

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

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

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

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

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

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

(c) LIMITATION.—If the Federal Aviation Administration determines that an O'Hare airport layout plan directly related to the agreement reached on December 5, 2001, will not be approved by the Administration, subsections (a) and (b) of this section shall expire and be of no further effect on the date of such determination.

(d) WESTERN PUBLIC ROADWAY ACCESS.—As provided in the December 5, 2001, agreement referred to in subsection (a), the Administrator of the Federal Aviation Administration shall not consider an airport layout plan submitted by the city of Chicago that includes the runway redesign plan, unless the airport layout plan includes public roadway access through the existing western boundary of O'Hare to passenger terminal and parking facilities located inside the boundary of O'Hare and reasonably accessible to such western access. Approval of western public roadway access shall be subject to the condition that the cost of construction be paid for from airport revenues consistent with Administration revenue use requirements.

(e) NOISE MITIGATION.—As provided in the December 5, 2001, agreement referred to in subsection (a), the following apply:

(1) Approval by the Administrator of an airport layout plan that includes the runway redesign plan shall require the city of Chicago to offer acoustical treatment of all single-family houses and schools located within the 65 DNL noise contour for each construction phase of the runway redesign plan, subject to Administration guidelines and specifications of general applicability. The Administrator may not approve the runway redesign plan unless the city provides the Administrator with information sufficient to demonstrate that the acoustical treatment required by this paragraph is feasible.

(2)(A) Approval by the Administrator of an airport layout plan that includes the runway redesign plan shall be subject to the condition that noise impact of aircraft operations at O'Hare in the calendar year immediately following the year in which the first new runway is first used and in each calendar year thereafter will be less than the noise impact in calendar year 2000.

(B) The Administrator shall make the determination described in subparagraph (A)—

(i) using, to the extent practicable, the procedures specified in part 150 of title 14, Code of Federal Regulations;

(ii) using the same method for calendar year 2000 and for each forecast year; and

(iii) by determining noise impact solely in terms of the aggregate number of square miles and the aggregate number of single-family houses and schools exposed to 65 or greater decibels using the DNL metric, including only single-family houses and schools in existence on the last day of calendar year 2000. The Administrator shall make such determination based on information provided by the city of Chicago, which shall be independently verified by the Administrator.

(C) The conditions described in this subsection shall be enforceable exclusively through the submission and approval of a noise compatibility plan under part 150 of title 14, Code of Federal Regulations. The noise compatibility plan submitted by the city of Chicago shall provide for compliance with this subsection. The Administrator shall approve measures sufficient for compliance with this subsection in accordance with procedures under such part 150. The United States shall have no financial responsibility or liability if operations at O'Hare in any year do not satisfy the conditions in this subsection.

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

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

(h) DEFINITION.—In this section, the terms ''airport layout plan directly related to the agreement reached on December 5, 2001'' and ''such airport layout plan'' mean a plan that shows—

(1) 6 parallel runways at O'Hare oriented in the east-west direction with the capability for 4 simultaneous independent visual aircraft arrivals in both directions, and all associated taxiways, navigational facilities, and other related facilities; and

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

SEC. 104. CLEAN AIR ACT.

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

7401 et seq.) in accordance with the State's customary practices for accounting for and regulating emissions associated with activity at commercial service airports. The State shall not deviate from its customary practices under the Clean Air Act for the purpose of interfering with the construction of a runway pursuant to the redesign plan or the south surburban airport. At the request of the Administrator of the Federal Aviation Administration, the Administrator of the Environmental Protection Agency shall, in consultation with the Administrator of the Federal Aviation Administration, determine that the foregoing condition has been satisfied before approving an implementation plan. Nothing in this section shall be construed to affect the obligations of the State under section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)).

(b) LIMITATION ON APPROVAL.—The Administrator of the Federal Aviation Administration shall not approve the runway redesign plan unless the Administrator of the Federal Aviation Administration determines that the construction and operation will include, to the maximum extent feasible, the best management practices then reasonably available to and used by operators of commercial service airports to mitigate emissions regulated under the implementation plan.

SEC. 105. MERRILL C. MEIGS FIELD.

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

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

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

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

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

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

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

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

(4) The Administrator shall not enforce the conditions listed in paragraph (1) if the State of Illinois enacts a law on or after January 1, 2006, authorizing the closure of Meigs Field.

(5) Net operating losses resulting from operation of Meigs Field, to the extent consistent with law, are expected to be paid by the 2 air carriers at O'Hare International Airport that paid the highest amount of airport fees and charges at O'Hare International Airport for the preceding calendar year. Notwithstanding any other provision of law, the city of Chicago may use airport revenues generated at O'Hare International Airport to fund the operation of Meigs Field.

SEC. 106. APPLICATION WITH EXISTING LAW.

Nothing in this Act shall give any priority to or affect availability or amounts of funds under chapter 471 of title 49, United States Code, to pay the costs of O'Hare International Airport, improvements shown on an airport layout plan directly related to the agreement reached by the State of Illinois and the city of Chicago, Illinois, on December 5, 2001.

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

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

TITLE II—AIRPORT STREAMLINING APPROVAL PROCESS

SEC. 201. SHORT TITLE.

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

SEC. 202. FINDINGS.

Congress finds that—

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

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

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

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

(5) the Federal Aviation Administration, airport authorities, communities, and other Federal, State, and local government agencies must work together to develop a plan, set and honor milestones and deadlines, and work to protect the environment while sustaining the economic vitality that will result from the continued growth of aviation.

SEC. 203. PROMOTION OF NEW RUNWAYS.

Section 40104 of title 49, United States Code, is amended by adding at the end the following:

''(c) AIRPORT CAPACITY ENHANCEMENT PROJECTS AT CONGESTED AIRPORTS.—In carrying out subsection (a), the Administrator shall take action to encourage the construction of airport capacity enhancement projects at congested airports as those terms are defined in section 47179.''.

SEC. 204. AIRPORT PROJECT STREAMLINING.

(a) IN GENERAL.—Chapter 471 of title 49, United States Code, is amended by inserting after section 47153 the following:

''SUBCHAPTER III—AIRPORT PROJECT STREAMLINING

''§ 47171. DOT as lead agency

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

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

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

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

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

''(f) EFFECT OF FAILURE TO MEET DEADLINE.—

''(1) NOTIFICATION OF CONGRESS AND CEQ.—If the Secretary determines that a Federal agency, State agency, or airport sponsor that is participating in a coordinated review process under this section with respect to a project has not met a deadline established under subsection (b) for the project, the Secretary shall notify, within 30 days of the date of such determination, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, the Council on Environmental Quality, and the agency or sponsor involved about the failure to meet the deadline.

''(2) AGENCY REPORT.—Not later than 30 days after date of receipt of a notice under paragraph (1), the agency or sponsor involved shall submit a report to the Secretary, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Council on Environmental Quality explaining why the agency or sponsor did not meet the deadline and what actions it intends to take to complete or issue the required review, analysis, opinion, license, or approval.

''(g) PURPOSE AND NEED.—For any environmental review, analysis, opinion, permit, license, or approval that must be issued or made by a Federal or State agency that is participating in a coordinated review process under this section with respect to an airport capacity enhancement project at a congested airport and that requires an analysis of purpose and need for the project, the agency, notwithstanding any other provision of law,

shall be bound by the project purpose and need as defined by the Secretary.

''(h) ALTERNATIVES ANALYSIS.—The Secretary shall determine the reasonable alternatives to an airport capacity enhancement project at a congested airport. Any other Federal or State agency that is participating in a coordinated review process under this section with respect to the project shall consider only those alternatives to the project that the Secretary has determined are reasonable.

''(i) SOLICITATION AND CONSIDERATION OF COMMENTS.—In applying subsections (g) and (h), the Secretary shall solicit and consider comments from interested persons and governmental entities.

''§ 47172. Categorical exclusions

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

''§ 47173. Access restrictions to ease construction

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

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

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

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

''§ 47174. Airport revenue to pay for mitigation

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

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

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

''(3) the cost of the mitigation measures is reasonable in relation to the mitigation that will be achieved.

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

''§ 47175. Airport funding of FAA staff

''(a) ACCEPTANCE OF SPONSOR-PROVIDED FUNDS.—Notwithstanding any other provision of law, the Administrator of the Federal Aviation Administration may accept funds from an airport sponsor, including funds provided to the sponsor under section 47114(c), to hire additional staff or obtain the services of consultants in order to facilitate the timely processing, review, and completion of environmental activities associated with an airport development project.

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

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

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

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

''(3) shall remain available until expended.

''(d) MAINTENANCE OF EFFORT.—No funds may be accepted pursuant to subsection (a), or transferred pursuant to subsection (b), in any fiscal year in which the Federal Aviation Administration does not allocate at least the amount it expended in fiscal year 2002, excluding amounts accepted pursuant to section 337 of the Department of Transportation and Related Agencies Appropriations Act, 2002 (115 Stat. 862), for the activities described in subsection (a).

''§ 47176. Authorization of appropriations

''In addition to the amounts authorized to be appropriated under section 106(k), there is authorized to be appropriated to the Secretary of Transportation, out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502), $2,100,000 for fiscal year 2003 and $4,200,000 for each fiscal year thereafter to facilitate the timely processing, review, and completion of environmental activities associated with airport capacity enhancement projects at congested airports.

''§ 47177. Judicial review

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

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

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

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

''(e) SUPREME COURT REVIEW.—A decision by a court under this section may be reviewed only by the Supreme Court under section 1254 of title 28.

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

''§ 47178. Definitions

''In this subchapter, the following definitions apply:

''(1) AIRPORT SPONSOR.—The term 'airport sponsor' has the meaning given the term 'sponsor' under section 47102.

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

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

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

''(B) such other airport development projects as the Secretary may designate as facilitating a reduction in air traffic congestion and delays.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 471 of such title is amended by adding at the end the following:

''SUBCHAPTER III—AIRPORT PROJECT STREAMLINING

''47171. DOT as lead agency.
''47172. Categorical exclusions.
''47173. Access restrictions to ease construction.
''47174. Airport revenue to pay for mitigation.
''47175. Airport funding of FAA staff.
''47176. Authorization of appropriations.
''47177. Judicial review.
''47178. Definitions.''.

SEC. 205. GOVERNOR'S CERTIFICATE.

Section 47106(c) of title 49, United States Code, is amended—

(1) in paragraph (1)—

(A) by inserting ''and'' after the semicolon at the end of subparagraph (A)(ii);

(B) by striking subparagraph (B); and

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

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

(3) by striking paragraph (4); and

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

SEC. 206. CONSTRUCTION OF CERTAIN AIRPORT CAPACITY PROJECTS.

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

(1) by striking ''and'' at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting ''; and''; and

(3) by adding at the end the following:

''(E) to an airport operator of a congested airport (as defined in section 47178) and a unit of local government referred to in paragraph (1)(A) or (1)(B) of this subsection to carry out a project to mitigate noise in the area surrounding the airport if the project is included as a commitment in a record of decision of the Federal Aviation Administration for an airport capacity enhancement project (as defined in section 47178) even if that airport has not met the requirements of part 150 of title 14, Code of Federal Regulations.''.

SEC. 207. LIMITATIONS.

Nothing in this Act, including any amendment made by this Act, shall preempt or interfere with—

(1) any practice of seeking public comment; and

(2) any power, jurisdiction, or authority of a State agency or an airport sponsor has with respect to carrying out an airport capacity enhancement project.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida (Mr. MICA) and the gentleman from Illinois (Mr. LIPINSKI) each will control 20 minutes.

Mr. LIPINSKI. Mr. Speaker, I ask unanimous consent to yield the 20 minutes that is designated to me to the gentleman from Illinois (Mr. JACKSON), who is a true opponent of this legislation.

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

There was no objection.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Florida (Mr. MICA).

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

Mr. Speaker, I am pleased today to rise in support of H.R. 3479, the National Aviation Capacity Enhancement Act. This legislation was introduced by the ranking Democrat of the Subcommittee on Aviation, the gentleman from Illinois (Mr. LIPINSKI).

This legislation codifies a long-sought agreement that was reached between the Governor of Illinois and the mayor of Chicago to address the critical aviation needs in the Chicago region. In December of 2001 after some 20 years of disagreement and in action, State and local leaders approved a plan to expand Chicago's O'Hare International Airport. The agreement also requires full FAA consideration of projects at regional reliever airports. These include the proposed South Suburban Airport in Peotone, and airports in Gary, Indiana, and Rockford, Illinois.

H.R. 3479 is not, as some have claimed, an attempt for the Federal Government to in any way usurp local decision-making authority. The State and local decision-makers in the greater Chicago region have come to an agreement. This bill ensures that the agreement in fact will be implemented, but only if all normal procedures for FAA approval are completed and Federal funding is received.

Federal approvals can take years. Title 2 of this legislation would help expedite that process. However, we do not want local leaders to change their minds while that process is in an ongoing situation and after having spent millions and millions of taxpayer dollars.

Why should Congress care or become involved in ensuring the viability of this important Chicago agreement? It is simple. Chicago O'Hare Airport is absolutely vital to our National aviation system and also to our interstate commerce and this Nation's economy.

O'Hare has consistently ranked as one of the world's busiest airports. It supports domestic hub operations for two major airlines, and over 70 million Americans a year and travelers use this facility.

□ 1245

Even during the economic downturn and with the aftermath of the tragic events of September 11, aircraft activity at O'Hare was up slightly last year. Unfortunately, O'Hare continues to be one of the most congested and delayed airports in the country. If future congestion at O'Hare affected only the Chicago area, we might not need to stand here before all of Congress to address this issue. However, the congestion in Chicago, in O'Hare often closes down and causes serious delay in our aviation activity across the Nation.

This legislation does provide assurances needed to proceed with the much-needed projects at O'Hare, and again, it is the codification of local and State governments.

Some of our colleagues have raised questions regarding this legislation, even said it is unconstitutional or supersedes State law. That is not the case. However, the preemption language contained in this legislation is extremely limited and is tied to a decision by the FAA to fund the O'Hare project. The preemption of State law would expire immediately upon a decision by the Federal Aviation Administration not to fund the construction of the O'Hare Capacity Enhancement Project.

This legislation ensures that State law will not prevent the Federal Government from spending Federal funds the way the Federal Government intends they be spent. I would ask this body to remember State and local officials have already reached an agreement regarding Chicago's regional aviation projects, but the agreement is not binding on future administrations, and we are not going to go round in circles any longer on this. We have to look at the national interest.

Therefore, before committing to a $6 billion capacity enhancement project at O'Hare, and it can even be more at this airport, it is absolutely reasonable to seek assurance that the agreement will not be abandoned by future State or future debate on this issue. This bill simply codifies a local agreement that addresses regional and our national transportation needs.

This bill is good for interstate commerce. It is good for our economy, and it will protect our national interests, which is part of my responsibility. So, therefore, I support this legislation. I urge Members on all sides, regardless of their persuasion, to support this bill.

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

Mr. JACKSON of Illinois. Mr. Speaker, I yield myself such time as I may consume.

First, let me begin by thanking the gentleman from Florida (Mr. MICA), the chairman, and the gentleman from Florida (Mr. LIPINSKI), the ranking member, for their work on H.R. 3479. There are many reasons why I oppose H.R. 3479, none of which have anything to do with them personally. I want to share with my colleagues some reasons why they should be opposed to the National Aviation Capacity and Expansion Act.

Mr. Speaker, just a week ago, this House rejected by a small margin this measure. There are a number of bills that we could be considering before the Congress, including saving Social Security, Medicare and Medicaid. There are a number of important measures that could be on the suspension calendar, but what has changed in a week for a bill that was rejected one week ago to be brought back in such short order, back on the noncontroversial suspension calendar?

Mr. Speaker, this is a highly controversial bill. This should offend every House traditionalist and institutionalist. It violates the established processes set up by the House of Representatives, and even if my colleagues agree on the substance, they should be against the process.

H.R. 3479 should be a stand-alone bill that is fully debated before the House, with the possibility of adding amendments to improve this bill. It should not be on the suspension calendar. Many of my colleagues believe that they are voting to codify, as the gentleman from Florida (Mr. MICA) said an agreement between Mayor Daley and the governor of our State, Governor Ryan, but this bill, the House version of the bill, does not reflect that deal.

Their agreement promised priority status for a south suburban airport in Peotone and O'Hare expansion. While I do not support the O'Hare-designed plan that is articulated in the bill, and I do believe in O'Hare modernization, the idea that this bill provides for O'Hare expansion but does not, I repeat, does not, give priority status to Peotone, offends those of us who have been fighting at least for the last 16 years to make aviation capacity and to alleviate the crisis for our entire Nation, a reality for all Americans.

Both sides agree that there is a capacity crisis at O'Hare. The disagreement comes over how best to solve it. A new south suburban airport in Peotone offers a faster and cheaper and safer, a cleaner and more permanent solution. What do I mean? I mean that after O'Hare expansion is completed if air travel expands as projected, we will

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

This is a 15-year construction project. So why spend more money, take longer, increase environmental problems, put the flying public at greater risk, support a temporary solution and increase the economic and racial divide in Chicago when there is a better way of resolving the current aviation capacity crisis?

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

O'Hare expansion puts in 195,000 new jobs and $19 billion of economic activity in an area that already has an overabundance. For example, the biggest beneficiary of O'Hare is Elk Grove Village, a city of 35,000 people where over 100,000 people come to work every day. That is three jobs for every one person.

The greatest beneficiary of O'Hare, Mayor Craig Johnson of Elk Grove Village, is one of the biggest supporters of Peotone. By contrast, some communities in my district have 60 people for every one job.

Finally, it just so happens that the areas where O'Hare and Midway Airports are located are primarily where whites live. African Americans live primarily south and in the south suburbs, but African American families need economically stable families and communities that have a future and can send their children to college, too. We need greater economic balance in the Chicago metropolitan area so that all of the people have jobs and economic security.

The gentleman from Illinois (Mr. LIPINSKI) says that 15 environmental groups, including the Sierra Club, support the language in this bill. He, of course, is implying that they have endorsed it. The gentleman from Illinois (Mr. LIPINSKI) knows better. They have not endorsed it. I also asked the gentleman from Illinois (Mr. LIPINSKI) to supply me with the names of the other environmental groups who he says support the language in this bill, and he has failed to do so.

O'Hare is already the largest polluter in the Chicago area. Doubling the number of flights into the 7,000 acres that houses O'Hare means pollution levels will explode. A recent study found there was an excess of 800 new incidences of cancer each year, over and above what would be expected based on the State's average, in eight northeastern communities downwind of O'Hare. Peotone's 24,000 acre site has a built-in environmental safety zone.

Mr. Speaker, the O'Hare expansion plan is obviously anti-consumer. Two airlines, American and United, control 90 percent of the flights in and out of O'Hare. It is a duopoly, and due to a lack of competition, fares at O'Hare continue climbing at faster than the national average.

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

The Printz versus United States decision emphasized that that is a constitutional structural barrier to Congress intruding on a State's sovereignty, and this structural barrier could not be avoided by claiming that constitutional authority was, A, pursuant to the commerce power clause. We have heard the gentleman from Florida (Mr. MICA) talk about the number of jobs and the fact this is a factor in our economy. It will create 195,000 jobs, $19 billion in economic activity pursuant to the commerce power. According to Printz versus the United States these arguments are not available to the chairman of the committee.

The necessary and proper clause of the Constitution, we have heard there is an aviation capacity crisis, that this bill seeks to alleviate. According to the Printz versus the United States, Congress cannot use the necessary and proper clause argument as a basis for preempting State law.

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

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

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

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

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

The SPEAKER pro tempore (Mr. ISAKSON). Is there objection to the request of the gentleman from Florida?

There was no objection.

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

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

There was no objection.

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

The SPEAKER pro tempore. The gentleman from Illinois (Mr. JACKSON) has 22½ minutes, the gentleman from Florida (Mr. MICA) has 14½ minutes. There is 5 minutes reallocated to the gentleman from Illinois.

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

The SPEAKER pro tempore. The gentleman is correct.

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

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

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

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

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

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

The gentleman from Illinois (Mr. JACKSON) talked about a potential racial divide on the Illinois side. I would

point out that Gary, Indiana's population is 85 percent African American, and for those African American citizen of Gary, Indiana, the passage of this legislation is very important for their economic future because they and their surrounding environs have been decimated because of the loss of manufacturing jobs.

□ 1300

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

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

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

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

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

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

Let me take a moment to discuss the importance of the south suburban third airport at Peotone. The south suburban third airport at Peotone will be a complement to O'Hare. And I will note that while they are pouring concrete and ripping up concrete, it is difficult to land airplanes, so we need a third airport to serve while O'Hare is expanded over the next 10 to 15 years. I would note that the south suburban third airport can be constructed in 4 to 5 years. It can be constructed for $500–600 million, compared to $13 billion. And from a local standpoint, for the 2.5 million of us who reside within 45 minutes of the Peotone site, it will generate over 200,000 jobs.

Mr. Speaker, we need the south suburban third airport at Peotone to expand aviation capacity, and I believe by moving this legislation forward, we can move towards that goal. People often ask what is the status of the construction of the airport at Peotone. Just recently, the FAA released their EIS approval of FAA record of decision signing. They investigated and reviewed seven proposed sites for a third airport, and they said that the Peotone site is the best one. They gave their blessing for the State to continue moving forward with what we call land banking, and the State legislature and the governor have made the decision to move forward to acquire 4,000 acres of the 24,000 eventually needed for the purpose of land banking. That is an important step. We need to move this legislative process forward, and while I am disappointed in this language, I want to make it clear that I was strongly in opposition to this bill this past week, and should this bill come back without the provisions that we need to build a south suburban third airport, I will just as strongly oppose it when it comes back from the conference.

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

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

Mr. KIRK. Mr. Speaker, this is a courageous decision by the gentleman. As a member of the committee and as a supporter of Peotone, the gentleman has engendered a lot of goodwill and friendship when we complete the final legislation. My hope is that it will strongly reflect the full agreement, including the gentleman's provision on Peotone.

Mr. WELLER. Mr. Speaker, I thank the gentleman and urge Members to join me in supporting this bill today.

Mr. JACKSON of Illinois. Mr. Speaker, I yield 10 minutes to the gentleman from Illinois (Mr. HYDE), the distinguished chairman of the Committee on International Relations.

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

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

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

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

The establishment wants to nearly double the capacity of what is now the world's busiest airport, O'Hare International, to accommodate 1.6 million flights a year. Who is the establishment? Well, people of substance in the community: The major Chicago newspapers, the Chamber of Commerce, the mayor of Chicago, the governor of Illinois, United Airlines, American Airlines, and so many more that a famous President once labeled the malefactors of great wealth the establishment. Members know who they are. They have been besieged by their lobbyists.

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

Members might say we cannot stand in the way of progress. Of course not. But O'Hare is landlocked. It is surrounded by vital suburban communities, many of which I represent. It is saturated with aircraft. Add to capacity, yes, but do it by building another airport at Peotone, a modern one that is environmentally friendly and can expand in years to come. By the time the $15–20 billion, not $6 billion as they propose, the $15–20 billion is spent on O'Hare, it will be obsolete. Peotone can be built faster and cheaper than expanding O'Hare.

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

There are fundamental constitutional questions with this bill. In the first place, Chicago has no power or authority to do anything unless that power has been given to the city by the Illinois General Assembly. The city is a political subdivision of the State. It is a creature of the legislature, and its powers are defined and limited by the Illinois Municipal Code. The Illinois Municipal Code contains the Illinois Aeronautics Act which forbids anyone from expanding any airport without a certificate of approval from the Illinois Department of Transportation. The same limitation applies to the governor. The deal he made with the city to expand O'Hare is what the lawyers call ultra vires, beyond his authority. Neither the Federal Constitution nor the State constitution gives the governor the authority to ignore the Illinois Aeronautics Act.

If President Bush were to enter into an agreement with Commonwealth Edison to build a nuclear plant in Illinois, his action would be ultra vires, without a license from the Nuclear Regulatory Commission. But that would require full disclosure, something woefully absent from this O'Hare debate. Does

anyone supporting this bill think the President has constitutional authority to enter into an agreement with Exxon to drill in the Alaskan National Wildlife Refuge without statutory authority from Congress?

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

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

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

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

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

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

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

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

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

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

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

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

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

Chicago has a vast and growing transportation industry. Over the years, Chicago O'Hare International Airport has continued its growth in traffic and demand.

□ 1315

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

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

As Chicago continues to grow, O'Hare continues to experience the backlog of delays. According to the Airport Capacity Benchmark Report in 2001, O'Hare was the third most delayed airport. Sitting in the heart of the Midwest, these delays continue to burden connecting airports, creating a snowball effect and frustrating passengers. By the addition of runways, and the expansion of O'Hare, delay times will diminish and air travel at Chicago's bustling O'Hare will undoubtedly improve for the consumer and the region.

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

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

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

I fought hard and testified several times to make sure this bill includes a provision asking the FAA to consider utilizing existing airports that are capable of immediately reducing congestion and delays at our Nation's major airports. In the Chicago region, that airport is the Greater Rockford Airport. Passage of this legislation ensures that Rockford Airport will be able to offer its vast resources, which include:

$150 million of recent infrastructure improvements; a 10,000-foot runway that can land any jet aircraft today as well as an 8,200-foot runway; a category III Instrument Landing System; a Glycol Detention and Treatment Facility; an upgraded taxiway system; an FAA 24-hour traffic control tower; it is the present home to United Parcel Service's second largest hub in the Nation; a modern passenger terminal immediately capable of handling 1 million emplaned passengers annually, and room for 3 million with a modest investment, and capacity for up to 15 million passengers a year; unconstrained airspace; the ability to relieve up to 20 percent of O'Hare's originating passengers; and all only 1 hour's distance from Chicago.

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

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

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

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

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

Like most people, I want the air traffic congestion problem at O'Hare solved as soon as possible, but the plan mandated by this bill will not accomplish that objective. It is projected to

take 900,000 flights annually to 1.6 million flights annually. Moreover, it would be expensive. Very expensive. Its sponsors say the O'Hare runway plan will cost $6.6 billion to implement, but by the time the 500 to 600 property condemnations, the two graveyard relocations, road improvements, soundproofing work, and other items are finished, the price tag is likely to be double or triple that amount.

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

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

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

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

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman from Illinois (Mr. LIPINSKI) has 10 minutes remaining, the gentleman from Illinois (Mr. JACKSON) has 6½ minutes remaining, and the gentleman from Florida (Mr. MICA) has 9½ minutes remaining.

Mr. JACKSON of Illinois. I am sorry, Mr. Speaker, my math is a little bit different. Since the moment that you yielded me and informed me I had 22½ minutes, I yielded 10 minutes to the gentleman from Illinois (Mr. HYDE) and 2 minutes to the gentleman from Illinois (Mr. CRANE).

The SPEAKER pro tempore. In the gentleman's request to yield 10 minutes to the gentleman from Illinois (Mr. HYDE), did the gentleman ask that he control the time?

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

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

Mr. JACKSON of Illinois. Correct. And at the time I yielded 10 minutes to the gentleman from Illinois (Mr. HYDE) I had 22½ minutes.

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

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

The SPEAKER pro tempore. The gentleman from Illinois (Mr. HYDE) used 9 of the 10 minutes, which is 8½ minutes remaining, before yielding to the gentleman from Illinois (Mr. CRANE) 2 minutes, and that leaves 6½ minutes.

Mr. JACKSON of Illinois. I thank the Speaker.

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

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

Mr. LIPINSKI. And the gentleman from Illinois (Mr. JACKSON) has 6½ minutes remaining.

The SPEAKER pro tempore. The gentleman has 6½ minutes remaining.

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

The SPEAKER pro tempore. The gentleman from Florida has 9½ minutes remaining.

Mr. MICA. Mr. Speaker, just for the information of the House and the Speaker, I plan to use only 3 minutes of that time because the House does want to proceed with other business.

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

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

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

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

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

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

Mr. HYDE. The gentleman had one hearing on this bill, did you not?

Mr. OBERSTAR. Reclaiming my time, Mr. Speaker, I believe there were two hearings

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

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

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

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

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

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

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

''This legislation is squarely within the power delegated to Congress under

the commerce clause and relies on familiar precepts of preemption. It presents no substantial issue under the anti-commandeering principle of U.S. v. New York.''

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

STATE OF ILLINOIS,
CITY OF CHICAGO,
July 22, 2002.

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

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

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

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

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

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

GEORGE H. RYAN,
Governor.
RICHARD M. DALEY,
Mayor.

MEMORANDUM

To: R. Eden Martin, President, Civic Committee of The Commercial Club of Chicago.

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

Re: Constitutionality of the Durbin-Lipinski Legislation.

Date: April 17, 2002.

This memorandum is in response to your request for an evaluation of the constitutionality of the National Aviation Capacity Expansion Act, proposed federal legislation introduced in the Senate by Senator Durbin (S. 2039) and in the House by Representative Lipinski (H.R. 3479) (the Durbin-Lipinski Legislation). This legislation is designed to facilitate the redesign of Chicago's O'Hare International Airport in accordance with a plan agreed to by Mayor Richard Delay of Chicago and Governor George Ryan of the State of Illinois. The plan would redesign the runways, terminals and access roads at O'Hare so as to permit this facility, which is vital to both the national and the regional economy, to accommodate the existing and anticipated volume of commercial air traffic in the Chicago area.

In a letter to Representative Henry Hyde dated March 1, 2002, Professor Ronald Rotunda of the University of Illinois Law School has offered the opinion that the Durbin-Lipinski legislation is ''most likely unconstitutional.'' (Rotunda Letter at 16). The provisions he finds constitutionally problematic are §3(a)(3), which exempts the O'Hare redesign project from state permitting requirements, and §3(f), which, as it appears in the House bill, provides that if all state and local approvals are not obtained by 2004, the project shall proceed as a federal project. These provisions are constitutionally suspect, according to Professor Rotunda, because they ''conscript the instrumentalities of state government and state power as tools of federal power,'' do not constitute ''generally applicable'' legislation, and ''impose[] federal rules on the relationship between a city and the State that created the city.'' (Letter at 16.) I have reviewed the authorities and arguments advanced by Professor Rotunda and conclude that they raise no substantial question about the constitutionality of the proposed legislation.

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

No claim has been made by Professor Rotunda, nor could it be made, that the Durbin-Lipinski Legislation deals with a subject beyond the scope of Congress's authority under the Commerce Clause. The Supreme Court, in reviewing the historical understanding of the Commerce Power, has recently summarized that Power as falling into three general categories: (1) regulation of the channels of interstate commerce, (2) regulation of the instrumentalities of interstate commerce, and (3) regulation of commercial activity that in the aggregate has a substantial affect on interstate commerce. See United States v. Lopez, 514 U.S. 549, 558–59 (1995); United States v. Morrison, 529 U.S. 598, 609–09 (2000). The ''channels of interstate commerce'' include navigable rivers, interstate highways, interstate rail facilities and terminals—and of course navigable airspace and airport terminals. See, e.g., Braniff Airways, Inc. v. Nebraska State Bd. of Equalization, 347 U.S. 590, 596 (1954) (''Federal Acts regulating air commerce are bottomed on the commerce power of Congress''). Congress thus has complete and plenary power under the Commerce Clause to regulate the size, configuration, and operating parameters of airport facilities that serve as hubs of interstate air commerce. See, e.g., Northwest Airlines, Inc. v. Minnesota, 322 U.S. 292, 303 (1944) (Jackson, J. concurring) (federal power over air commerce and air transit is ''exclusive''). It follows from this that the Durbin-Lipinski Legislation—which is designed to assure that the Nation's busiest airport terminal has sufficient capacity to accommodate future growth in interstate and international air commerce—falls squarely within the core of congressional power under the Commerce Clause.

Given that the Durbin-Lipinski Legislation is within Congress's power to legislate, any contrary provision of state law is preempted. ''[U]nder the Supremacy Clause, from which our pre-emption doctrine is derived, 'any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield.'' Gade v. National Solid Waste Management Ass'n, 505 U.S, 88, 108 (1992) (citation omitted). As the Court noted in Printz v. United States, 521 U.S. 898, 913 (1997)—one of the decisions Professor Rotunda relies upon most heavily—''all state officials'' act under a duty ''to enact enforce, and interpret state law in such as fashion as not to obstruct the operation of federal law;'' consequently, ''all state actions constituting such obstruction, even legislative Acts, are ipso facto invalid.'' Indeed, ''even state regulation designed to protect vital state interests must give way to paramount federal legislation.'' De Canas v. Bica, 424 U.S. 351, 357 (1976).

The Durbin-Lipinski Legislation provides, among other things, that the State of Illinois ''shall not enact or enforce any law respecting aeronautics that interferes with, or has the effect of interfering with, implementation of Federal policy with respect to the runway redesign plan including 38.01, 47, and 48 of the Illinois Aeronautics Act.'' H.R. 3479, §3(a)(3). This provision is obviously inconsistent with any requirement for state certification of the O'Hare redesign plan under §47 of the Illinois Aeronautics Act or otherwise. Any such state certification requirement is therefore plainly pre-empted by the Durbin-Lipinski Legislation.

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

Professor Rotunda concludes that the Durbin-Lipinski Legislation is ''likely unconstitutional'' primarily by relying on decisions holding that the Commerce Power does not extend to laws that ''compel the States to enact or administer a federal regulatory program,'' New York v. United States, 505 U.S. 144, 188 (1992), or that ''conscript the States' officers directly'' to administer or enforce federal law. Printz, supra, 521 U.S. at 935. He argues that the Durbin-Lipinski Legislation has the effect of ''commanding and singling out the State of Illinois to, in effect, repeal its legislation governing the powers delegated to the City of Chicago.'' (Letter at 14.)

The short answer to this elaborate argument is that the Durbin-Lipinski legislation does no such thing. I does not require the State of Illinois or any political subdivision to enact—or repeal—any legislation. Nor does it conscript state employees to act as administrators or enforcement agents of federal law. Instead, the Durbin-Lipinski Legislation simply preempts provisions of state law that might serve as an impediment to the completion of the O'Hare redesign plan. The State is not ordered to take affirmative steps to aid in the redesign of the airport, either by legislative or administrative action. It is merely prohibited from blocking the redesign and reconfiguration of the airport. This of course is what happens whenever state law is preempted by federal legislation. See, e.g., City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973) (local ordinance governing hours of operation of airport terminal pre-empted by comprehensive federal regulation of airport noise).

Absent some provision that directs Illinois to adopt legislation or regulations, or that commands Illinois officials or employees to enforce federal law, the Durbin-Lipinski Legislation raises no issue under New York and Printz. As the Supreme Court recently (and unanimously) held in Reno v. Condon, 528 U.S. 141 (2000), where a federal statute does not require a state legislature ''to enact any laws or regulations'' and does not ''require state officials to assist in the enforcement of federal statutes regulating private individuals,'' the anti-commandeering doctrine of New York and Printz does not apply. Id. at 151. Condon involved a federal statute, The Driver's Privacy Protection Act, that prohibited States from disclosing personal information about individuals obtained from

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

Nor does the provision of the House bill that calls for the O'Hare redesign to become a federal project if construction has not commenced by 2004 raise any commandeering problem. This is a form of conditional regulation, in which Congress ''offer[s] States the choice of regulating [private] activity according to federal standards or having state law pre-empted by federal regulation.'' New York, 505 U.S. at 167. This type of conditional regulation is often used in environmental legislation, and the New York Court took pains to reaffirm its constitutionality. Id; see also Printz, 521 U.S. at 925–26. Such condition regulation, the Court found, is constitutionally permissible because it does not represent direct coercion of State governments in the way that commandeering does. Section 4(f) of the House bill is of a similar design. It provides that in the event the Administrator of the FAA finds that ''a continuous course of expected to commence by December 1, 2004'' then ''the Administrator shall construct the runway redesign plan as a Federal project.'' H.R. 3479, §4(f). The legislation, in other words, does not order State and local officials to issue permits and approvals for construction; it sets a deadline for obtaining such approvals, and if this is not met, provides for federal permits and approvals—a classic form of conditional regulation approved by New York and Printz.

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

Professor Rotunda also seeks to rely on language in New York and Condon that distinguishes impermissible commandeering statutes from laws ''that subject state governments to generally applicable laws.'' New York, 505 U.S. at 160; Condon, 528 U.S. at 151. He notes that the Durbin-Lipinski Legislation applies to only one airport and in this sense is not a ''generally applicable'' law, thus, he suggests, the legislation is unconstitutional under New York and Prinitz.

This argument, however, reflects misapplication of the ''generally applicable laws'' exception recognized in New York and Condon. The exception applies only to federal laws that otherwise compel a State to enact legislation or conscript state employees to enforce federal law. If a federal law has this ''commandeering'' effect, then it may nevertheless be upheld as constitutional if it is a ''generally applicable law'' that applies to state governments and private persons alike. Thus, for example, the Fair Labor Standards Act (FLSA), as amended, applies to state and local governments as well as to private employers. This statute requires state governments to enact laws or regulations (e.g., setting wages and hours of state employees), and it requires state officers and employees to administer federal law (e.g., determining that all units of state government are in compliance with federal standards). Yet the constitutionality of the FLSA as applied to state governments was upheld in Garcia v. San Antonio Metropolitan Transit Auth., 469 U.S. 528 (1985). The Court in New York reconciled this result with the anti-commandeering principle by noting that the FLSA is a generally applicable law that governs state and private employers alike. New York, 505 U.S. at 160–61.

Properly understood, therefore, the generally applicable laws exception has no relevance to the Durbin-Lipinski Legislation. The Durbin-Lipinski Legislation does not compel the State to enact any laws or regulations, and does not conscript state employees to administer any federal law. Instead, it is a narrow preemption statute. As such, the anti-commandeering principle of New York and Printz does not apply at all, and hence the generally applicable laws exception does not apply at all.

Outside the commandeering context, there is no principle of law that condemns congressional legislation under the Commerce Clause because it proceeds project-by-project rather than under generally applicable laws. Congress has often legislated under the Commerce Clause by addressing particular obstructions of commerce, whether they be inadequate harbor facilities, impassive on rivers, or bottlenecks in the interstate highway system. For example, Congress has legislated with respect to a single bridge spanning a navigable river, and this has been sustained as a valid exercise of the Commerce Power. See Pennsylvania v. Wheeling and Belmont Bridge Co., 59 U.S. (18 How.) 421, 431 (1855). Similarly, federal agencies exercising delegated power under the Commerce Clause, such as the Army Corps of Engineers and the FAA, commonly and properly focus their attentions on particular obstructions of commerce, rather than proceeding by promulgating general regulations. That is all Congress has done here, by legislating to assure that a critical airport that serves as a central hub of the entire air traffic system of the United States does not become an impediment to the free flow of interstate and international commerce.

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

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

In fact, Congress has long dealt directly with municipalities in a variety of contexts, and the federal courts have uniformly rejected challenges to these measures based on the notion that the federal government must always defer to state-law limitations on municipal powers. Lawrence County v. Lead-Deadwood School District, 469 U.S. 256 (1985), for example, involved a federal statute that provided payments in lieu of taxes to a county based on the presence of tax-exempt federal land in the county. The federal statute gave the county discretion to allocate funds for ''any governmental purpose.'' Id. at 258. A South Dakota statute, however, provided that all in lieu payments be allocated in the same ratio as the county's general tax revenues were allocated. By a vote of 7–2, the Supreme Court held that the federal statute preempted the allocation requirement in the state statute, and specifically rejected the contention based on the language in Hunter that this constituted impermissible interfence with state control over its political subdivisions, Id. at 269; cf. id. at 270–71 (Rehnquist, J. dissenting (quoting Hunter)).

The same conclusion has been reached when the federal government has given regulatory permission to political subdivisions to take action contrary to state law. In one case the Federal Power Commission issued a license to the City of Tacoma, Washington, to build a hydroelectric dam on the Cowlitz River. An agency of the State of Washington opposed the license, and argued that Washington statutes required the City to obtain permission from the State. The United States Court of Appeals for the Ninth Circuit held that the case presented a simple matter of federal supremacy: State law cannot interfere with the ability of a federal licensee to exercise the rights provided by a federal license on a navigable waterway. State of Washington Dept. of Game v. Federal Power Comm., 207 F.2d 396 (9th Cir. 1953). The court agreed that the City was a creature of the State and normally could not act without authorization of state law. But private licensees—such as corporations and electrical cooperatives—are also creatures of state law, and it is well-established that they can invoke federal law to preempt state law inconsistent with a federal license. See First Iowa Hydro-Electric Coop. v. Federal Power Comm., 328 U.S. 152 (1946). The court reasoned that municipal corporations are no different in this regard, and they too may be empowered by the federal government to take action affecting the channels of interstate commerce without regard to limitations contained in state law. The Washington Supreme Court later disagreed with this ruling, see City of Tacoma v. Taxpayers of Tacoma, 307 P.2d 567 (Wash. 1957), but the U.S. Supreme Court reversed, holding that the decision of the Ninth Circuit was res judicata. See City of Tacoma v. Taxpayers of Tacoma, 357 U.S. 320 (1958).

Similiarly, in a controversy closely analogous to the instant matter, the City of New Haven, Connecticut received a $750,000 grant from the Federal Aviation Administration for extension of an airport runway. Pursuant to agreements between the City and the FAA, the City was required to purchase land in the neighboring town of East Haven in order to provide an expanded ''clear zone'' for takeoffs and landings. When neighbors objected and instituted actions in state court seeking to block the project on the ground that New Haven's purchase of land in East Haven violated state law, the United States sought and obtained a preliminary injunction against further state-court litigation. In affirming the injunction, the United States Court of Appeals for the Second Circuit observed that ''[i]n the case of a clash between federal legislation and state orders in the area of air commerce, it is clear that under the doctrine of federal supremacy and the commerce clause'' the United States would likely prevail on the merits. See United States v. City of New Haven, 447 F.2d 972, 973–74 (2d Cir. 1971) (citations omitted).

There are, to be sure, constitutional questions about how far the federal government may go in bypassing state governments and dealing directly with municipalities and other subdivisions of a State. The Washington Supreme Court in the Tacoma dam controversy thought that the federal government could not confer the power of eminent domain on a municipality in circumstances

where such power is not given by state law. City of Tacoma, 307 P.2d at 576–78, rev'd on other grounds, 357 U.S. 320. And although the Supreme Court has held that a federal district court in implementing a desegregation decree may issue an order pre-empting state tax limitations in order to permit a city to raise taxes, it has reserved judgment as to whether it would be constitutional for such a court directly to order a city to raise taxes. Missouri v. Jenkins, 495 U.S. 33, 50–51 (1990).

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

CONCLUSION

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

PARLIAMENTARY INQUIRY

Mr. JACKSON of Illinois. Mr. Speaker, I feel compelled at this time to ask a parliamentary inquiry about my time. The reason I need to ask the parliamentary inquiry is that there have been three speakers for those of us who have been opposed to the legislation.

The debate began with 20 minutes on each side, and then there was a unanimous consent for an additional 10 minutes, which should have left me with 30 minutes on my side and 30 minutes on the other side of this legislation. I have yielded 10 minutes to the gentleman from Illinois (Mr. HYDE), and you said he spoke for 9½ minutes and yielded back the balance of his time. I yielded 2 minutes to the gentleman from Illinois (Mr. CRANE), and I made an opening statement.

I do not know how long my opening statement was, but I do not believe it left me 6½ minutes.

The SPEAKER pro tempore. The gentleman from Illinois (Mr. JACKSON) made an opening statement of 7½ minutes, leaving 12½ minutes. Thereon the time was expanded by 10 minutes per side, leaving the gentleman 22½ minutes. The gentleman then yielded 5 minutes to the gentleman from Illinois (Mr. LIPINSKI), leaving him 7½ minutes.

Mr. JACKSON of Illinois. No, sir. No, sir, I did not yield 5 minutes to the gentleman from Illinois (Mr. LIPINSKI).

□ 1330

The time of the gentleman from Illinois (Mr. LIPINSKI) is controlled by the chairman, sir. I am in opposition to the bill. They divided time amongst themselves. Ten minutes additional on each side, sir, should have left me with 22½ minutes. I yielded 10 minutes to the gentleman from Illinois (Mr. HYDE), and I yielded 2 minutes to the gentleman from Illinois (Mr. CRANE), which should leave me with 10 minutes.

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman did not make a unanimous consent request that the gentleman from Illinois (Mr. LIPINSKI) control 5 minutes?

Mr. JACKSON of Illinois. No, sir. The gentleman from Illinois (Mr. LIPINSKI) made a unanimous consent request that 10 minutes be increased on each side and there was no objection, 10 minutes for that side and I am the other side.

The SPEAKER pro tempore. The Chair will subtract 5 minutes from the gentleman from Illinois's (Mr. LIPINSKI) side that apparently the gentleman from Illinois (Mr. JACKSON) did not yield to him, which means that the gentleman from Illinois has no time remaining.

Mr. LIPINSKI. How much time do I have?

The SPEAKER pro tempore. The gentleman has no time remaining now.

Mr. LIPINSKI. That is not right, Mr. Speaker. If I may say, before my 10 minutes was used at all, my request was for an additional 10 minutes for the gentleman from Illinois (Mr. JACKSON), an additional 10 minutes for the gentleman from Florida (Mr. MICA), which he would yield 5 minutes to me, thereby giving me 15 minutes.

To the best of my recollection, I gave 2 minutes to the gentleman from Indiana (Mr. VISCLOSKY), 3 minutes to the gentleman from Illinois (Mr. DAVIS), and 5 minutes to the gentleman from Minnesota (Mr. OBERSTAR). That is 10 minutes, which means I have 5 minutes remaining.

The SPEAKER pro tempore. Let the chair get this straight.

The gentleman's 5 minutes was taken out of the gentleman from Florida's (Mr. MICA) time. Of the 10-minute expansion, 5 went to the gentleman from Illinois (Mr. LIPINSKI), 5 went to the gentleman from Florida (Mr. MICA), and 10 went to the gentleman from Illinois (Mr. JACKSON).

Mr. LIPINSKI. Correct.

The SPEAKER pro tempore. The gentleman from Florida (Mr. MICA) has 4½ minutes remaining, the gentleman from Illinois (Mr. JACKSON) has 11½ minutes remaining, and the gentleman from Illinois (Mr. LIPINSKI) has 5 minutes remaining.

Mr. JACKSON of Illinois. Mr. Speaker, I yield myself 4¾ minutes.

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

Mr. JACKSON of Illinois. Mr. Speaker, I have not often come to the floor of this Congress to talk about the racial divide in the city of Chicago; but when I do, it is very serious business because I do not want to take lightly the implications of what Members of Congress are going to vote on today. This bill will greatly exacerbate what the New York Times has referred to as the most segregated city in Chicago. I guess, Mr. Speaker, I want to draw the relationship with this chart between those comments and what the demographic shifts are actually showing in Chicago.

When John F. Kennedy inaugurated O'Hare Airport in the early sixties, you see that the center of economic activity in this first map is in central downtown Chicago. As a result of O'Hare Airport and our economy moving from an industrial-based economy to a service-based economy, we see tremendous economic growth by 1980 in the northwestern suburban area. In the meantime, the south side of Chicago and the south suburbs is experiencing zero to negative growth.

By 1990, O'Hare Airport, well into Du Page County, Kane County, McHenry County, and Lake County, Illinois, end up being responsible, for every three jobs that exist in our area, three of them can be found in the northwestern suburbs per one person. Under a build scenario for the south suburban airport, which is why I am here, the Second Congressional District of Illinois extends from 71st and Yates all the way to Will County, to the county line and just beyond the county line. The south suburban airport under a 2020 build scenario allows the balancing of growth between the northwest suburban areas and the south suburban areas, with Chicago being the overwhelming beneficiary of that balanced economic growth. Without that airport, under a 2020 no-build scenario, south Cook County becomes increasingly reliant upon government services, welfare, various forms of section 8 housing, and other programs.

And so when we debate aviation capacity and the opportunity to expand aviation in northeastern Illinois and build an airport on the south side of Chicago and the south suburbs, Mr. Speaker, it is our goal to solve a longstanding problem. Consistent with the gentleman from Indiana (Mr. VISCLOSKY), I too support modernization at Gary Airport. I do support modernization at Rockford Airport. But, Mr. Speaker, the deal between the Governor of the State of Illinois and the mayor of the city of Chicago was to add priority status to the building of a south suburban airport in Peotone, Illinois.

This legislation does not reflect that deal. That deal is better reflected by the Senate version of the bill offered by Mr. DURBIN where the Peotone language is given priority status. And so why the gentleman from Illinois (Mr. LIPINSKI) stands here, my good friend,

and advocates that this bill is reflective of the deal but removes the priority status that by 2020 will alleviate the racial, social and economic tensions that exist in our region is a factor is why some of us are so adamantly opposed to O'Hare expansion without building this south suburban airport at least first and as a priority.

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

Mr. Speaker, it is not just about airports. With airports come Hyatt and Hilton and Fairmont and UPS and Federal Express and every other ancillary business that requires moving cargo in and out of aviation facilities. Those jobs are badly needed not just in the northwest suburbs. They are also needed on the south side of Chicago and in the south suburbs. That is why bringing this bill to the floor in regular order, allowing those of us who have been advocating for this bill and advocating for expansion of aviation capacity in the regular order that we might amend it and ensure that our interests are protected is a factor is why we are disappointed and many of us, namely myself I know for a fact, are going to vote against this bill.

Certainly the gentleman from Illinois (Mr. WELLER) says that he hopes these issues will be worked out in conference. Mr. Speaker, the mayor of the city of Chicago's father wanted to expand aviation capacity by building a third airport on Lake Michigan. The mayor himself wanted to build one in Lake Calumet. Only when the idea came about to build it in south suburban Peotone where he did not control it did he oppose it.

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

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

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

The SPEAKER pro tempore. The gentleman has 6¾ minutes remaining.

Mr. LIPINSKI. You were very generous to him.

Mr. Speaker, I yield 30 seconds to the gentleman from Illinois (Mr. GUTIERREZ).

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

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

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

Mr. JACKSON of Illinois. Mr. Speaker, I am honored to yield 3¼ minutes to the distinguished gentlewoman from California (Ms. WATERS), who has an issue at Los Angeles International Airport.

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

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

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

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

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

I urge my colleagues to support the CAP Act and oppose the expansion of Chicago O'Hare and LAX.

Mr. Speaker, I join this debate because there is nothing worse than having the folks sit in Washington override the people in local communities and in the States, telling them what is best for them when in fact the people have a right to make those decisions in their own regions and in their own communities. I respect the right of the people of the south side of Chicago to talk about what is in the best interests of their area, of that region. If we are sincere about not trying to override local control, we will not allow this to happen.

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

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

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

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

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

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

□ 1345

The gentleman from Illinois (Congressman HYDE) has asked me a number of times why the City of Chicago did not ask the Illinois Department of Transportation for a certificate of approval. I now have the answer for the congresswoman. In order to get a certificate for the Illinois Department of Transportation, it takes over a year. Unfortunately Governor Ryan would no longer be in office at the end of that time. A new governor could simply take that report because he has the arbitrary veto power and chuck it out

the window and say we are going to keep the gridlock in the Midwest in aviation.

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

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

Mr. JACKSON of Illinois. Mr. Speaker, I just have one final speaker; so we will continue to reserve the balance of our time if that is okay.

The SPEAKER pro tempore (Mr. SIMPSON). Who yields time?

Mr. LIPINSKI. Mr. Speaker, since our side has time to close, I reserve the balance of my time.

Mr. JACKSON of Illinois. Mr. Speaker, the gentleman from Florida (Mr. MICA) has the right to close. The gentleman from Illinois (Mr. LIPINSKI) needs to exhaust the balance of his time and then we will exhaust the balance of ours and we will give it to the gentleman from Florida (Mr. MICA).

Mr. LIPINSKI. Mr. Speaker, is that the ruling of the Chair?

The SPEAKER pro tempore. It is.

Mr. LIPINSKI. Could I inquire to have a Parliamentary inquiry on why, since I have part of the gentleman from Florida's (Mr. MICA) time, I should not be able to come just before he closes?

The SPEAKER pro tempore. The original time is controlled by the gentleman from Florida (Mr. MICA) and the gentleman from Illinois (Mr. JACKSON); the reverse order of opening.

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

Let us see something else that has been brought up here. Competition. The gentleman from Illinois (Mr. HYDE) talked about the competition. We are going to have more gates at new modernized O'Hare Airport. In the agreement, Delta Airlines, Northwest Airlines, a number of airlines that now utilize O'Hare but feel that they are restricted because of the size of O'Hare will have a much greater opportunity to get gates, to get landing slots so that there will be significantly more competition at O'Hare.

Another point I would like to bring up is that this is really a very bipartisan piece of legislation. Not only do we have support from the Republican side and the Democratic side, but beyond this Chamber, five secretaries of Transportation enthusiastically support this legislation, and these are appointees both on the Democratic side and from the Republican side. Two of them that I could name right here, Secretary Slater, Secretary Skinner. People support this not only because it is necessary to break the gridlock at O'Hare for benefit of the American aviation flying public, but it will also create 195,000 jobs, and those jobs are not going to just go to people on the northwest side of the city of Chicago. They are going to go to people within the city of Chicago, within Cook County, within the counties that surround Cook County. This is job creation. This is economic development at the highest possible level, and on top of all that, once again I say to you there is nothing in this legislation that stops the State, rural county, or anyone else from building Peotone.

Mr. JACKSON of Illinois. Mr. Speaker, I yield myself 1½ minutes.

Mr. Speaker, this is a Rand McNally map of Chicago. It is called the Rand McNally Chicago Easy Finder Map. And in this map it has all of the northwest suburbs in it, it has most of the city of Chicago, it has some of the southwest suburbs, but it stops here at 55th Street, right here at the Museum of Science and Industry. My district does not even start until 71st Street, and then it proceeds almost 40 miles outside the city of Chicago.

Mr. Speaker, it is as if the city of Chicago stops right there where all of the tourists and where all of the economic activity is without any consideration of the south suburbs.

Mr. Speaker, I brought with me some of the many books that document the damaging effects of Chicago's persistent disparities between north and south. Let me read a passage of just one of these titled When Work Disappears by noted University of Chicago and Harvard University Professor William Julius Wilson. Professor Wilson writes, ''Over the last two decades, 60 percent of the new jobs created in the Chicago metropolitan area have been located in northwest suburbs of Cook and DuPage County surrounding O'Hare Airport. African-Americans constitute less than 2 percent of the population in these areas.'' He concluded, ''The metropolitan black poor are becoming increasingly isolated.''

Let us not add to this hefty volume. Let us not continue to perpetuate and exploit this divide. Let us regulate all of these books to the history section and begin our own new chapter of balanced economic growth and justice in Chicago.

Mr. Speaker, I urge a no vote on this bill. It is an unprecedented act that undermines our State's ability to determine our State's future.

Mr. Speaker, I include for the RECORD the following remarks:

Mr. Speaker, I rise in opposition to H.R. 3479.

Votes on the suspension calendar are supposed to be, by definition, non-controversial. But to argue that H.R. 3479 is non-controversial is like arguing that the elimination of estate taxes, gun control legislation, a patients bill of rights, and prescription drug benefits for seniors should all be on the suspension calendar. H.R. 3479 is one of the most controversial bills to come before the House this year. It has been extremely controversial in Chicago, in the northwest suburbs, in Illinois generally, in the Illinois congressional delegation(our two U.S. Senators are divided over it), in all House and Senate Committees, in the full Senate, and, if a full debate were held on the House floor today, the nation would see just how controversial this bill is.

This bill has already been delayed in the Senate with one virtual filibuster—and it will be subjected to every parliamentary and tactical maneuver possible to try to stop it when it comes before the senate again. Hardly non-controversial!

To tear down and rebuild O'Hare will cost taxpayers three times as much money as it will cost to build a third South Suburban airport—$15–20 billion (not the $6.6 billion generally used) versus $5–7 billion. This bill is hardly non-controversial for taxpayers!

Tearing down and rebuilding O'Hare is estimated to take 15–20 years, assuming ti proceeds on schedule, without lawsuits—not likely—while building a new South Suburban Airport would take five years, it would expand thereafter as need arises, and would be a more permanent solution to the capacity crisis. When the new O'Hare is completed, we will be in the same position we are today with regard to the air capacity crisis. How is that not controversial?

This bill will double the noise pollution in the suburban communities surrounding O'Hare. It is hardly non-controversial in the polluted northwest suburbs of Chicago.

Doubling the traffic in the air space around O'Hare from 900,000 to 1.6 million operations will make flying into O'Hare less safe for the public—hardly noncontroversial for the flying public.

This bill will increase environmental pollution—O'Hare is already the number one polluter in Illinois—hardly non-controversial for those having to live in the increased pollution.

The Chicago Tribune won a Pulitzer Prize for documenting ''sleaze'' surrounding the City of Chicago and past O'Hare construction, vender, and service contracts. By passing this bill—and removing the Illinois Aeronautics Law and by-passing the Illinois General Assembly—we are virtually sanctioning more ''sleaze'' to be found around O'Hare construction, vender, and service contracts. Since when has such potential ''sleaze'' become non-controversial for Congress.

I don't consider the Federal Government running over any future Governor of Illinois, the Illinois General Assembly, the Illinois Aeronautics Law, and the 10th Amendment of the U.S. Constitution—to build an airport—non-controversial.

Finally, we're already finding out how controversial this bill is as Judge Hollis Webster on July 9, 2002, stopped the City of Chicago from running rough-shod over their northwest suburban neighbors by illegally trying to buy up and tear down their homes and businesses to make room for O'Hare expansion. This is just one of many controversial lawsuits that have been and will be filed in the future if this bill passes and becomes law.

How is tearing down and rebuilding O'Hare—which will be three times as expensive, take three times longer, be less protective of the environment, make the skys less safe, and be a less permanent solution than building a third airport—non-controversial? I say, solve the current air capacity crisis by building Peotone first, faster, cheaper, and safer, then evaluate what needs to be done with O'Hare.

H.R. 3479 fall woefully short of providing an adequate, equitable solution.

Please know that I do not oppose fixing the current air capacity crisis surrounding O'Hare. But I have many, many grave concerns about this specific expansion plan. Concerns about cost. About safety. About environmental impact. About federal precedence—and I associate myself completely with the remarks of my good friend, Mr. HYDE.

Although I oppose this bill for many reasons, I rise today to discuss an important element of this bill—constitutionality.

The attempt to rebuild and expand O'Hare Airport—Congress is inappropriately violating the Tenth Amendment.

In other contexts—specifically with regard to certain human rights—I believe that the Tenth Amendment serves to place limitations on the federal government with which I disagree. Indeed, in the area of human right, I believe new amendments must be added to the Constitution to overcome the limitations of the Tenth Amendment. However, building airports is not a human right. Therefore, in the present context, I agree that building airports is appropriately within the purview of the states.

I believe attempts by Congress to strip the authority of Governor Ryan and the Illinois Legislature over the delegation and authorization to Chicago of state power to build airports—along with the authority of governors and state legislatures in a host of other states such as Massachusetts (Logan), New York (LaGuardia and JFK), New Jersey (Newark), California (San Francisco airport), and the State of Washington (Seattle)—raise serious constitutional questions.

Under the framework of federalism established by the federal constitution, Congress is without power to dictate to the states how the states delegate power—or limit the delegation of that power—to their political subdivisions. Unless and until Congress decides that the federal government should build airports, airports will continue to be built by states or their delegated agents (state political subdivisions or other agents of state power) as an exercise of state law and state power. Further compliance by the political subdivision of the oversight conditions imposed by the State legislature as a condition of delegating the state law authority to build airports is an essential element of that delegation of state power. If Congress strips away a key element of that state law delegation, it is highly unlikely that the political subdivision would continue to have the power to build airports under state law. The political subdivision's attempts to build runways would likely be ultra vires (without authority) under state law.

Under the Tenth Amendment and the framework of federalism built into the Constitution, Congress cannot command the States to affirmatively undertake an activity. Nor can Congress intrude upon or dictate to the states, the prerogatives of the states as to how to allocate and exercise state power—either directly by the state or by delegation of state authority to its political subdivisions.

As states by the United States Supreme Court:

> [T]he Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States. . . . We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts. New York v. United States, 505 U.S. 144, at 166 (1992) (emphasis added)

> It is incontestable that the Constitution established a system of ''dual sovereignty.'' Printz v. United States, 521 U.S. 898, 981 (1997) (emphasis added)

> Although the States surrendered many of their powers to the new Federal Government, they retained ''a residuary and inviolable sovereignty,'' The Federalist No. 39, at 245 (J. Madison). This is reflected throughout the Constitution's text.

> Residual state sovereignty was also implicit, of course, in the Constitution's conferral upon Congress of not all governmental powers, but only discrete, enumerated ones, Art. I, Sec. 8, which implication was rendered express by the Tenth Amendment's assertion that ''[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'' Id at 918–919.

> This separation of the two spheres is one of the Constitution's structural protections of liberty. ''Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a health balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front. Id at 921 quoting Gregory v. Ashcroft, 501 U.S. 452 at 458 (1991)

The Supreme Court in Printz went on to emphasize that this constitutional structural barrier to the Congress introducing on the States' sovereignty could not be avoided by claiming either (a) that the congressional authority was pursuant to the Commerce Power and the ''necessary and proper clause of the Constitution or (b) that the federal law ''preempted'' state law under the Supremacy Clause. 521 U.S. at 923–924.

It is important to note that Congress can regulate—but not affirmatively command—the states when the state decides to engage in interstate commerce. See Reno v. Condon, 528 U.S. 141 (2002). Thus in Reno, the Court upheld an act of Congress that restricted the ability of the state to distribute personal drivers' license information. But Reno did not involve an affirmative command of Congress to a state to affirmatively undertake an activity desired by Congress. Nor did Reno involve (as proposed here) an intrusion by the federal government into the delegation of state power by a state legislature—and the sate legislature's express limits on that delegation of state power—to a state political subdivision.

H.R. 3479 would involve a federal law which would prohibit a state from restricting or limiting the delegated exercise of state power by a state's political subdivision. In this case, the proposed federal law would seek to bar the Illinois Legislature from deciding the allocation of the state's power to build an airport or runways—and especially the limits and conditions imposed by the State of Illinois on the delegation of that power to Chicago. The law is clear that Congress has no power to intrude upon or interfere with a state's decision as to how to allocate state power.

A state's authority to create, modify, or even eliminate the structure and power of the state's political subdivision—whether that subdivision be Chicago, Bensenville, or Elmhurst—is a matter left by our system of federalism and our federal Constitution to the exclusive authority of the states. As stated by the Seventh Circuit in Commissioners of Highways v. United States, 653 F.2d 292 (7th Cir. 1981) (quoting Hunter v. City of Pittsburgh, 207 U.S. 161, 178 (1907)):

> Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. . . . The State, therefore, at its pleasure may modify or withdraw all such power, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.

Commissioners of Highways, 653 F.2d at 297 Chicago has acknowledged that Illinois has delegated its power to build and operate airports to its political subdivisions by express statutory delegation. 65 ILCS 5/11–102–1, 11–102–2 and 11–102–5. These state law delegations of the power to build airports and runways are subject to the Illinois Aeronautics Act requirements—including the requirement that the State approve any alterations of the airport—by their express terms. Any attempt by Congress to remove a condition or limitation imposed by the Illinois Legislature on the terms of that state law delegation of authority would likely destroy the delegation of state authority to build airports by the Illinois Legislation to Chicago—leaving Chicago without delegated state legislative authority to build runways and terminals at O'Hare or midway. The requirement that Chicago receive a state permit is an express condition of the grant of state authority and an attempt by Congress to remove that condition or limitation would mean that there was no continuing valid state delegation of authority to Chicago to build airports. Chicago's attempts to build new runways would be ultra vires under state law as being without the required state legislative authority.

Clearly this bill sets dangerous precedence by stating that Congress—not the FAA, not Departments of Transportation, not aviation experts—but Congress shall plan and built airports.

Further, it ignores the 10th Amendment to the U.S. Constitution. It guts and/or undermines state laws and environmental protections. And it sidesteps the checks-and-balances and the public hearing process.

My focus today is the same as it's always been. Finding the best fix. And that best fix is

the construction of a third Chicago airport near Peotone, Illinois. The plain truth is Peotone could be build in one-third the time at one-third the cost. For taxpayers and travelers, it's a no-brainer.

Unfortunately, this bill mandates expansion of O'Hare yet pays mere lip service to Peotone. It puts the projects on two separate and unequal tracks. That is my opinion. That is also the opinion of the Congressional Research Service, whose analysis I will provide for the record.

What we don't need at this critical juncture is favoritism or interference from politicians and profit-oriented airlines to stack the deck against Peotone. What we don't need is a bill that increases the likelihood of a constitutional challenge that prolongs the debate and delays the fix.

Thus, I urge members to reject this unprecedented, unwise, and unconstitutional bill.

RONALD D. ROTUNDA, UNIVERSITY OF ILLINOIS COLLEGE OF LAW,
Champaign, IL, March 1, 2002.

Re Proposed federal legislation granting new powers to the city of Chicago.

Hon. JESSE L. JACKSON, JR.,
House of Representatives, Washington, DC.

DEAR CONGRESSMAN JACKSON. As you know, I serve as the Albert E. Jenner Professor of Law at the University of Illinois Law School. I have authored a leading course book on Constitutional Law. In addition, I co-author, along with my colleague John Nowak, the widely-used multi-volume Treatise on Constitutional Law, published by West Publishing Company. In addition to my books, I have taught and researched in the area of Constitutional Law since 1974.

I have been asked to give my opinion on the constitutionality of proposed federal legislation entitled ''National Aviation Capacity Expansion Act,'' identical versions of which have been introduced in both the Senate and the House of Representatives by Senator Durbin and Congressman Lipinski (S. 1786, HR 3479), hereafter the ''Durbin-Lipinski legislation.''

The Durbin-Lipinski legislation seeks to enact Congressional approval of a proposal to construct a major alteration of O'Hare Airport in Chicago. While this legislation focuses on Chicago and the State of Illinois, the issues raised by the legislation have serious constitutional implications for all 50 States.

There are two key components of the legislation that have been the subject of my examination.

First Section 3(a)(3) attempts to give the City of Chicago (a political subdivision and instrumentality of the State of Illinois) the legal power and authority to build a proposed major alteration of O'Hare even though state law does not authorize Chicago to build the alteration without first receiving a permit from the State of Illinois. Chicago, as a legal entity, is entirely a creation of state—not federal law—and Chicago's authority to build airports is essentially an exercise of state law power delegated to Chicago by the Illinois General Assembly.

The requirement that Chicago first obtain a state permit is an integral and essential element of that delegation of state power. The U.S. Constitution prohibits Congress (1) from invading and commandeering the exercise of state power to build airports, and (2) from changing the allocation of state-created power between the State of Illinois and its political subdivisions. The U.S. Constitution, in short, prohibits Congress from essentially rewriting state law dealing with the delegation of state power by eliminating the conditions, restrictions, and prohibitions imposed by the Illinois General Assembly on that delegation. These constitutional restrictions on Congress' power—which prohibit Congress from requiring states to change their state laws governing cities—are often termed Tenth Amendment restrictions.

Similarly, the provisions of Section 3(f) of the proposed Durbin-Lipinski legislation are necessarily conditioned upon the existence of state law authority of Chicago to enter into agreements for a third party (the FAA) to alter O'Hare without first obtaining a permit from the State of Illinois. But Chicago has no state law authority (under the delegation of state power to build and alter airports) to enter into an agreement to engage in a massive alteration of O'Hare without a state permit. Congress cannot confer powers on a political subdivision of a State where the State has expressly limited its delegation of state power to build airports to require a state permit. Congress has no constitutional authority to create powers in an instrumentality of State law (Chicago) when the very authority and power of Chicago to undertake the actions proposed by Congress depends on compliance with—and is contrary to—the mandates of the Illinois General Assembly.

For the reasons discussed below, it is my opinion that the proposed legislation is unconstitutional.

Summary of Analysis

The following is a summary of my analysis:

1. Under the governing United States Supreme Court decisions of New York v. United States and Printz v. United States, which are discussed below, the proposed legislation is not supported by any enumerated power and thus violates the limitations of the Tenth Amendment of the Constitution. In these decisions, the Supreme Court held that legislation passed by Congress, purportedly relying on its exercise of the Commerce Power (nuclear waste legislation in New York and gun control legislation in Printz) was unconstitutional because the federal laws essentially commandeered state law powers of the States as instrumentalities of federal policy.

2. The same constitutional flaws afflict the proposed Durbin-Lipinski legislation. Central to the Durbin-Lipinski legislation are two provisions [sections 3(a)(3) and 3(f)] that purport to empower or authorize Chicago (a political instrumentality of the State of Illinois, and thus a city that has no authority or even legal existence independent of state law) to undertake actions for which Chicago has not received any delegation of authority from the State of Illinois and that, in fact, are directly prohibited by Illinois law when the conditions and limitations of the State delegation of authority have not been satisfied.

3. Under Illinois law, Chicago (like any other political subdivision of a State) has no authority to undertake any activity (including constructing airports) without a grant of state authority from the State of Illinois. Under Illinois law, actions taken by political subdivisions of the State (e.g., Chicago) without a grant of authority from the State, or actions taken by political subdivision in violation of the conditions, limitations or prohibitions imposed by the State in delegating the state authority, are plainly ultra vires, illegal, and unenforceable. The City of Chicago is a creature of state law, not federal law.

4. The power exercised by any state political subdivision (e.g., the power to construct airports) is in reality a power of the State—not inherent in the existence of the political subdivision. For the political subdivision to have the legal authority to exercise that state power, there must be a delegation of that state power by the State to the political subdivision. Further, it is axiomatic that any such delegation of state power to a political subdivision must be exercised in accordance with the conditions, limitations, and prohibitions accompanying the State's delegation of that power.

5. In the case of airport construction, the Illinois General Assembly has enacted a statute that delegated to Chicago (and other municipalities) the state law power to construct airports explicitly and specifically subject to certain limits and conditions that the General Assembly imposed. One basic requirement is that Chicago must first comply with all of the requirements of the Illinois Aeronautics Act—including the requirement that Chicago first receive a permit (a certificate of approval) from the State of Illinois. the Illinois General Assembly has expressly provided that municipal construction or alteration of an airport without such a state permit is unlawful and ultra vires.

6. Section 3(a)(3) of the Durbin-Lipinski legislation expressly authorizes Chicago to proceed with the ''runway redesign plan'' (a multi-billion dollar modification of O'Hare) without regard to the clear delegation limitations and prohibitions imposed by the Illinois General Assembly on the state statutory delegation to Chicago of the state law power to construct airports. Illinois law explicitly says Chicago has no state law authority to build or alter airports without first complying with the Illinois Aeronautics Act, including the state permitting requirements of §47 of that Act. Even though Chicago (a political creation and instrumentality of the State of Illinois) has no power to build or modify airports (a state law power) unless Chicago obtains State approval, Section 3(a)(3) purports to infuse Chicago (which has no legal existence independent of state law) with a federal power to build airports and to disregard Chicago's fundamental lack of power under state law to undertake such actions (absent compliance with state law). Like New York v. United States and Printz v. United States the proposed Durbin-Lipinski legislation involved Congress attempting to use a legal instrumentality of a State (i.e., the state power to build airports exercised through its delegated state-created instrumentality, the city of Chicago) as an instrument of federal power. As the Supreme Court held in New York and Printz, the Tenth Amendment—and the structure of ''dual sovereignty'' it represents under our constitutional structure of federalism—prohibits the federal government from using the Commerce power to conscript state instrumentalities as its agents.

7. Similar problems articulated in New York and Printz fatally afflict Section 3(f) of the proposed Durbin-Lipinski legislation. That section provides that, if (for whatever reason) construction of the ''runway design plan'' is not underway by July 1, 2004, then the FAA Administrator (a federal agency) shall construct the ''runway redesign plan'' as a ''Federal Project''. But, Section 3(f)(1) then provides that this ''federal project'' must obtain several agreements and undertakings from Chicago—agreements and undertakings that are controlled by state law, which limits Chicago's authority to enter into such agreements or accept such undertakings. Chicago has no authority under the state law (which confers upon Chicago the state power to construct airports) to enter into agreements with any third party (be it the United States or a private party) to make alterations of an airport without the state permit required by state statute. Thus, Chicago has no authority under state law to enter into an agreement with the FAA Administrator to have the runway redesign

plan constructed by the Federal government because Chicago has not received approval from the State of Illinois under the Illinois Aeronautics Act—a specific condition and prohibition of the delegation of state power (to build airports) to Chicago by the Illinois General Assembly. Just as Chicago (a creation and instrumentality of the State of Illionis) has no power or authority under state law (absent compliance with the Illinois Aeronautics Act) to enter into an agreement for the FAA to construct the runway redesign plan, Chicago also has no power or authority (absent compliance with the Illinois Aeronautics Act) to enter into the other agreements provided for in Sections 3(f)(1)(B) of the Durbin-Lipinski legislation. Again, Section 3(f) is an attempt to have Congress use the Commerce power to conscript state instrumentalities as its agents. Instead of Congress regulating interstate commerce directly (which both New York v. United States and Printz allow), the Durbin-Lipinski legislation seeks to regulate how the State regulates one of its cities (which both New York v. United States and Printz do not allow).

8. The Durbin-Lipinski legislation is not a law of ''general application''. There is a line of Supreme Court decisions which allow Congress to use the Commerce Power to impose obligations on the States when the obligations imposed on the States are part of laws which are ''generally applicable'' i.e., that impose obligations on the States and on private parties alike. See e.g., Reno v. Condon, 528 U.S. 141 (2000) (Federal rule protecting privacy of drivers' records upheld because they do not apply solely to the State), South Carolina v. Baker, 485 U.S. 505 (1988); (state bond interest not immune from nondiscriminatory federal income tax); Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528, (1985) (law of general applicability, binding on States and private parties, upheld). But these cases have no application where, as here and in New York and Printz, the Congressional statute is not one of general applicaiton but a specifically directed at the States to use state law instrumentalities as tools to implement federal policy. Here the Durbin-Lipinski legislation is doubly unconstitutional, because it does not apply to private parties or even to all States but only to one State (Illinois) and its relationship to one city (Chicago). The Durbin-Lipinski legislation proposes to use Chicago (an instrumentality of state power whose authority to construct airports is an exercise of state power expressly limited and conditioned on the limits and prohibitions imposed on that delegation by the Illinois legislature) as a federal instrumentality to implement federal policy. Congress is commandeering a state instrumentality of a single State (Illinois) against the express statutory will of the Illinois Legislature, which has refused to confer on Chicago (an instrumentality of the State) the state law power and authority to build airports unless Chicago first obtains a permit from the State of Illinois. This is an unconstitutional use of the Commerce Power under the holdings New York and Printz and does not fall within the ''general applicability'' line of cases such as Reno v. Condon, South Carolina v. Baker, and Garcia.

ANALYSIS

Before discussing any further the specific provisions of the Durbin-Lipinski legislation, let us review some important background law.

A. The basic legal principles

Cities are Creatures of the States and State Law—Not Instrumentalities of Federal Power. Normally, this controversy surrounding the proposed expansion of O'Hare Airport would be left to the state political process. Under Illinois law, the cities in this state have only the power that the State Constitution or the legislature grants to them, subject to whatever limits the State imposes. This legal principle has long been settled.

Nearly a century ago, the U.S. Supreme Court, in Hunter v. City of Pittsburgh, 207 U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151 (1907) held that, under the U.S. Constitution, cities are merely creatures of the State and have only those powers that the State decides to give the, subject to whatever limits the States choose to impose:

''This court has many times had occasion to consider and decide the nature of municipal corporations, their rights and duties, and the rights of their citizens and creditors. [Citations omitted.] It would be unnecessary and unprofitable to analyze these decisions or quote from the opinions rendered. We think the following principles have been established by them and have become settled doctrines of this court, to be acted upon wherever they are applicable. Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be [e]ntrusted to them. . . . The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. . . . The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.''

Hunter held that a State that simply takes the property of municipalities without their consent and without just compensation did not violate due process. While Hunter is an old case, it still is the law, and the Seventh Circuit recently quoted with approval the language reprinted here.

The Illinois Aeronautics Act Expressly Limits Chicago's Power to Build and Alter. The State of Illinois has delegated to Chicago the power to build and alter airports. But that power is expressly limited by the requirement that Chicago must comply with the Illinois Aeronautics Act. And the Illinois Aeronautics Act provides that Chicago has no power to make ''any alteration'' to an airport unless it first obtains a permit, a ''certificate of approval,'' from the State of Illinois. Finally, Chicago has not obtained this certificate of approval. That fact is what has led to the proposed federal intervention.

B. The federalism problem

As mentioned above, section 3(a)(3) of the proposed federal law overrides the licensing requirements of §47 of the Illinois Aeronautics Act. This section states:

''(3) The State shall not enact or enforce any law respecting aeronautics that interferes with, or has the effect of interfering with, implementation of Federal policy with respect to the runway redesign plan including sections 38.01, 47, and 48 of the Illinois Aeronautics Act.''

In addition, section 3(f) authorizes Chicago to enter into an agreement with the federal government to construct the O'Hare Airport expansion. This project is called a ''Federal project,'' but Chicago must agree to construct the ''runway redesign as a Federal Project,'' and Chicago provides the necessary land, easements, etc., ''without cost to the United States.''

What this proposed legislation does is authorize the City of Chicago to implement an airport expansion approved by the Administrator of the Federal Aviation Administration. But, under state law, Chicago cannot expand O'Hare because it does not have the required state permit.

There is no doubt that the O'Hare Airport is a means of interstate commerce, and Congress may certainly impose various rules and regulations on airports, including O'Hare. Congress, for example, may decide to require airport security and require that the security agents be federal employees. Or, Congress could provide that it would build and takeover the O'Hare Airport and construct expansion if the State of Illinois refused to do so.

Congress may also use its spending power to take land by eminent domain and then construct or expand an airport, no matter that the state law provides. The limits on the spending clause are few.

But, the proposed law does not take such alternatives. It does not impose regulations on airports in general, nor does it exercise the very broad federal spending power. Nor does the proposed law authorize the federal government take over ownership and control of O'Hare Airport. Instead, it seeks to use an instrumentality of state power (i.e., the state law power to build airports as delegated to a state instrumentality, the city of Chicago) as an exercise of federal power.

The proposed federal law is stating that it is creating a federal authorization or empowerment to the City of Chicago to do that which state law provides that Chicago may not do—expand O'Hare Airport without complying with state laws that create the City of Chicago and delegate to it certain limited powers that can be exercised only if within the limits of the authorizing state legislation.

New York v. United States

The proposed federal law is very similar to the law that the Supreme Court invalidated a decade ago in New York v. United States. The law that New York invalidated singled out states for special legislation and regulated that states' regulation of interstate commerce. The proposed Durbin-Lipinski legislation singles out a State (Illinois) for special legislation and regulates the State's regulation of interstate commerce dealing with O'Hare Airport.

While the law in this area has shifted a bit over the last few decades, it is now clear that Congress can use the Interstate Commerce Clause to impose various burdens on States as long as those laws are ''generally applicable.'' The federal law may not single out the State for special burdens. For example, Congress may impose a minimum wage on state employees in, or affecting, interstate commerce as long as Congress imposes the same minimum wage requirements on non-state workers in, or affecting, interstate commerce. Congress can regulate the States using the Commerce Clause if it imposes requirements on the States that are generally applicable—that is, if it imposes the same burdens on private employers. Congress cannot single out the States for special burdens; it cannot commandeer or take control over the States or order a state legislature to increase the home rule powers of the City of Chicago; it cannot enact federal legislation that adds to or revises Chicago's state created and limited delegated powers.

The leading case, New York v. United States, held that the Commerce Clause does not authorize the Federal Government to

conscript state governments as its agents. ''Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not conscript state governments as its agents.'' The proposed Durbin-Lipinski legislation will do exactly what New York prohibits: it will conscript the City of Chicago as its agent and interfere with the relationship between the State of Illinois and the entity it created, the City of Chicago.

New York invalidated a legislative provision that is strikingly similar to the proposed federal Durbin-Lipinski legislation. The Court, in the New York case, considered the Low-Level Radioactive Waste Policy Amendments Act of 1985. Congress was concerned with a shortage of disposal sites for low level radioactive waste. The transfer of waste from one State to another is obviously interstate commerce. Congress, in order to deal with the waste disposal problem, crafted a complex statute with three parts, only one of which was unconstitutional. There were a series of monetary incentives, which the Court unanimously upheld under Congress' broad spending powers. Congress also authorized States that adopted radioactive waste and storage disposal guidelines to bar waste imported from States that had not adopted certain storage and disposal programs. The Court, again unanimously, relied on long-settled precedent that approves of Congress creating such trade barriers in interstate commerce.

Then the Court turned to the ''take title'' provisions and held (six to three) that they were unconstitutional. The ''take title'' provision in effect required a State to enact certain regulations and, if the State did not do so, it must (upon the request of the waste's generator or owner), take title to and possession of the waste and become liable for all damages suffered by the generator or owner as a result of the State's failure to promptly take possession.

The Court explained that Congress could, if it wished, preempt entirely state regulation in this area and take over the radioactive waste problem. But Congress could not order the States to change their regulations in this area. Congress lacks the power, under the Constitution, to regulate the State's regulation of interstate commerce. This is what the proposed federal O'Hare Airport bill will do: it will regulate the State's regulation of interstate commerce by telling the State that it must act as if the City of Chicago has complied with the Illinois Aeronautics Act and other state rules.

In a nutshell, Congress cannot constitutionally commandeer the legislative or executive branches. The Court pointed out that this commandeering is not only unconstitutional (because nothing in our Constitution authorizes it) but also bad policy, because federal commandeering serves to muddy responsibility, undermine political accountability, and increase federal power.

The proposed Durbin-Lipinski legislation prohibits Illinois from applying its laws regulating one of its cities. The proposed federal law also authorizes the federal government to make an agreement with Chicago, pursuant to which Chicago will assume some significant obligations, even though present state law gives Chicago no authority to engage in this activity. As the six to three New York decision made clear:

''A State may not decline to administer the federal program. No matter which path the State chooses, it must follow the direction of Congress. . . . No other federal statute has been cited which offers a state government no option other than that of implementing legislation enacted by Congress. Whether one views the take title provision as lying outside Congress' enumerated powers, or as infringing upon the core of state sovereignty reserved by the Tenth Amendment, the provision is inconsistent with the federal structure of our Government established by the Constitution.''

The proposed Durbin-Lipinski legislation is very much like the law that six justices invalidated in New York. The O'Hare bill provides that, no matter what the State chooses, ''it must follow the direction of Congress.'' The State has ''no option other than that of implementing legislation enacted by Congress.''

The Court in New York went on to explain that there are legitimate ways that Congress can impose its will on the states:

''This is not to say that Congress lacks the ability to encourage a State to regulate in a particular way, or that Congress may not hold out incentives to the States as a method of influencing a State's policy choices. Our cases have identified a variety of methods, short of outright coercion, by which Congress may urge a State to adopt a legislative program consistent with federal interests. Two of these methods are of particular relevance here.''

The Court then discussed those two alternatives. First, there is the spending power, with Congress attaching conditions to the receipt of federal funds. The proposed Durbin-Lipinski legislation rejects the spending power alternative. Second, ''where Congress has the authority to regulate private activity under the Commerce Clause, we have recognized Congress' power to offer States the choice of regulating that activity according to federal standards or having state law preempted by federal regulation.'' The proposed Durbin-Lipinski legislation rejects that alternative as well. It does not propose that Congress directly takeover and expand O'Hare Airport. Instead, it proposes that the City of Chicago be allowed to exercise power that the State does not allow the City to exercise.

New York v. United States did not question ''the authority of Congress to subject state governments to generally applicable laws.'' But Congress cannot discriminate against the States and place on them special burdens. It cannot commandeer or command state legislatures or executive branch officials to enforce federal law. Congress can regulate interstate commerce and States are not immune from such regulation just because they are States. For example, Congress can forbid employers from hiring child labor to work in coal mines, whether a private company or a State owns the coal mine and employs the workers.

Printz v. United States. Following the New York decision, the Court invalidated another federal statute imposing certain administrative duties on local law enforcement officials, in Printz v. United States. The Brady Act, for a temporary period of time, required local law enforcement officials to use ''reasonable efforts'' to determine if certain gun sales were lawful under federal law. The federal law also ''empowered'' these local officers to grant waivers of the federally prescribed 5-day waiting period for handgun purchases. Note that the proposed Durbin-Lipinski legislation will also ''empower'' the City of Chicago to do that which Illinois does not authorize the city to do.

To make the analogy even more compelling, the chief law enforcement personal suing in the Printz case said that state law prohibited them from undertaking these federal responsibilities. That, of course, is the exact position in which Chicago finds itself. State law prohibits Chicago from entering into and committing to these federal responsibilities (e.g., the agreements between Chicago and the FAA in §3(f) of the proposed Durbin-Lipinski legislation call for construction as a ''federal project'' but then require Chicago to either construct or allow construction without a permit from the State of Illinois).

We should realize that the proposed Durbin-Lipinski legislation—in commanding and singling out the State of Illinois to, in effect, repeal its legislation governing the powers delegated to the City of Chicago—is quite unusual and not at all in the tradition of federal legislation. For most of our history, Congress would explicitly only ''recommend'' or ''request'' the assistance of the governors and state legislatures in implementing federal policy. It is only in very recent times that Congress has sought explicitly to commandeer or order the legislative and executive branches of the States to implement federal policies. Because such federal legislative activity is recent, the case law in this area is recent, but the case law is clear in prohibiting this type of federal assertion of power.

New York v. United States held that Congress cannot ''command a State government to enact state regulation.'' Congress may regulate interstate commerce directly, but it may not ''regulate state governments' regulation of interstate commerce.'' The Federal Government may not ''conscript state governments as its agents.'' Congress has the ''power to regulate individuals, not States.''

In short, there are important limits on the power of the federal government to commandeer the state legislature or state executive branch officials for federal purposes. Another way to think about this issue is that, to a certain extent, the Constitution forbids Congress from imposing what recently have been called ''unfunded mandates'' on state officials. Congress cannot simply order the States or state officials or a city to take care of a problem. Congress can use its spending power to persuade the States by using the carrot instead of the stick.

While there are those who have attacked the restrictions that New York v. United States have imposed on the Federal Government, it is worth remembering the line-up of the Court in Maryland v. Wirtz when the justices first considered this issue. That case rejected the applicability of the Tenth Amendment and held that it was constitutional for Congress to set the wages, hours, and working conditions of employees, including state employees in interstate commerce. However, Justice Douglas, who was joined by Justice Stewart, dissented. Douglas found the law to be a ''serious invasion of state sovereignty protected by the Tenth Amendment'' and ''not consistent with our constitutional federalism.'' He objected that Congress, using the broad commerce power, could ''virtually draw up each State's budget to avoid 'disruptive effect[s]' '' on interstate commerce. New York v. United States prevents this result.

The ''generally applicable'' restriction is important, and it explains Reno v. Condon. Congress enacted the Driver's Privacy Protection Act (DPPA), which limited the ability of the States to sell or disclose a driver's personal information to third parties without the driver's consent. Chief Justice Rehnquist, for a unanimous Court, upheld the law as a proper regulation of interstate commerce and not violating any principles of federalism found in New York v. United States or Printz because the law was ''generally applicable.''

Reno grew out of a congressional effort to protect the privacy of drivers' records. As a condition of obtaining a driver's license or registering a car, many States require drivers to provide personal information, such as name, address, social security number, medical information, and a photograph. Some States then sell this personal information to

businesses and individuals, generating significant revenue. To limit such sales, Congress enacted the DPPA, which governs any state department of motor vehicles (DMV), or state officer, employee, or contractor thereof, and any resale or re-disclosure of drivers' personal information by private persons who obtained the information from a state DMV. The Court concluded: ''The DPPA's provisions do not apply solely to States.'' Private parties also could not buy the information for certain prohibited purposes nor could they resell the information to other parties for prohibited purposes, and the States could not sell the information to the private parties for certain purposes if the private parties could not buy it for those purposes.

Unlike the law in New York, the Court concluded that the DPPA does not control or regulate the manner in which States regulate private parties, it does not require the States to regulate their own citizens, and it does not require the state legislatures to enact any laws or regulations. Unlike the law in Printz, the DPPA does not require state officials to assist in enforcing federal statutes regulating private individuals. This DMV information is an article of commerce and its sale or release into the interstate stream of business is sufficient to support federal regulation.

The DPPA is a ''generally applicable'' federal law regulating commerce because it regulates the universe of entities that participate as suppliers to the market for motor vehicle information—the states as initial suppliers and the private resellers or redisclosers of this information. ''South Carolina has not asserted that it does not participate in the interstate market for personal information. Rather, South Carolina asks that the DPPA be invalidated in its entirety, even as applied to the States acting purely as commercial sellers.''

CONCLUSION

The proposed federal law dealing with the O'Hare Airport expansion is most likely unconstitutional because it imposes federal rules on the relationship between a city and the State that created the city. It subjects Illinois to special burdens that are not generally applicable to private parties or even to other States. It authorizes the City of Chicago to do that which Illinois now prohibits.

There is no escape from the conclusion that the proposed federal law does not regulate the behavior of private parties in interstate commerce. It does not subject the State of Illinois to ''generally applicable'' legislation. Instead, Congress is regulating the state's regulation of interstate commerce. Congress may not conscript the instrumentalities of state government and state power as tools of federal power. The case law is clear that Congress does not have this power.

Sincerely,

RONALD D. ROTUNDA,
The Albert E. Jenner, Jr. Professor of Law.

CHICAGO IS NOT AN AGENCY OF THE FEDERAL GOVERNMENT

(By Ronald D. Rotunda)

Congress is at it again. The Senate Commerce Committee has cleared a bill that would, in effect, enlist Chicago as an agency of the federal government. The immediate dispute involves O'Hare Airport, but the underlying constitutional issue affects us all. The question is whether there should be a major expansion of O'Hare, or a new airport. That decision has been entrusted to Chicago, a city created under Illinois law. But the state placed an important condition on Chicago's power to expand O'Hare. First, the city has to secure a state permit.

That's the rub. Some people who favor the expansion don't want Chicago to comply with the state permit requirement, so they urged Congress to enact legislation that authorizes Chicago to do what state law forbids. Enter the U.S. Constitution. For over two centuries, the federal government has had the power to regulate interstate commerce. After the terrorist attacks, for example, Congress relied on that power to federalize airport security. Notably, Congress didn't deal with the problem by ordering state and city police to take over security and pay the bills. That's because the federal government knew it could not regulate by conscripting state or city governments as its agents.

Congress acknowledged that fundamental principle in 1789, the very year that the Constitution was ratified. The First Congress enacted a law that requested state assistance to hold federal prisoners in state jails at federal expense. The law did not command the states' executives, but merely recommended to their legislatures, and offered to pay 50 cents per month for each prisoner. When Georgia refused, Congress authorized the U.S. marshal to rent a temporary jail until a permanent one could be found. It never occurred to Congress that it could make city or state officials its minions by instructing them to act as if they were federal employees.

All this changed a little over a decade ago, when Congress has to decide how to dispose of radioactive waste. Rather than handle the matter directly, it chose a low-cost solution: it simply ordered the states to take care of the problem. The law required the states to take title to radioactive waste that private parties had generated, and be responsible for its disposal, at not cost to the federal government. In 1992, the Supreme Court invalidated the law, calling it an unprecedented effort by the federal government to co-opt legislative and executive branch officials of state government.

A few years later, Congress mandated background checks in connection with gun purchases. It didn't want to spend federal money for bureaucrats to enforce the new law, so it told city and state law enforcement personnel to carry out the background checks. Printz v. United States invalidated that portion of the federal law. The Supreme Court explained that city and state officials do not work for the federal government; they work for the state. Cities are creatures of state law, and they have only the powers that the state chooses to give them.

Federalism, the Court tells us, exists to protect the people by dividing power between the states and the federal government. That protection is undermined if Congress can bypass the federal bureaucracy by directing state or city officials to do its bidding. The Court added that allowing Congress to treat state officials as its worker bees is bad policy because it muddies responsibility, weakens political accountability, and increases federal power.

The Constitution gives Congress plenty of ways to deal with O'Hare, but they all cost money: Congress can use its spending power to expand the airport; it can give the state money on the condition that it expand the airport; it can order federal officials (the Army Corps of Engineers) to build the O'Hare expansion. But Congress may not simply order or authorize state or city officials to violate state law and act like federal employees. The proposed federal law dealing with the expansion of O'Hare Airport subjects Illinois to special burdens that are not applicable to other states or to private parties, and it authorizes Chicago, a city created by the state, to do that which Illinois law prohibits.

Justice Sandra Day O'Connor, speaking for the Court in 1992, put it bluntly: ''Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not conscript state [or city] governments as its agents.''

A CONTROLLER'S VIEW

Ladies and gentlemen; I have proudly served the FAA for the past 14 years as an Air Traffic Controller. I have been employed at several air traffic control facilities throughout the Chicagoland area, and feel that I have a unique perspective on enhancing future airport development.

To date, most of you have heard numerous insights on a proposed third major airport for Chicago. Let me offer another perspective from a ''controller's viewport''. Within a small twenty-mile radius of the Chicagoland area, lie four of the busiest airports in the country. Approximately one and one half million airplanes take off and land at Palwaukee, Dupage, Midway, and O'Hare Airports yearly! This puts a tremendous strain on the Air Traffic Controllers who struggle to keep this area safe and without significant delay. With air travel continuously increasing, delays and safety will become a nearly impossible challenge.

Plans for expansion at the two major Chicago airports will not be enough to meet demands. O'Hare airport has reached its maximum capacity creating consequential delays. There are not enough available gates, runways, and taxiways to serve all the aircraft. Although there are plans to add additional gates and another runway, this will not address the taxiway problem. Due to the layout of O'Hare airport, in my opinion there is no effective way to construct additional taxiways that will have a positive impact on airport operations. Thus making any other method to increase capacity ineffective.

The problems that face O'Hare are some of the same problems facing Midway Airport. Midway boasts as being aviation's busiest square mile. Nowhere else are there more commercial airplanes landing and departing in such a condensed area. Unfortunately, Midway Airport is very condensed. Due to runway lengths, it can only handle the smallest commercial aircraft. The airport is severely landlocked with major streets, houses and businesses immediately surrounding the field. Even with the current terminal expansion project in effect, an insufficient number of taxiways and the size of the runways, in my opinion limit any significant increase in traffic.

The need for a third major airport is loud and clear. With the projections of air traffic on the rise, additional airports must become available. In my opinion, Peotone is an excellent location for a major commercial airport. Peotone is located just outside the main flow of air traffic in and out of Chicago. Any additional airplanes created by the third airport would not adversely effect air traffic facilities located east, south, and west of Peotone. A third airport located in Peotone would not be significantly effected by Chicago's air traffic, which is rapidly reaching a saturation point, but instead would aid in alleviating the congestion heading into Chicago.

Another point of interest, which may have been overlooked, is corporate aircraft. The use of corporate aircraft is one of the fastest growing fields in aviation. There are very few, if any airports that can accommodate corporate aircraft in the south Chicagoland area. With the pending closure of Meigs Field in Chicago, the Petone airport would fill the need for another corporate airport crucial to south Chicagoland businesses. Furthermore, suggestions that a third major

airport being located in the immediate Chicagoland area, namely Gary, Indiana, would not alleviate the saturation problem Chicago is already facing.

In closure, I would like to thank all those involved with the Petone Airport project. I am greatly anticipating the future events surrounding this project.

JOHN W. TEERLING,

Lockport, IL, January 18, 1999.

Re A Third Chicago Airport.

Governor GEORGE RYAN,

State Capitol, Springfield, IL.

DEAR GOVERNOR RYAN: My name is John Teerling and I recently retired, after 31.5 years with American Airlines as a Captain, flying international routes in Boeing 767 and 757's. I was based at Chicago's O'Hare my entire career. I have seen the volume of traffic at O'Hare pick up and exceed anyone's expectations, so much so, that on occasion midairs were only seconds apart. O'Hare is at maximum capacity, if not over capacity. It is my opinion that it is only a matter of time until two airliners collide making disastrous headlines.

Cities like Atlanta, Dallas and especially Miami continue to increase their traffic flow, some months exceeding Chicago, and at some point could supersede Chicago permanently. If Chicago and Illinois are to remain as the major Hub for airline traffic, a third major airport has to be built, and built now. Midway, with its location and shorter runways will never fill this void. A large international airport located in the Petone area, complete with good ground infrastructure (rail and highway) to serve Chicago, Kankakee, Joliet, Indiana and the Southwest suburbs, would be win, win situation for all. The jobs created for housing, offices, hotels, shopping, manufacturing and light industry could produce three to four hundred thousand jobs. Good paying jobs.

Another item to consider, which I feel is extremely important, is whether. I have frequently observed that there are two distinct weather patterns between O'Hare and Kankakee. Very often when one is receiving snow, fog or rain the other is not. These conditions affect the visibility and ceiling conditions determining whether the airports operate normally or not. Because of the difference in weather patterns when one airport, say O'Hare, is experiencing a hampered operation, an airport in Peotone, in all probability, could be having more normal operations. Airliners could then divert to the ''other'' Chicago Airport, saving time and money as well as causing less inconvenience to the public. (It's better to be in Peotone than in Detroit).

It is well known that American and United, who literally control O'Hare with their massive presence, are against a third airport, Why? It is called market share competition and greed. A new airport in the Peotone area would allow other airlines to service Chicago and be competition. American and United are of course dead set against that. What they are not considering is that their presence at a third airport would afford them an even greater share of the Chicago regional pie as well as put them in a great position for future expansion.

You also have Mayor Daley against a third airport because he feels a loss of control and possible revenue for the city. This third airport, if built, and it should be, should be classified as the Northern Illinois Regional Airport, controlled by a Board with representatives from Chicago and the surrounding areas. That way all would share in the prestige of a new major international airport along with its revenues and expanding revenue base.

The demand in airline traffic could easily expand by 30% during the next decade. Where does this leaves Illinois and Chicago? It leaves us with no growth in the industry if we have no place to land more airplanes. If Indiana were ever to get smart and construct a major airport to the East of Peotone, imagine the damaging economic impact it would have on Northern Illinois!

Sincerely,

JOHN W. TEERLING.

THE FUTURE OF THE CHICAGO REGION: SMART GROWTH, INFILL REDEVELOPMENT AND REGIONAL BALANCE

The Midwest and, in particular, the Chicago Metropolitan Area, has had a remarkable turnaround in economic fortune over the past decade. It has shed its ''rust-belt'' image and has produced remarkable economic growth.

Between 1990 and 1998, the six-county Chicago area grew by 505,500 persons, a 7 percent increase. While this percent increase is moderate, the numerical increase is equivalent to a city larger than Denver.

Between 1990 and 1997, the six-county area grew by 275,000 jobs, a 9 percent increase. Between 1970 and 1996, the region (Kenosha to Michigan City) grew by 1.310 million jobs, the fifth largest increase in the nation.

Between 1996 and 2020, the Chicago region is projected to grow by 785,000 persons. This is a city the size of San Francisco.

Between 1996 and 2020, the Chicago region is projected to have the largest growth of any metro area in the U.S., adding 1.118 million jobs.

In spite of these significant regional turnarounds, the City of Chicago continued to lose ground. Between 1991 and 1997, the City of Chicago lost over 27,000 jobs; 11,0000 were from the South Loop. Every one of the City's eight major community areas experienced losses, with the exception of North Michigan Avenue and the Northwest area around O'Hare International Airport. The Far South, Southwest and South communities experienced the greatest losses.

This development trend extended to the suburban area. While the six-county Chicago Area grew by 275,000, the north and northwest suburbs were the major beneficiaries. DuPage, Lake and Northwest Suburban Cook (around O'Hare) Counties contributed 194,000 jobs, or 71 percent of the net growth. With 500,000 jobs in Chicago's Central Business District versus 450,000 in North Suburban Cook County and 150,000 in Northeast Du Page County, the economic center of the region has shifted from downtown to O'Hare.

O'Hare International Airport is, undoubtedly, the great economic engine it is portrayed. But, it has run out of space, both in the air and on the ground. Its enormous attraction, to business and industry, has brought thousands of enterprises, hundreds of thousands of jobs, millions of visitors and billions of dollars, annually, to the Chicago region. On this, we all agree. But, the area surrounding it is choking on the development. Other areas, particularly the South Side, are in great need of both jobs and better airport access. In fact, the two issues are closely related.

The massive development attracted by O'Hare Airport makes airport expansion there costly, time-consuming, difficult and intrusive. Traffic often is brought to a near halt on the expressways leading to O'Hare; future traffic problems would be compounded many times over. O'Hare's neighbors—well-aware of its many economic contributions—also are wary of expansion, weary of noise and traffic, and fearful of possible future compromises on safety. On the opposite side of the region—and the other side of the ledger—are the communities of the Chicago South Side and the South Suburbs. By all accounts, these areas find themselves overlooked and under-served—primarily due to their distance from the region's airports. This economic disparity is clearly evident from the following maps, which show job concentrations in 1960 and 1990. This period marked major declines in manufacturing jobs in the region's South Side; and a rise in both manufacturing and service jobs in the North/Northwest, around O'Hare. Airport access was the difference.

The solution to the region's needs is the Third Chicago Airport. Development of the Third Chicago Airport is a true urbanist's dream: obtaining multiple benefits from one investment. Why, then, is it being ignored? When you have two powerful and thoughtful representatives of the people—Congressman Henry Hyde saying ''we've had enough,'' and Congressman Jesse Jackson, Jr. saying ''let us have some—perhaps we should listen to them. Other representatives—Congressmen Jerry Weller, Bobby Rush, and Tom Ewing, Senator Peter Fitzgerald, Governor George Ryan, Senate President Pate Phillip—plus scores of local mayors, hundreds of local businesses and hundreds of thousands of residents, have joined in the effort to bring the airport to the South Suburbs. Perhaps, with the airport in place, we can begin to truly balance growth, encourage infill development and share the wealth of the region.

THE PLANNING PROCESS: TWELVE YEARS OF FINDINGS

The state agency responsible for planning the region's transportation infrastructure, the Illinois Department of Transportation (IDOT), has been planning for the region's aviation needs for the past twelve years. IDOT, and its aviation consultants, are convinced, without a doubt, that Chicago's aviation demands will more than double by 2020. The Federal Aviation Administration (FAA), the Airports Council International (ACI) and other industry groups have forecasted national growth of similar magnitude. For a brief time, the City of Chicago agreed, as well. The Chicagoland Chamber study predicts a five-fold increase in international traffic. IDOT's studies support the contention that Chicago has an excellent opportunity to be the dominant North American hub for international flights, as well as its premier domestic hub, into the next century. That point has been stated and documented on many occasions by IDOT. The State's forecasts have been corroborated, independently, by a decade of observations. They are reinforced in the latest study for the Chicagoland Chamber of Commerce. It is agreed, by all key interest groups, that the Chicago region must increase its aviation capacity.

The region cannot double its aviation service without building major new airport capacity. O'Hare and Midway are now at capacity. Enplanements already are being affected, with growth limited to increases in plane size or load factor; neither is expected to increase further. The City's $1.8 billion investment in terminals will not increase capacity. But, the adverse impact on the region already is evident. Businesses and residents are witnessing major increases in fares in the Chicago region, according to IDOT, the USDOT, the GAO and the FAA, itself. Perhaps in response to these obvious constraints, both the Chicagoland Chamber and the Commercial Club of Chicago have begun to address the region's aviation issues. The Chamber calls for O'Hare expansion. The ''Metropolis 2020'' study also recognizes the need for additional aviation capacity, with a call for expansion of O'Hare and land banking of the Third Airport site in Peotone. This call for action comes none too soon. There are many indications that the Chicago region has begun to suffer from capacity constraints.

Ten years ago, Chicago was one of the nation's least expensive regions to fly to, due to its central location. Obviously, its location has not changed; however, now, due to O'Hare's capacity overload and higher fares, it is cheaper to fly from all around the country to many other cities than to Chicago. For instance, according to data supplied by the airlines to the U.S. Department of Transportation, it is now cheaper to fly from Green Bay to Las Vegas than from Green Bay to Chicago. It is cheaper to fly from Seattle to Orlando than from Seattle to Chicago. Something is wrong. Due to capacity constraints, O'Hare's airlines are over-charging their patrons by $750 million, annually (the difference between average fares for large U.S. airports and those at O'Hare). This fact is beginning to affect regional development—especially conventions and tourism—but, it also affects every major and start-up business, every individual with family and friends in far-flung places. As is well-known, access to a major airport is one of the top three requirements of a locating or expanding business. But, access must be at competitive fares. Expanding O'Hare will simply buttress the monopolistic behavior of its airlines. Such monopolistic practices currently are a major concern of Congress.

THE DEVELOPMENT ALTERNATIVES

Aviation infrastructure must be expanded—and expanded soon—to bring true competition, lower fares and increased service to the region. The alternatives are two: adding runways to O'Hare; or building the Third Chicago Airport. The two alternatives have far different consequences. The question is: ''Will we continue to spend great outlays of public-private funds on an area that is overwhelmed with both riches and the congestion those riches bring; or do we make those investments in mature urban areas that are wanting for jobs and economic development?''

As is clearly documented by a recent Chamber study, O'Hare's benefits are conferred, primarily, on the west, north and northwest suburbs. Virtually all of O'Hare's employees reside near it. In addition, it has garnered high concentrations of development. These concentrations, however, have led to congestion and increased land values. High land prices have forced businesses and developers to plan future growth on the most environmentally-sensitive fringes of the region and in areas farther removed from the region's central core.

THE TWO SIDES OF THE COIN

While unprecedented growth takes place around O'Hare, to the north, the three million residents of the region who reside south of McCormick Place are left with long trips to the airport for flights and out of the running for the many jobs it produces. The consequences, for South Side/South Suburban residents and the dwindling businesses that serve them, are the highest property tax rates in the State. Because jobs have disappeared, residents have some of the longest trips to work in the nation. Because transit only to the Loop is convenient, recent job losses in that area, as well, (11,000 since 1991; 25,000 since 1983) have compounded the job searches of the South Side's residents. For decades, regional planning agencies have called for the development of moderate-income housing near job concentrations. Instead, let us bring the jobs to the residents.

Recent public forums on the disparity of property tax rates in Cook County's north and south communities have led to the South's designation as the ''Red Zone,'' signifying its concentration of highest property tax rates. This disparity was not always so. It has occurred over the last three decades and proliferated in the last two, as shown below. The ''Metropolis 2020'' study addresses this disparity issue by calling for a sharing of revenues with the ''lesser haves.'' The more-responsive, enduring and—ultimately—more-equitable solution is to provide the South Side with the Economic opportunities generated by the Third Chicago Airport.

Whether the region expands O'Hare or builds a supplemental airport, O'Hare's riches will remain and grow. It is currently enjoying a $1 billion public investment to upgrade its terminals. Midway, as well, will continue to thrive, as the recipient of an $800-million-publicly-funded new terminal. However, this $1.8 billion investment will not increase capacity. The initial infrastructure investment of $500 million ($2.5 billion through 2010) to build the Third Chicago Airport, will. And, it will produce more than just added aviation capacity. The Third Chicago Airport will provide 235,000 airport-relate jobs—in the right places—by 2020. Additional airport access jobs will benefit the entire region. In addition, it will reinforce the City of Chicago's role as the center of the region's growth.

Spokesmen for the incumbent airlines claim that other airlines will not invest in the Third Chicago Airport; this is a traditional response to discourage competition. Furthermore, the financing of any airport comes, principally, from its users. The Third Chicago Airport market comprises 16.5 percent of the region's current air trip users, with a potential for contributing 20 percent. They should not be left behind. Upfront airport development costs, for planning and engineering and land acquisition traditionally have come from the federal government. In this ''Year of Aviation'', these funds are expected to increase by 50 percent; and Passenger Facility Charges (PFC's) are expected to increase from $3 to $6. Currently, $1 in PFC's at O'Hare yields $37 million per year. At the Full-Build forecast and $6 rate, the Third Chicago Airport will generate $100 million in PFC's annually by 2010. The FAA must provide the needed approvals and normal up-front funding. A Third Airport development in the Sought Suburbs can provide social and economic parity; and it can do it with a hand-up rather than a hand-out.

THE ARGUMENT FOR SMART GROWTH WITH CHICAGO'S THIRD AIRPORT

Independent studies have demonstrated overwhelmingly, the need for expanded aviation capacity in the Chicago region.

Demand will more than double by 2020.

Needed is a Third Airport that can grow as future demand dictates.

The need is now. The region is beginning to experience the costs of capacity constraints. These are:

Dampended aviation growth.

Increased and non-competitive fares.

Lost jobs, conventions and other opportunities.

There are two alternatives for meeting the region's demand:

Adding runways at O'Hare—an area already well-served and suffering the effects of overdevelopment and congestion, or;

Building the Third Chicago Airport—investing in an existing, mature part of the region suffering losses due to changes in the national/regional economies and lack of access to a major airport.

Doubling traffic at O'Hare drives new development farther away from the region's core—the Chicago Central Area—and its residents and businesses to the South.

It will encroach on environmentally-sensitive areas.

It will compound noise, pollution and traffic congestion; and impose these on hundreds of thousands of additional residents.

It will buttress monopolistic behavior by major airlines.

Building the Third Chicago Airport is a true urbanist's dream. It solves multiple problems with one investment.

It develops an environmentally-sensitive, new airport, that can provide increased capacity for decades to come.

It provides nearby, inexpensive land for development.

It brings jobs and development to mature portions of the region.

It allows three airport facilities to function at optimal capacity.

It maintains the Chicago region as the nation's aviation capital.

Because of planning already completed, the Third Chicago Airport can be built before additional runways at O'Hare.

Resources are available to build the airport.

Federal Funds for airport development will increase by 50 percent.

The U.S. Congress, many businesses and consumers are demanding access to and through the Chicago area.

Ultimately, the passenger pays through Passenger Facility Charges.

THE GROWING IMBALANCE IN THE REGION'S GROWTH, AND ACCESS TO JOBS

1. The Chicago region has grown robustly over the past 25–30 years.

Over 1.310 million jobs (1970–96) for the consolidated area.

Over 275,000 jobs between 1990 and 1997, alone, for the six-county area.

2. This growth has been very uneven. The North has prospered, while the South has languished.

3. The region's center has migrated from Downtown Chicago (with its excellent public transportation access) to the area around O'Hare (dependent on autos).

4. The City of Chicago lost over 27,000 jobs between 1991 and 1997; 11,000 of these losses were from the South Loop.

5. The suburbs grew by 300,000 jobs. The areas to the north, northwest and west (O'Hare-influenced) contributed nearly 200,000 of this growth.

6. With 500,000 jobs in Chicago's CBD, versus 450,000 in North Suburban Cook and 150,000 in Northeast DuPage, the economic center of the region has shifted from Downtown to O'Hare.

7. Consequently, residents of the South Side and South Suburbs have commutes to work that are among the nation's longest. There is little public transit between suburbs.

8. These same residents do have the region's highest tax rates, however; without businesses and industries, the residents, alone, must pay for all their services.

9. New businesses and industries want access to major airports. O'Hare's nearby communities have run out of space to offer. The South Side has ample land, but no airport. The ample land also allows the construction of an environmentally-sensitive airport.

10. To accommodate the economic growth anticipated over the next 20 years, the Chicago region needs additional airport capacity. To balance the economic growth, it needs a South Suburban Airport.

SOUTH SUBURBAN AIRPORT: AVIATION DEMAND IN THE CHICAGO REGION

Background Assumptions for Demand Forecasts

Aviation demand is derived from a few basic factors:

The national/international growth in aviation.

The socio-economic dynamics and growth of the region.

The location/desirability of the region for providing connecting flights.

The ability of the region to accommodate this demand depends on:

The capacity of its airports.

The competitiveness of its fares.

National/International Aviation Growth

The FAA forecasts a doubling in aviation growth over a 15 year period.

International enplanements and freight are growing even more rapidly.

The FAA and the Airports Council International have equated this growth to 10 O'Hare Airports.

By 2012, there will be more than 1 billion enplanements, 2 billion passengers in the U.S..

Socio-Economics Create Demand

Since the original aviation forecasts, made in 1994, the socio-economic performance of the Chicago region has matched or exceeded expectations:

In 1990–1996, population and employment for the 14- and 9-County regions grew at rates and volumes slightly above those forecast.

The Chicago Consolidated Area (Kenosha to Michigan City) produced 1,311,000 jobs between 1970 and 1996; and added 617,260 persons.

The regional planning agencies have increased their 2020 forecasts, to reflect this growth. So has NPA, author of forecasts used by City of Chicago.

Woods & Poole Economics (the national forecast used by IDOT), in its 1999 edition, expects the Chicago region to produce the largest volume growth in employment of any metropolitan region in the U.S.:—for 1996–2020, a 1,118,660 job growth—for 1990–2020, a 1,635,570 job growth

Chicago's economy an continue its robust growth only if it can provide excellent aviation access. And it, can serve the region fairly, only if it provides that access to the south suburbs.

Location Drives Connecting Flights

Becuase of its central location and high concentration of jobs and population, the Chicago region is a critical location for connecting flights:

The recent Booz-Allen study, prepared for the City, forecasts an international growth that is higher than IDOT's; and claims that high ratios of connecting to O/D are not just desirable, but necessary.

The City of Chicago, in 1998, forecast connecting enplanements based on regional location; their connecting forecasts were higher than IDOT's.

O'Hare's current connecting is 54.7%, slightly under its past average. IDOT assumed 50% connecting for O'Hare in 2001; 51% for the region.

Aviation Growth Parallels IDOT Forecasts

Since their national forecasts of 1994 (base for IDOT forecast), the FAA has generated five 12-year forecasts, five long-range national forecasts though 2020, and five terminal area forecasts.

All the FAA national forecasts are higher than the study's base forecast.

Although it continues to contest IDOT's forecasts, the City and Chicago and its consultants are using forecasts that are nearly identical.

The City and State are using IDOT socio-economic and aviation forecasts for all short- and long-term regional transportation planning.

Other aviation plans (Gary Airport Master Plan; Booz-Allen forecasts for O'Hare International) are consistent with IDOT forecasts.

Capacity Constraints Jeopardize Economic and Aviation Growth

The ability of the region's airports to accommodate demand is a most-serious concern. The Chicago region has reached aviation capacity. These aviation capacity constraints have dampened regional growth:

Since 1995, O'Hare's growth in commercial operations has stopped.

Domestic enplanements at O'Hare have declined this year.

Small cities have been dropped from service.

Booz-Allen says the international market is not being well served.

Fares at O'Hare have risen above the average for large airports.

O'Hare's delays have been much greater this year than last; O'Hare's delays are among the nation's highest and cascade throughout the nation's airports.

The FAA has long forecasted such capacity problems and resultant delays. In 1992 it forecasted a doubling of airports with delay problems by 2001.

The forecasts have arrived a bit ahead of schedule. Without additional capacity, the economic well-being of both Chicago and the nation are jeopardized.

NIPC FINDINGS—NOVEMBER 1996

TALKING ABOUT THE REGION'S FUTURE

We recently asked a cross-section of the region's leaders:

Should water quality protection measures for our rivers, lakes, and streams be implemented even if this means placing development limits on presently undeveloped high-quality watersheds?

Should the region pursue infill and redevelopment strategies that lead to employment and income growth in older communities that have experienced diminished tax base and disinvestment?

Should priority in transportation funding be given to maintenance of the existing system?

Should measures to encourage reclamation of contaminated properties, including tax credits and limits on liability, be enacted?

Yes, said strong majorities of participants in two public workshops conducted by NIPC in June and September of this year. The workshops were held as part of an effort to engage the region in a discussion of growth choices facing us. Participants representing local governments, state and federal agencies, and civic and community organizations were asked to respond to possible future development patterns, their probable consequences, and the tools it would take to bring them about. The broad choice which framed the discussions was this: should anticipated future growth continue along the path of past trends or should efforts should be made to moderate the physical decentralization of the region?

NIPC is not alone in the region in raising these issues. In fact, it is hard to remember a time when the future development of the region has been discussed more widely or fervently. Numerous civic and community organizations have been developing analyses and recommendations on transportation and development and encouraging discussion of regional issues by their members and constituents.

The Commission's immediate purpose in conducting the workshops was to seek public guidance in the development of new demographic forecasts for the region. These forecasts will be used in the preparation of the Regional Transportation Plan for 2020. Draft forecasts will be completed by early 1997. At the same time, the Chicago Area Transportation Study (CATS) will complete a draft transportation plan. After a period of public review, the transportation plan will be tested for conformity with the requirements of the Clean Air Act. Following additional opportunity for public comment, final forecasts will be endorsed and the Regional Transportation Plan for 2020 will be adopted. These actions are scheduled for June 1997.

Beyond the immediate need to support the transportation planning process, this regional discussion advances NIPC's mission of striving for consensus on policies and plans for action which will promote the sound and orderly development of the northeastern Illinois area. The purpose of this newsletter is to inform the region of what we have heard and to encourage continuing deliberation on what kind of region we want to be in the next century.

What We Have Heard

Several general conclusions emerged from the workshops. The first is that there is widespread, though by no means unanimous, belief that the past trend of dispersed, low-density residential and employment growth has had unintended negative consequences which must be moderated to some degree in the interests of environmental quality, prudent public investment, and social equity. There is also substantial support for some public policy measures which could help achieve that moderated growth. These will be described in more detail below. Some measures which could be highly effective in moderating past trends are widely agreed to lack political acceptability in this region. Finally, there is broad support for measures which would improve the quality of local planning and development within either a continued trends or moderated trend approach.

The Forecast: A Growing Region

The preparation of forecasts of future population, households, and employment is one of NIPC's most important responsibilities. These are not simply forecasts of the numbers of people, households and jobs which will be in the region in a future year. People, households, and jobs imply houses, roads, sewers, and parks. The forecasts thus represent the Commission's best estimate of how activities and facilities will be distributed across the region: where new housing will be necessary and old housing may become vacant, where new or expanded streets and sewers will be required, and where streams and wetlands will come under pressure form growing population. The forecasts thus have implicit in them a generalized land use plan for the region. It is critical that they be as realistic as possible in reflecting the trends and constraints of the market, the influences of public policy, and expectations of local governments.

We have previously described the process being used to develop forecasts for the year 2020 (NIPC Reports, January 5, 1996). In March 1994, the Commission endorsed regional forecast totals of 9 million people, 3.4 million households, and 5.3 million jobs in 2020. These figures represent a 25 percent increase in population and a 37 percent increase in employment from 1990 to 2020. By way of comparison, between 1970 and 1990 the region's population increased by only four percent and employment by 21 percent. The amount of land devoted to urban uses, however, increased by 34 percent during that twenty-year period. In view of this finding about land consumption, the forecasted future growth has the potential to add seriously to pressures on the transportation system, air and water quality, and agricultural land. The Commission thus concluded that alternatives to past patterns of growth had to be presented to the region for discussion.

A Preferred Development Pattern in Northeastern Illinois

On June 26, 1996, the Commission conducted the first of two regional workshops on alternative growth scenarios and their

implications. The intent was to assess how much support there might be for different development patterns and how much acceptance of their probable costs. It was hoped that participants would set aside issues of feasibility for the time being and respond to the question of what is the most desirable future for the region. The workshop was attended by 127 people representing a broad spectrum of organizations and interests.

Three general scenarios were presented. Each was designed to illustrate the outcome of a unique combination of public policies with respect to transportation and community development. The broad patterns of new household and job growth to which these scenarios would lead are shown in the maps below. Participants were not asked to express a preference among the scenarios themselves, but to evaluate the relative importantance of the impacts which each would have on communities and the natural environment. Questions to the participants concerned the importance of land development patterns which would (1) help preserve farmland, (2) encourage the use of public transit, (3) protect high-quality watersheds from the impacts of urbanization, and (4) promote affordable housing close to centers of job growth.

Continued Trends. This is the ''baseline'' scenario which assumes the least change, in terms of public policy, from recent conditions. Only limited highway and rail transit capacity would be built beyond what is currently committed for funding. Future demand for aviation service would be met at O'Hare and Midway. The broad pattern of low-density dispersal of jobs and households would continue. Households and jobs in Chicago and some inner suburbs would continue to decline while they would increase in the rest of the region. The largest number of new jobs would be located in suburban Cook County, and DuPage County would gain jobs but as a slower rate. The four outer counties would show the greatest percentage gains in employment. Household growth would be strongest in the middle ring of suburbs. The loss of farmland would be substantial, as would the negative impact of urban densities on lakes and streams. Automobile use would continue to increase and transit use to decline. The separation of affordable housing from low-income jobs would continue to increase.

South Suburban Airport. The central assumption of this scenario is that future need for additional aviation capacity would be provided at the proposed south suburban airport. Otherwise, the scenario makes essentially the same land use and transportation policy assumption as the trends alternative. Employment and population in Chicago would increase, although the city's regional share would decline slightly. Job growth would be lower than under existing trends in the northern and western parts of the region and substantially higher in south Cook and Will counties. Household growth would be similar to that expected under a continuation of trends. Conversion of agricultural land would be extensive, particularly in Will County, as would development pressure on lakes and streams. The development of the airport could have a positive effect on jobs-housing balance and on redevelopment by bringing employment to a portion of the region which is now relatively job-poor.

Redevelopment and Infill. This scenario represents a deliberate attempt to moderate the trend of dispersed development and to encourage reinvestment in mature communities. Like the trends scenario, this alternative assumes limited investment in new surface transportation and satisfaction of future aviation requirements at the existing regional airports. In addition, the scenario assumes (1) implementation of very strong farmland protection policies in the agricultural protection zones in Kane, McHenry and Will counties, (2) intensive population and employment growth within walking distance of selected transit stops in Chicago and the inner suburbs, and (3) high employment growth through redevelopment in certain built-up areas in Chicago, the inner suburbs, Waukegan, and Joliet. Under this scenario, Chicago's loss of population and employment would be reversed. At the same time, the other sectors of the region would all gain both people and jobs, though their rates of growth would be lower than under a continuation of trends. Conversion of farmland for development and urban stress on water resources would be at lower levels than the other two scenarios, but still significant. Similarly, automobile use would increase and transit ridership decrease, but at lower rates. Because both jobs and population would increase in the communities with the greatest low-income population, jobs-housing balance would change only slightly.

The redevelopment scenario was designed to simulate the effect of efforts to moderate the worst unintended consequences of recent trends. Two important conclusions emerge from an examination of the scenario results:

Given NIPC's overall forecasts, economic growth in northeastern Illinois need not be an either-or situation. Even with deliberate efforts to encourage reinvestment in the mature core communities, the balance of the region can sustain a relatively high level of growth.

Under conditions of high overall growth, managing negative environmental consequences will be very difficult even if the trend of decentralized, low-density development is moderated.

Following the presentation of the scenarios, a panel of five experts on aspects of the region's development commented on the alternatives and on issues related to their implementation. These are some of the highlights of their comments:

Barry Hokanson, Director of Planning, Lake County: Lake County is expected to experience high growth under any one of the scenarios. While the county has programs to meet the demands on resources and services generated by growth, the multiplicity of local governments makes the translation of regional projections into coordinated local planning difficult. There are strong voices in Lake County advocating constraint on new transportation capacity as a means of limiting growth and encouraging mature-area reinvestment.

David Schulz, Director, Infrastructure Technology Institute, Northwestern University: The outward movement of households is driven by a variety of forces having to do with the quality of schools, perceptions of safety, tax levels, and job availability. Transportation systems do not induce people to move but influence where they move. Constraining the transportation system will simply force people to move farther out past the perceived zone of congestion and will thus worsen the problem of dispersal rather than curing it.

Rusty Erickson, Director of Development, City of Aurora: Aurora has benefited from the decentralizing trend in the region. Continued growth is necessary to provide quality schools and other services to residents. It is important that new suburban growth be concentrated in areas with full public services. Low-density development in rural areas will destroy the open countryside which is a strong quality-of-life value.

Frank Martin, President, Shaw Homes Inc: There is a market for residential development which integrates the natural and built environments and which provides the resource efficiency and quality of life of a dense community, including access to public transportation, while preserving high-quality natural surroundings. However, developers will find this kind of balanced development hard to do successfully if local government does not address inefficiencies in public services and excessive regulations which work against affordability by raising land values and construction costs.

Benjamin Tuggle, Field Office Supervisor, U.S. Fish and Wildlife Service: Making maximum use of existing intrastructure and established urban areas is an important way of preserving high-quality air, surface water, and wetlands in . . .

IF YOU BUILD IT, WE WON'T COME—THE COLLECTIVE REFUSAL OF THE MAJOR AIRLINES TO COMPETE IN THE CHICAGO AIR TRAVEL MARKET

AN ANALYSIS OF THE PER SE VIOLATIONS OF FEDERAL ANTITRUST LAWS BY MAJOR AIRLINES IN THEIR REFUSAL TO COMPETE WITH EACH OTHER IN FORTRESS HUB MARKETS—WITH METROPOLITAN CHICAGO AS A CASE EXAMPLE—MAY 2000

The Suburban O'Hare Commission

The Suburban O'Hare Commission (SOC) is an inter-governmental agency representing more than one million residents who live in communities surrounding O'Hare Airport. SOC's leadership is made up of mayors and other officials who are both advocates for the quality of life and health of their communities and business persons who are concerned about the economic health of the region. Over the past several years SOC has conducted a number of studies relating to the environmental, safety, public health, and economic issues surrounding air transportation in the Chicago metropolitan region.

This current (SOC) report focuses on one of the significant economic issues relating to air transportation—monopoly power and high monopoly-supported air fares—and the legality of the Fortress Hub system under the nation's antitrust laws. However, as is discussed in the report, the major airlines' drive for preservation and expansion of their Fortress Hub system (especially at Fortress O'Hare)—and their corresponding refusal to compete in each other's Fortress Hub markets—creates serious economic, social, and environmental harm in broad areas of the metro Chicago region.

PREFACE

In the past several years there have been numerous congressional hearings and media stories about a phenomenon in the airline industry known as ''Fortress Hubs'' and the problem of high monopoly supported airfares charged to airline passengers traveling from or through these Fortress Hubs.

However, most of the attention of Congress, the Administration, and the media has focused on two narrow facets of the Fortress Hub problem (1) restrictions on access by so-called ''low cost'' ''new entrant'' carriers to a few of the Fortress Hubs, and (2) the allegations of predatory pricing by a dominant major airline against a new low-cost entrant. But this narrow focus has ignored a much more fundamental question: Does the Big Seven Airlines Fortress Hub geographic allocation of markets—and their corresponding refusal to compete in each other's Fortress Hub markets—violate federal antitrust laws?

Virtually ignored by Congress and the Administration has been the concerted refusal of the major airlines—the so-called ''Big Seven'' (Northwest, United, American, Delta, US Air, Continental, and Trans World)—to compete with their fellow major airlines in each other's Fortress Hub cities. This study, prepared by the Suburban O'Hare Commission (SOC), focuses on the collective refusal

of the Big Seven to compete with each other and examines the question as to whether this geographic allocation of Fortress Hub markets by the Big Seven violates federal antitrust laws. Does the Big Seven's refusal to compete in Metropolitan Chicago—their refusal to use the South Suburban Airport: ''If you build it, we won't come.''—violate federal anti-trust law?

The SOC study also focus on the Metropolitan Chicago market as a case study of the Big Seven's de facto arrangement not to compete with their fellow major airlines in each other's Fortress Hub cities. A glaring example of this concerted refusal by the major airlines to compete in the fellow major airlines' Fortress Hub markets can be found in the decision of the major airlines to boycott the proposed new South Suburban Airport in metropolitan Chicago. The major airlines' ''If you build it, we won't come'' argument is simply a manifestation of the majors' overall horizontal geographic restraint of major markets across the nation—and particularly in metropolitan Chicago.

THE FINDINGS OF THIS STUDY

The study's findings include:

1. De Facto Geographic Allocation of Fortress Hub Markets by the Big Seven. The heart of the monopoly problem in Fortress Hub markets—and the resultant high monopoly-inducted air fares—has been the de facto agreement among the Big Seven to stay out of each other's Fortress Hub markets with any competitively significant level of entry into that market.

2. The Fortress Hub Monopoly Dominance Geographic Allocation by the Big Seven is Likely Costing the Nation's Air Travelers Billions of Dollars Annually. There is an overwhelming body of evidence that—because of the Fortress Hub monopoly dominance of one of two of the Big Seven at many metropolitan areas across the country—the Big Seven airlines are able to charge excessive air fares totaling billions of dollars a year. The principal victims of this monopoly-induced Fortress Hub excess fares are: (1) the time-sensitive business traveler who pays unrestricted coach fares and (2) the so-called ''spoke'' passenger who must connect through one of the ''Fortress Hubs'' monopoly tithe American consumer: billions of dollars per year in excess fares—hundreds of millions per year in metropolitan Chicago alone.

3. The Big Seven's De Facto Geographic Allocation of Major Air Travel Markets in the Nation through the Development of ''Fortress Hubs'' Constitutes a Per Se Violation of Federal Antitrust laws. Little discussion or analysis has been undertaken by Congress or the Administration as to whether this concerted refusal by the Big Seven to compete in their fellow major airlines' Fortress Hub markets—which costs consumers billions annually—constitutes a violation of federal antitrust laws. Based on clear and repeated Supreme Court precedent, it clearly does. The Big Seven's de facto geographic allocation of major air travel markets in the Fortress Hub through the development of ''Fortress Hubs'' constitutes a per se violation of the antitrust laws. The Supreme Court has uniformly condemned arrangements to carve up horizontal markets as per se violations of section 1 of the Sherman Act. See e.g., Palmer v. BRG Group of Georgia, 498 U.S. 46, 49 (1990); United States v Topco Associates, Inc., 405 U.S. 596, 607–609 (1972).

4. The Big Seven's Explicit Refusal to Compete In Metropolitan Chicago: If You Build It, we Won't Come. In the metropolitan Chicago air travel market, the illegal collective refusal of the Big Seven to compete is manifested by two actions: (1) the de facto abandonment by members of the Big Seven (other than United and American) of any significant role at O'Hare Airport and (2) the announcement by the Big Seven and its allied in the Air Transport Association that they would refuse to use a new South Suburban Regional Airport. In the popular jargon of the media, the Big Seven have said ''If you build it, we won't come.''

In reality, this collective refusal to use a new regional airport is nothing more than a manifestation of the Big Seven's horizontal market agreement not to compete in any significant way with United and American in their dominant Chicago market. This refusal by major airlines such as Delta, Northwest, USAir, and Continental to use new metropolitan Chicago airport capacity to compete in metropolitan Chicago is but an individual example of the per se antitrust violation of allocating geographic markets by the major airlines. ''If you build it, we won't come'' is a blatant violation of the federal antitrust laws.

5. The City of Chicago's Participation in Opposing New Capacity and in Assisting Big Seven in Their Refusal to Use the New South Suburban Airport is Not Immune from Antitrust Law Prosecution. The available evidence is clear that the City of Chicago and its agents have been active participants in helping the Big Seven Airlines in their refusal to compete in the Chicago market and their refusal to use the proposed South Suburban Airport. Absent express approval by the State of the monopolistic practice, political subdivisions of the State—like the City of Chicago—are not free to violate the antitrust laws under the guise of state action.

While Congress has made municipalities immune from damages for violations of the antitrust laws, Chicago and its officials are not immune from prosecution for their attempts to assist the Big Seven in their refusal to compete in the metro Chicago market and in United and American's attempts to monopolize that market.

6. It Appears That Federal Taxpayer Funds May Have Been Used to Suppress Competition and Violate the Antitrust Laws in the Chicago Market. United and American (the dominant carriers at O'Hare)—along with other major airlines through the Air Transport Association—have engaged in a concerted effort to defeat construction of a new South Suburban Airport, an airport that would provide significant capacity opportunities for major new competition to enter the Chicago market. United executives have stated their goal as ''Kill Peotone''.

United and American have been assisted in their ''Kill Peotone'' (and thus kill new competitive capacity) campaign by representatives of the City of Chicago—including Chicago's consultants have been paid several million dollars in fees to assist Chicago and United and American in expanding O'Hare and in obstructing development of a new South Suburban Airport.

Much of the money paid to these consultants has come from either: (1) federal Passenger Facility Charge (PFC) funds, (2) federal Airport Improvement Program (AIP) funds, or (3) federally subsidized municipal airport bonds (''GARBs'' General Airport Revenue Bonds). Thus, we have the following spectacle—not only are the airlines and Chicago engaged in a monopolistic arrangement designed to prevent new competition from entering the Chicago market (i.e., through the new airport)—but much of the money to implement this illegal arrangement is coming from federal taxpayer dollars. The GAO and the Department of Justice should be asked to conduct an independent audit of all PFC, AIP, and GARB expenditures at O'Hare to determine if any federal funds were used as part of a campaign to ''Kill Petone''—i.e., a campaign to oppose construction of a new South Suburban Airport.

7. Federal Officials Have Participated in and Supported the Big Seven's Illegal Monopolistic Arrangement to Refuse to Compete in the Chicago Market. Not only have federal funds been used to support the major airlines illegal monopolistic arrangement to refuse to compete in the Chicago market, but it appears that federal officials within the Administration have worked with the major airlines and Chicago to assist in this antitrust arrangement to prevent the development of a new airport in metropolitan Chicago. For the last several years, federal administration officials—several of whom are former Chicago officials who worked for the City of Chicago—have blocked development of the new South Suburban Airport through a series of spurious legal claims that federal law requires that there be a ''consensus'' between the State of Illinois and the City of Chicago before a new metropolitan airport can be constructed. No such legal requirement exists.

Because of the active participation of key figures in the current administration in promoting and supporting the continued blockage of new airport development in metropolitan Chicago—in concert with the illegal refusal of the major airlines to compete in the Chicago market by using the new airport—the impartiality and lack of bias of the Administration in conducting law enforcement in this area is legitimately suspect. The Attorney General should be asked to appoint an independent prosecutor to conduct the antitrust investigation and to undertake all appropriate civil legal actions needed to correct the ongoing antitrust violations.

8. Defining the Market Under Monopoly Control and in Need of New Competition—The Hub-and-Spoke Market. The heart of the monopoly overcharges to travelers in the Chicago market is the absence of competition in the ''hub-and-spoke'' market in Chicago. None of the other Big Seven will come into the Chicago market to establish a competitive hub-and-spoke operation.

In an attempt to expand their monopoly and prevent new competition from entering the Chicago market, United and American—along with their surrogate allies—have sought to distract attention by suggesting a south suburban airport in metro Chicago as a ''point-to-point'' airport—not unlike Midway. United and American argue that O'Hare should be the only ''hub-and-spoke'' airport in metropolitan Chicago.

By shaping the argument in this fashion, United and American guarantee that they will be allowed to continue and dramatically expand their Fortress Hub monopoly at O'Hare. According to their arguments, the lion's share of all the origin-destination traffic in the region—and all of the connecting and international traffic—should go to the sole hub-and-spoke airport in the region: O'Hare. Any minor overflow of ''point-to-point'' origin-destination traffic that a dramatically expanded O'Hare and Midway could not handle (if any) could be addressed in a small ''point-to-point'' airport like the South Suburban Airport or Gary.

What United and American gloss over is the fact that there is plenty of competition in the Chicago market in point-to-point service. The real lack of competition in the Chicago market is in the lack of additional hub-and-spoke competition to challenge the hub-and-spoke duopoly of United and American at Fortress O'Hare. It is this market dominance of the hub-and-spoke market—not the point-to-point—where lack of competition gouges the business traveler and those travelers from ''spoke'' cities who must use a single Fortress Hub. There is a desperate need for new competitive hub-and-

spoke service in the Chicago market and the place to put that hub-and-spoke is the new South Suburban Airport.

9. Beyond Antitrust Law Enforcement, Federal Transportation Officials Play a Major Antitrust Policy Role—In Either Promoting Monopoly Abuses or Encouraging Competition—By Their Decisions on the Use of Federal Taxpayer Funds. Not only have federal officials blocked development of new competition by blocking a new airport, federal approval of federal expenditures for major physical changes at O'Hare will exacerbate the monopoly power of American and United in this region.

Chicago's so-called ''World Gateway'' program has been designed in consultation with United and American to enhance and expand United and American's hub-and-spoke system at O'Hare. Chicago's World Gateway proposal is not designed to bring new hub-and-spoke competition into O'Hare or the Chicago market to compete with United and American.

Thus, Chicago's World Gateway proposal will enhance and expand United and American's Fortress Hub monopoly in the Chicago market. Since the physical design proposed by United and American and Chicago can only go forward if federal Transportation Department officials approve federal taxpayer funds to subsidize the project, federal officials are being asked to use billions of dollars in federal taxpayer funds to expand and enhance the illegal Fortress Hub monopoly of American and United at O'Hare. No federal officials appear to be examining whether spending 10 billion dollars (much of it from federal taxpayers) at O'Hare makes economic sense when much more new capacity to support competitive hub-and-spoke operations can be constructed at a new metropolitan airport for less than half the cost. Nor are federal officials examining whether the use of billions of dollars of federal taxpayer funds to expand United and American's hub-and-spoke duopoly at Fortress O'Hare—essentially using federal taxpayer funds to subsidize expansion of monopoly power—is a proper use of federal funds.

10. The Lifting of the Slot Limits at O'Hare Will Not Provide Sufficient Capacity to Allow Significant New Competition to Enter the Chicago Area Market. Much of the debate over the recent passage of the federal reauthorization of the Federal Aviation Program involved the issue of lifting ''slot restrictions'' at LaGuardia and Kennedy airports in New York and O'Hare in Chicago. One of the principal asserted justifications for lifting the slots was to provide access to so-called ''new entrant'' carriers that would presumably provide competition for the dominant carriers at O'Hare and force prices down. Yet FAA's own capacity studies at O'Hare demonstrate that O'Hare is already beyond acceptable limits of capacity and can provide only marginal capacity access—if any.

In addition, as predicted by Senator Peter Fitzgerald and Congressman Henry Hyde, any arguable incremental theoretical capacity at O'Hare will rapidly be consumed by United and American—expanding their monopoly. As stated by the Illinois Department of Transportation, the only effective way to provide sufficient capacity for major new competition in the Chicago market is to build major new capacity in the metropolitan Chicago area.

11. A New Runway at O'Hare is Intended to Increase Capacity to Expand United and American's Monopoly Power. The airlines' current public relations argument is that the lion's share of all the origin-destination traffic in the region (and all of the connecting and international traffic) should go to the sole hub-and-spoke airport in the region (O'Hare). Any minor overflow of point-to-point origin-destination traffic that a dramatically expanded O'Hare and Midway could not handle (if any) could be addressed in a small point-to-point airport like the South Suburban Airport or Gary.

Paralleling this argument is the claim by the airlines' allies that a new runway at O'Hare is needed to ''reduce delays.'' They claim that a new runway would not increase O'Hare capacity but simply reduce delays.

Yet an analysis using FAA's own capacity analysis standards and criteria demonstrates that a new runway at O'Hare would substantially increase the capacity of the airport. This capacity increase at O'Hare would dramatically expand American's and United's hub-and-spoke monopoly at Fortress O'Hare. Further, it would virtually doom the economic justification for the new south suburban airport because the new ''delay'' runway—once built—could easily be used to carry the new additional traffic for which the new airport was intended. Simply by piecemealing incremental expansion at O'Hare, Chicago and American and United can keep the region under the thumb of the Fortress O'Hare monopoly.

12. United's and American's Fight to Preserve and Expand Fortress Hub Monopoly Power at O'Hare Has Grave Social, Economic, Public Health, and Quality of Life Consequences for the Region. Much of the discussion in this paper focuses on the billions of dollars in monopoly induced overcharges inflicted on air travelers—particularly the business traveler—as a result of the Fortress Hub monopoly system. But these monopoly abuses also inflict other serious harm on a variety of important public and social interests.

The consequences of these abuses of monopoly power for the metro Chicago region are stark and severe:

O'Hare area communities will be subjected to more noise, more air pollution, and more safety hazards because—under the United, American, and Chicago proposal—all the international, all the transfer traffic, and the lion's share of the origin-destination traffic are jammed into an already overstuffed O'Hare. Any new airport—even if built—will simply receive the origin-destination overflow (if any) from a vastly expanded O'Hare and Midway.

South Chicago and south suburban communities will continue to suffer serious economic decline because the South Suburban Airport—which should have been built years ago—lies hostage to the unholy alliance struck between the monopoly interest of United and American and the political pique of Chicago's mayor.

RECOMMENDATIONS

Based on the facts and the antitrust law analysis contained in this report, the Suburban O'Hare Commission recommends the following actions:

1. The United States Attorney General and the United States Attorney for the Northern District of Illinois should initiate an investigation into the collective refusal of the Big Seven airlines to compete against each other in each other's Fortress Hub Markets. Included in the investigation should be an examination of the role of third party collaborators in the antitrust violations—including the City of Chicago and other private organizations and individuals who have assisted the Big Seven (including United and American) in perpetrating these violations. Because of the involvement by federal officials in affirmatively assisting the Big Seven and the City of Chicago in keeping significant competition out of Chicago, the Attorney General should be asked to consider the appointment of independent counsel.

2. The United States Attorney General and the United States Attorney should bring a civil action in federal court to enjoin and break up the illegal Fortress Hub geographic market allocation by the Big Seven and prohibit the collective refusal by the Big Seven to compete in each other's Fortress Hub markets. Included in the relief should be a requirement that members of the Big Seven halt their collective refusal to use a new South Suburban Airport in metropolitan Chicago and a requirement that competitive hub-and-spoke operations be established in metro Chicago to compete with United and American.

3. The State Attorneys General should initiate civil damage actions to recover treble damages for the billions of dollars per year in excess monopoly profits in airfare overcharges that have been charged at the Big Seven's Fortress Hubs. The Illinois Attorney General should bring suit to recover treble damages for the hundreds of millions of dollars in monopoly overcharges by American and United at Fortress O'Hare. On a multiple year basis in Illinois alone, the treble damages recoverable for consumers would exceed several billion dollars.

4. The GAO and the Department of Justice should undertake an immediate and detailed audit of all federal funds that may have been used to further the refusal of the other members of the Big Seven to compete with United and American in metropolital Chicago—particularly the campaign by the airlines and Chicago to ''Kill Peotone.''

5. The United States Department of Transportation should withhold any further approvals of federal funds for expansion of the United and American duopoly at Fortress O'Hare.

6. The House and Senate Judiciary Committees should conduct immediate hearings on these issues.

7. Our Governor and our two United States Senators, the Speaker of the House, and our Illinois Attorney General should be respectfully asked what specific actions they will take to (1) break up the Fortress Hub system—particularly Fortress O'Hare; (2) bring new hub-and-spoke competitors into the Chicago market; (3) recover the billions in excess monopoly profits from the Fortress O'Hare overcharges; (4) prevent the Big Seven from continuing to refuse to use the new capacity provided to the South Suburban Airport; and (5) assemble the federal and state resources needed to rapidly build the South Suburban Airport.

8. Our Governor should hold fast to his promise not to permit any additional runways at O'Hare. To do otherwide would simply enhance and expand the monopoly power of Fortress O'Hare and doom the opportunity to bring new competition into the region at the South Suburban Airport.

9. The two candidates for President of the United States—both of whom have likely received large campaign contributions from the Big Seven—should be respectfully asked what they will do to break up the Fortress Hub system nationally and Fortress O'Hare in particular. Vice President Gore in particular should be asked why his administration has for the past eight years looked the other way while the Big Seven has used violations of the nation's antittust laws to literally steal billions of dollars from American consumers. Mr. Gore should also be asked to explain why his administration has literally blocked development of new competitive capacity in metro Chicago—i.e., a new South Suburban Airport—at every turn Finally, Mr. Bush should be asked specifically what he will do to build the South Suburban Airport and break up Fortress O'Hare.

INTRODUCTION—RELEVANT QUOTATIONS

Alfred Kahn, the ''father'' of airlines deregulation:

Anyone who says applying antitrust laws is the same as re-regulation is simply ignorant. To preserve competition we need the antitrust laws and vigorous enforcement of the antitrust laws.

When we deregulated the airlines, we certainly did not intend to exempt them from the antitrust laws.

Gordon Bethune, Chairman and CEO, Continental Airlines:

''Continental chief says hub competition over,'':

Competition among airlines for dominance at major U.S. airports is virtually a thing of the past, the chairman of Continental Airlines said on Monday.

Continental chief executive Gordon Bethune, in a break from the usual industry line that competition reigns supreme, said the large air carriers have staked out their respective hubs and will be difficult to dislodge.

''In the last 20 years, the marketplace of the United States has been sorted out. American (Airlines) kind of controls Dallas-Fort Worth and Miami and we've got Newark, Houston and Cleveland. Delta's got Atlanta,'' Bethune said in remarks to the National Defense Transportation Association annual conference.

U.S. Senator Mike Dewine:

During the last year, there has been rising concern among some of the smaller airlines that the seven largest passenger carriers in the U.S. are no longer competing against each other. Essentially, the argument goes, the ''Big Seven'' have carved up the U.S. aviation market . . .

CEOs of 16 major airlines tell Illinois' Governor that they will not use new airport in metropolitan Chicago:

We are writing to express our concerns about further planning and development of the so-called Third Chicago Airport. It is our understanding that the State of Illinois will not proceed with the construction of a third airport without the support of the airlines. This letter is intended to inform you that the airlines oppose further planning and construction of this facility. . .

USA Today:

In the two decades since deregulation forced the government to stop telling carriers what fares to charge and which cities to serve, the big airlines have built up ''fortress hubs'' where, without meaningful competition, they alone decide where to go, how often to go there and how much to charge.

What travelers suspect is true: Airfares are climbing fast, and nowhere is the situation worse than at the hubs for the nation's largest airlines.

Business travelers have been especially hard hit at hubs.

And almost everywhere, hub fares, especially for business fliers, are soaring.

Even when low-fare carriers enter a hub market, they usually control so little of the traffic that they can't do much to bring fares down.

New York Times:

Business travelers feel particularly abused because they account for more than half of airline revenue. For in the through-the-looking-glass world of airline pricing, the fares paid by leisure travelers, who book as long as a month in advance and stay over a weekend night, have in many cases declined, while last-minute fully refundable fares, which are most often paid by business travelers, are skyrocketing.

''The carriers always say that the business traveler is inelastic,'' said Peter M. Buchheit, director of travel and meeting services for the Black & Decker Corporation, which spent $18 million on air tickets for its American employees last year. ''We need to travel so we will pay whatever it costs. But it has reached a point where we can't pay it anymore.''

The burden of high fares is even greater on small companies. John W. Galbraith, president of Twin Advertising, a small company based in Rochester that had $2 million in billings last year, said he was thinking about dropping clients outside the city because the high cost of visiting them cancels out the profit he makes from having their business.

''Basically, what the airlines have done to companies like ours is kept us from growing,'' he said. (New York Times January 11, 1998)

United States Supreme Court on horizontal market allocations as *per se* violations of federal antitrust law:

One of the classic examples of a per se violation of §1 [of the Sherman Antitrust Act] is an agreement between competitors at the same level of the market structure to allocate territories in order to minimize competition. . . . This Court has reiterated time and time again that '[h]orizontal territorial limitations . . . are naked restraints of trade with no purpose except stifling of competition.' Such limitations are per se violations of the Sherman Act. (The United States Supreme Court in the 1990 decision in Palmer v. BRG Group of Georgia, 498 U.S. 46, 49 (1990).)

Relevant Provisions of The Sherman Act:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court. (Title 15 United States Code §1)

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court. (Title 15 United States Code §2)

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. (Title 15 United States Code §4)

[A]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. (Title 15 United States Code §15)

1. Focusing on the Elephant in the Corner.

Over the last decade there have been extensive congressional hearings and much media coverage of so-called ''Fortress Hubs. But much of the attention has focused on two aspects of the Fortress Hub phenomenon:

Various ''constraints'' that the so-called ''low-cost'' ''new-entrant'' airlines (e.g., Spirit Vanguard) say have prevented these new entrants from entering and competing in Fortress Hub markets; and

In those instances where the new low-cost airlines could physically enter the Fortress Hub market, the dominant hub airlines are alleged to have engaged in predatory pricing to drive the so-called ''low-cost'' ''new-entrant'' competitors out of the market.

But while Congress and the Administration have focused on these elements, they have ignored what might be called ''the elephant in the corner'' aspect of the Fortress Hub issue. Virtually ignored in these debates has been the role of the so-called ''major'' airlines—i.e., the so-called ''Big Seven'' controlling members of the trade group known as the Air Transport Association (ATA)—in creating and maintaining the Fortress Hub system. While Congress and the U.S. DOT talked about the anti-competitive aspects of keeping the new ''low-cost'' airlines out of the Fortress Hub market, little attention has been directed toward the issue of whether the Big Seven's Fortress Hub system is itself a violation of the nation's antitrust laws.

The purpose of this study is to: (1) analyze the known facts of the Fortress Hub system; (2) determine if the known facts demonstrate the existence of a violation of federal antitrust laws, (3) examine the role of the ''Big Seven's'' conduct in the Chicago air travel market as a case study illustration of their collaborative conduct nationally in maintaining the national Fortress Hub network, and (4) propose remedial action.

The findings of this study unequivocally demonstrate that the Fortress Hub system maintained by the Big Seven—alone and through their trade organizations, the Air Transport Association—is an illegal cartel in violation of the Nation's antitrust laws.

2. Geographic Market Allocation through Fortress Hubs—Mutual Protection of Fortress Hub Dominance Against New Competition from Other Big Seven Airlines.

There is overwhelming and incontroverible evidence that, since ''deregulation'' in 1978, the market airlines have carved up major areas of the Nation into territories of geographic market dominance known as ''Fortress Hubs''. Under this Fortress Hub arrangement, one or two major airlines are ceded geographic market dominance and other major airlines tactitly agree not to compete in that geographic market.

Thus Delta has Fortress Hubs at Atlanta and Cincinnati, USAir at Pittsburgh, Northwest at Minneapolis and Detroit, American at Dallas-Ft. Worth, American and United at Chicago O'Hare, etc. The other Big Seven airlines—either implicitly or by explicit agreement—have agreed to stay out of each other's Fortress Hub markets in any significant way. Thus, for example, Delta remains unchallenged by United, Northwest, and others in Atlanta. In turn, Delta doesn't provide significant challenge to United and American at O'Hare or to Northwest at Minneapolis and Detroit. Similar de facto, quid pro quo non-compete accommodations by the major airlines can be found at virtually every Fortress Hub where one or two airlines have dominant control of the local market.

As stated by one congressional witness:

''The major airlines . . . developed high market share hubs in large sections of the country. Given the market power that they have developed, the major airlines have raised prices far above the competitive level in their market hubs (as study after study has shown). Furthermore, the major airlines defend their high price hub markets with predatory pricing. These markets are descriptively called 'fortress hub's'.

''There are two things the major airlines are doing to monopolize large segments of the country. First, they work hard to see that entry to their large markets remains closed or difficult. Second, if a discounter

enters a few of their markets they use predatory pricing to drive the discounters out of business.''

The broad reach of this Fortress Hub system is illustrated in a table prepared by the National Association of Attorneys General.

CITIES WHERE FORTRESS HUBS ARE LOCATED

City and Dominant Airline

Atlanta, Delta; Chicago O'Hare, United and American; Cincinnati, Delta; Dallas, American; Detroit, Northwest; Houston International, Continental; Minneapolis/St. Paul, Northwest; Denver, United; Pittsburgh, US Air; St. Louis, TWA.

3. Monopoly Fare Premiums at Fortress Hubs.

There is a large body of evidence and expert opinion—as articulated by the General Accounting Office, USDOT, business travel organizations, and the Illinois Department of Transportation—that the dominance of these major markets by one or two carriers results in a monopolistic ability to raise fares beyond the air fares that would exist if there was strong competition in these Fortress Hub markets. As stated by the GAO as far back as 1990:

''Airports where one or two carriers handle most of the enplaning traffic have higher fares than airports where the traffic is less concentrated. Moreover, the data show that fares tend to rise as concentration increases. While many factors can influence fare changes, the evidence that we have collected strongly suggests that fares and concentration at an airport are related. Fares are higher at concentrated airports than at relatively less concentrated ones, and the evidence suggests that the gap is increasing.''

Subsequent studies by GAO since 1990 have confirmed the problem of higher fares at Fortress Hubs—higher than would exist in a competitive environment. See e.g., Barriers to Entry Continue in Some Markets (GAO/T–RCED–98–112; March 5, 1998); Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets (GAO/RCED–97–4, Oct. 18, 1996); Domestic Aviation: Barriers to Entry Continue to Limit Benefits of Airline Deregulation (GAO/RCED–97–120, May, 13, 1997); Airline Competition: Higher Fares and Less Competition Continue at Concentrated Airports (GAO/RCED–93–141, July 15, 1993); Airline Competition: Effects of Airline Market Concentration and Barriers to Entry on Airfares (GAO/RCED–91–101, Apr. 26, 1991).

While repeatedly emphasizing the problem of higher monopoly fares caused by lack of competition, GAO continued to emphasize the lifting of slot restrictions at three of the nation's airports as a partial solution to the problem. GAO's prime emphasis has been to obtain access to airport capacity for the so-called ''low-cost'' new entrant airlines into the Fortress Hub markets.

But GAO has never analyzed the issue of the ''capacity'' of these slot-restricted airports to service new competition—even if the slot restrictions were lifted. As discussed below, the FAA has repeatedly emphasized that the practical capacity of an airport is limited (see discussion, infra.) and that as traffic growth approaches the physical limits of the airport's capacity, aircraft delays rise geometrically—essentially leading to gridlock.

As the analysis contained in the 1995 DOT report A Study of the High Density Rule, and this study show, there simply is not enough capacity at O'Hare—even with the slots lifted—to all significant new competition to enter the Chicago market. This is why the Big Seven's collective refusal (discussed infra) to use and support the major new capacity that would be provided by the new South Suburban Airport is a central component in the preservation of the Fortress Hub problem in metropolitan Chicago. Moreover, any arguable minor increment of available capacity at O'Hare will rapidly be consumed by United and American. There simply is not enough room at O'Hare to allow a major new competitor to gain the ''critical mass'' to compete with United and American.

The Illinois Department of Transportation has repeatedly emphasized its opinion that monopoly dominance at O'Hare results in higher airfares paid by Chicago area travelers and that major new regional airport capacity is essential to breaking the monopoly stranglehold of Fortress O'Hare:

''There are numerous examples besides these to demonstrate that without the competition of a new entrant, the fares at Chicago are increasing or remain inordinately high.''

''We encourage and support your [USDOT's] focus on anticompetitive practices that are injuring commerce, smaller cities, and consumers in Illinois and throughout the region serviced by O'Hare Airport as the hub of United Airlines and American Airlines. We strongly urge, however, that the enforcement policies should be part of a broader initiative that will insure that there will be airport capacity available in the Chicago area that will provide new airline entrants the opportunity to compete with United and American. Additional airport capacity is vital to restoring airline competition in the Chicago, Illinois, and Midwestern markets.''

''There is simply no room at O'Hare for new entrant airlines to pose competitive challenges to the dominant airlines.''

4. Time Sensitive Business Traveler Biggest Loser in Fortress Hub Monopoly System.

The air travel consumer most seriously harmed by this horizontal Fortress Hub market allocation is the business traveler—particularly the small to medium size business traveler who cannot negotiate bulk fare discounts and who must make time sensitive business trips at unrestricted coach fares.

The Illinois Department of Transportation estimates this monopoly based fare penalty at O'Hare alone exceeds several hundred million dollars per year. Nationally, the loss to the traveling public from these monopoly premiums at Fortress Hubs is likely to exceed several billion dollars annually.

As stated in major articles on the subject by USA Today and the New York Times:

What travelers suspect is true: Airfares are climbing fast, and nowhere is the situation worse than at the hubs for the nation's largest airlines.

Business travelers have been especially hard hit at hubs

And almost everywhere, hub fares, especially for business fliers, are soaring. (USA Today February 23, 1998)

Business travelers feel particularly abused because they account for more than half of airline revenue. For in the through-the-looking-glass world of airline pricing, the fares paid by leisure travelers, who book as long as a month in advance and stay over a weekend night, have in many cases declined, while last-minute fully refundable fares, which are most often paid by business travelers, are skyrocketing.

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''Basically, what the airlines have done to companies like ours is kept us from growing,'' he said. (New York Times January 11, 1998)

Put bluntly, the Big Seven has used their monopoly power at Fortress Hubs to literally extort billions of dollars annually from captive travelers—most often time sensitive business travelers living in these airlines' own Fortress Hub communities.

5. The Second Biggest Loser in the Fortress Hub Monopoly System is the ''Spoke'' Passenger.

The second biggest loser from this Fortress Hub monopoly system is the so-called ''spoke'' passenger in the small to medium size community that serves as the ''spoke'' to a single large metropolitan Fortress Hub. Because the dominant Big Seven airline at a Fortress Hub has no competition at its hub, it is free to charge the spoke passenger—who must use the hub to get to his or her destination—excessive monopoly fares.

The Illinois Department of Transportation—again emphasizing the lack of capacity to handle both new competition and service to smaller and mid-size communities—has stated the problem as follows:

''The dominant airlines are diminishing and even abandoning service to smaller Illinois and Midwestern cities in favor of routes that are more lucrative or that increase the power of their hub networks.''

Because the dominant O'Hare airlines prioritize the limited capacity at O'Hare to service the flight operations with the highest profitability, the small community ''spoke'' traveler gets harmed on two levels. First, he loses service when the cominant airlines cut small community service to use the limited capacity to service more lucrative long-haul or international traffic—eliminating less profitable small community service. Second, as to the small community traffic that the dominant airlines still service, they are able to charge exorbitant rates—knowing that the small community spoke traveler is at their mercy.

6. The Big Seven's Fortress Hub Geographic Market Allocation is a Per Se Violation of the Antitrust laws.

Neither the Administration nor the Congress appears to have critically examined a central question: Does the Big Seven's Fortress Hub geographic market allocation violate the Nation's antitrust laws? Based on clear and repeated Supreme Court precedent, it clearly does.

The major airlines general de facto geographic allocation of major air travel markets in the nation through the development of ''Fortress Hubs'' constitutes a per se violation of the antitrust laws. The Supreme Court has uniformly condemned arrangements to carve up horizontal markets as per se violations of Section 1 of the Sherman Act. See e.g., Palmer v. BRG Group of Georgia, 498 U.S. 46, 49 (1990); United States v. Topco Associates, Inc., 405 U.S. 596, 607–609 (1972).

Virtually all laymen and most lawyers shy away from antitrust law as an economic morass difficult to understand. But there is one area where the United States Supreme Court has been clear and unequivocal: horizontal arrangements to carve up geographic markets are an automatic—a ''per se''—violation of the federal antitrust laws. Because this law is so-clear and unambiguous—and recognizing that the airlines will claim that the law can be ignored—we believe it important to quote the United States Supreme Court on this subject:

''While the Court has utilized the 'rule of reason' in evaluating the legality of most restraints alleged to be violative of the Sherman Act, it has also developed the doctrine that certain business relationships are per se violations of the Act without regard to a consideration of their reasonableness. In Northern Pacific R. Co. v. United States, 356 U.S. 1, 5, 78 S.Ct. 514, 518, 2 L.Ed.2d 545 (1958), Mr. Justice Black explained the appropriateness of, and the need for, per se rules:''

'' '(T)here are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use. This principle of per se unreasonableness not only makes the type of restraints which are prescribed by the Sherman Act more certain to the benefit of everyone concerned, but it also avoids the necessity for an incredibly complicated and prolonged economic investigation into the entire history of the industry involved, as well as related industries, in an effort to determine at large whether a particular restraint has been unreasonable—an inquiry so often wholly fruitless when undertaken.' ''

''It is only after considerable experience with certain business relationships that courts classify them as per se violations of the Sherman Act. See generally Van Cise, The Future of Per Se in Antitrust Law, 50 Va.L.Rev. 1165 (1964). One of the classic examples of a per se violation of §1 is an agreement between competitors at the same level of the market structure to allocate territories in order to minimize competition. Such concerted action is usually termed a 'horizontal' restraint, in contradistinction to combinations of persons at different levels of the market structure, e.g., manufacturers and distributors, which are termed 'vertical' restraints. The Court has reiterated time and time again that '(h)orizontal territorial limitations . . . are naked restraints of trade with no purpose except stifling of competition.' White Motor Co. v. United States, 372 U.S. 253, 263, 83 S. Ct. 696, 702, 9 L.Ed.2d 738 (1963). Such limitations are per se violations of the Sherman Act. See Addyston Pipe & Steel Co. v. United States, 175 U.S. 211, 20 S.Ct. 44 L.Ed 136 (1989), aff'g 85 F. 271 (C.A.6 1898) (Taft, J.); United States v. National Lead Co., 332 U.S. 319,67 S.Ct. 1634, 91 L.Ed. 2077 (1947); Timken Roller Bearing Co. v. United States, 341 U.S. 593, 71 S.Ct. 971, 95 L.Ed. 1199 (1951); Northern Pacific R. Co. v. United States, supra; Citizen Publishing Co. v. United States, 394 U.S. 131, 89 S.Ct. 927, 22 L.Ed.2d 148 (1969); United States v. Sealy, Inc., 388 U.S. 350, 87 S.Ct. 1847, 28 L.Ed.2d 1238 (1967); United States v. Arnold, Schwinn & Co., 388 U.S. 365, 390, 87 S.Ct. 1856, 1871, 18 L.Ed.2d 1249 (1967) (Stewart, J., concurring in part and dissenting in part); Serta Associates, Inc. v. United States, 393 U.S. 534, 89 S.Ct. 870, 21 L.Ed.2d 753 (1969), aff'g 296 F.Supp. 1121, 1128 (N.D.Del.1968).'' (United States v. Topco Associates, Inc., 405 U.S. at 607–608 (emphasis added))

The Big Seven's carving up of geographic markets into the current Fortress Hub system is nothing more than a naked horizontal restraint repeatedly condemned by the Supreme Court as a per se violation of the Sherman Act.

Put in terms the average citizen understands—Could McDonald's tell Burger King: We won't compete in Atlanta if you won't compete in Chicago? Could Ford tell GM: We won't sell Fords in Michigan if you won't well Chevys in Illinois? The answer is clearly no. Each would be a horizontal market restraint and a per se violation of the Sherman Act just as the Big Seven's Fortress Hub system—and their refusal to compete in each other's hub market—is a horizontal market restraint and a per se violation of the Sherman Act.

The law is equally clear it is not necessary to demonstrate a formal written agreement among the Big Seven to carve up the geographic Fortress Hub market in order to find a conspiracy in violation of the Sherman Act. The existence of such an agreement or arrangement can be inferred from the course of conduct of the members of the industry. Norfolk Monument Company v. Woodlawn Memorial Gardens, 394 U.S. 700, 704 (1969); American Tobacco Company v. United States, 328 U.S. 781, 809–810 (1946); InterstateCircuit v. United States, 306 U.S. 208, 221, 226–227 (1939).

7. The Metropolitan Chicago Market: An Egregious Example of the Geographic Market Allocation and Refusal to Compete—''If You Build It, We Won't Come.''

A particularly egregious implementation of this horizontal agreement not to compete in each other's Fortress Hub markets can be found in the major airlines' announced refusal to use a new major airport in the metropolitan Chicago. The most visible manifestation of their refusal to compete in the Chicago market an be found in letters written by sixteen Chief Executive Officers (CEOs) of the major airlines to Illinois Governor Jim Edgar and his successor George Ryan. In those letters—drafted in coordination with representatives of the City of Chicago and the Air Transport Association—the major airlines tell the Illinois Governor that they will refuse to use the proposed new metropolitan Chicago airport:

''We are writing to express our concerns about further planning and development of the so-called Third Chicago Airport. It is our understanding that the State of Illinois will not proceed with the construction of a third airport without the support of the airlines. This letter is intended to inform you that the airlines oppose further planning and construction of this facility . . .

Chicago area news media have characterized the major airlines' refusal to use a new airport as ''If you build it, we won't come.'' In reality, this collective refusal to use a new regional airport is nothing more than a manifestation of the major airlines' horizontal market agreement not to compete in any significant way with United and American in their dominant Chicago market. This refusal by major airlines such as Delta, Northwest, USAir, and Continental to use new metropolitan Chicago airport capacity to compete in metropolitan Chicago is but an individual example of the per se antitrust violation of allocating geographic markets by the major airlines.

8. The Fortress Hub System and the Big Seven's Collective Refusal to Compete in Each Other's Fortress Hub Markets—as Illustrated by Their Collective Refusal to Use the New South Suburban Airport—Represent Serious Violations of Federal Law.

These clear violations by the Big Seven airlines in creating and maintaining the Fortress Hub system and the refusal of the Big Seven to compete in each other's markets represent serious violations of the antitrust laws. If the GAO and IDOT estimates are accurate, nationally the Fortress Hub system literally illegally steals several billion dollars per year from the nation's air travelers—several hundred million dollars in the Chicago area alone.

Because these antitrust violations are so blatant, it is important for the public to know the significant sanctions and remedies available to cure these violations.

Section 1 of the Sherman Act provides:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court. (Title 15 United States Code §1 (emphasis added))

Section 2 of the Sherman Act provides:

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court. (Title 15 United States Code §2 (emphasis added))

Section 4 of the Act provides civil injunction remedies and mandates the Department of Justice to ''institute proceedings in equity to prevent and restrain such violations'':

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. (Title 15 United States §4 (emphasis added))

Section 15 provides that any person injured by the violations of the antitrust laws can recover treble (triple) damages for the monetary losses caused by the violations.

[A]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefore in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. (Title 15 United States Code §15)

In summary, the statutory sanctions for these antitrust violations are significant. Thus far, federal Department of Justice officials have been unwilling to initiate antitrust enforcement proceedings to break up the Fortress Hub monopoly of the Big Seven.

9. The Major Airlines Geographic Market Allocation—A Per Se Violation of the Antitrust laws—Is Not Immunized by the ''Noerr-Pennington'' Doctrine.

The major airlines' have engaged in this de facto Fortress Hub geographic market allocation scheme for more than a decade. It is likely that the airlines will assert that their collective refusal to compete in the metropolitan Chicago market—and the manifestation of that refusal by their letters to Governors Edgar and Ryan—is immunized from antitrust law enforcement by the ''Noerr-Pennington'' doctrine. That doctrine immunizes antitrust violations where the principal vehicle for achieving the monopolistic goal is political expression—i.e., lobbying government.

But the post-Noerr-Pennington case law makes clear that where a business arrangement—that otherwise violates the antitrust laws—has one component that involves the exercise of First Amendment speech, there is no immunity from antitrust enforcement under the ''Noerr-Pennington'' doctrine. See Allied Tube & Conduit Corp. v. Indian Head,

Inc., 486 U.S. 492, 505–506 (1988); FTC v. Superior Court Trial Lawyers Ass'n, 493 U.S. 411, 423–426 (1990); Sandy River Nursing Care v. Aetna Casualty, 985 F.2d 1138, 1142–43 (1st Cir. 1993); In re Brand Name Prescription Drugs Antitrust Litigation, 186 F.3d 781, 788–789 (7th Cir. 1999).

10. The Major Airlines Geographic Market Allocation—A Per Se Violation of the Antitrust laws—Is Not Immunized by the ''State Action Doctrine''.

It is common for those accused of antitrust violations to claim that their monopolistic practices are immunized from antitrust liability under the so-called ''state action'' doctrine of Parker v. Brown, 317 U.S. 341 (1943). The Supreme Court's rationale in Parker for ''state action'' immunity was the Congress had not intended in the Sherman Act to control the activities of states in engaging in conduct directed by the state legislature. 317 U.S. at 351–352.

But the Supreme Court has severely limited the availability of ''state action'' immunity when invoked by private parties such as the airlines in an attempt to immunize conduct clearly violative of the antitrust laws. The Supreme Court has established two requirements for ''state action'' immunity where private parties participate in the antitrust violation: 1) the monopolistic activity must be clearly expressed and affirmatively adopted as being the policy of the State, and 2) the monopolistic activity must be actively supervised by the State itself. Federal Trade Commission v. Ticor Title Insurance Co, 504 U.S. 621, 633–634 (1992); Patrick v. Burget, 486 U.S. 94, 101–102 (1988); California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., 445 U.S. 97, 105–106 (1980).

In the case of Fortress O'Hare and the collective campaign of United, American and Chicago to keep significant new hub-and-spoke competition from coming into the metro Chicago market, there is no question that the ''state action'' defense does not apply. First, the State of Illinois has not authorized the Fortress O'Hare monopoly maintained by United and American and has actively spoken out against the monopoly problem there. Second, the State is not actively supervising and approving the anticompetitive conduct by United and United and American and Chicago.

11. Federal Taxpayer Funds May Have Been Used to Suppress Competition and Violate the Antitrust Laws in the Chicago Market.

As stated above, other major airlines through the (ATA), United and American (the dominant carriers at O'Hare) have engaged in a concerted effort to defeat construction of a new South Suburban Airport, an airport that would provide significant capacity opportunities for major new competition to enter the Chicago market. United executives have privately stated their goal as ''Kill Peotone''.

United and American have been assisted in their ''Kill Peotone'' (and thus kill new competitive capacity) campaign by representatives of the City of Chicago—including Chicago's consultants. Chicago's consultants have been paid several million dollars in consulting fees to assist Chicago and United and American in expanding O'Hare and in obstructing development of a new South Suburban Airport.

Much of the money paid to these consultants has come from either: (1) federal Passenger Facility Charge (PFC) funds (2) federal Airport Improvement Program (AIP) funds, or (3) federal tax subsidies for municipal for municipal airport bonds (''GARBs'' General Airport Revenue Bonds). Not only are the airlines and Chicago engaged in a monopolistic arrangement designed to prevent new competition from entering the Chicago market (i.e., through the new airport), but much of the money to implement this illegal arrangement is coming from federal taxpayer dollars. The GAO and the Department of Justice should be asked to conduct an independent audit of all PFC, AIP, and GARB expenditures at O'Hare to determine if any federal funds wee used as part of a campaign to ''Kill Peotone'' and to assist in the violation of federal antitrust laws.

12. Federal Officials Have Participated in and Supported the Big Seven's Illegal Monopolistic Arrangement to Refuse to Compete in the Chicago Market.

Not only have federal funds been used to support the major airlines illegal monopolistic arrangement to refuse to compete in the Chicago market, but it appears that federal officials within the Administration have worked with the major airlines and Chicago to assist in this antitrust arrangement to prevent the development of a new airport in metropolitan Chicago. For the last several years, federal administration officials—several of whom are former Chicago officials who worked for the Chicago Aviation Department—have blocked development of the new South Suburban Airport through a series of spurious legal claims that federal law requires that a ''consensus'' must exist between the State of Illinois and the City of Chicago before a new metropolitan airport can be constructed. No such legal requirement exists.

Because of the active participation of key figures in the current administration in promoting and supporting the continued blockage of new airport development in metropolitan Chicago—in concert with the illegal refusal of the major airlines to compete in the Chicago market by using the new airport—and impartiality and lack of bias of the Administration in conducting law enforcement in this area is suspect. The Attorney General should be asked to appoint an independent prosecutor to conduct the antitrust investigation and to undertake all appropriate actions needed to correct the ongoing antitrust violations.

13. Defining Essential Remedies—A New Regional Airport With Sufficient Capacity to Support New Competitive Hub-And-Spoke Operations.

There have been two ''remedies'' asserted to eliminate the monopoly dominance of Fortress O'Hare in the Chicago market. The first—eliminating slot restrictions at O'Hare—was proposed and passed by Congress this year. According to proponents of lifting the slot limits, elimination of slot controls would bring new competition into O'Hare.

A. Lifting the Slot Limits Was an Unmitigated Disaster.

At the time the federal laws lifting the slot limits was passed, Illinois Senator Peter Fitzgerald and Congressman Henry Hyde both voted against the bill. They argued that the slot limitations were not an artificial constraint but a recognition of the already exhausted limited capacity of O'Hare. They argued that lifting the slots would be a disaster because: (1) added flights should lead to a massive delay gridlock at O'Hare, and (2) that even if there were any additional capacity, that capacity would be rapidly consumed by American and United. Under these circumstances, they argued that lifting the slot limits would simply expand United's and American's monopoly—not increase competition.

Senator Fitzgerald and Congressman Hyde can rightfully say: I told you so. On April 20, 2000 United and American announced their intent to add 400 new daily flights to O'Hare. The sad reality is that O'Hare does not have the capacity for these 400 new flights. But Fitzgerald's and Hyde's point was made; whatever arguable minor incremental capacity exists at O'Hare (if any), it has been rapidly consumed by United and American—not used by new competition. Instead of reducing the monopoly, the new federal law has helped United and America expand the monopoly.

United's and American's actions—coupled with the limited capacity of O'Hare—illustrate's salient point. There simply is not enough capacity at O'Hare to bring any significant new competition into O'Hare. Any new competitive entry will be token at best and not provide meaningful competition to the hub-and-spoke dominance of United and American.

Lifting the slot limit, coupled with United and American's actions to jam more than 400 new flights into O'Hare also means massive new delay increases for the traveling public this Summer. To illustrate these points and to demonstrate why the recently passed federal legislation makes matters much worse at O'Hare requires a brief analysis of the related issues of capacity and delay at airport—particularly O'Hare.

FAA, the airlines, Chicago and IDOT define capacity as the number of operations that can be processed at an airport at an acceptable level of delay. There is a recognition that there is a difference between absolute maximum physical throughput and a lower level of operations that can be put through without experiencing intolerable levels of delay and cancellations. As stated by the City of Chicago:

''The practical capacity of an airfield will be defined as the maximum level of average all-weather throughput achievable while maintaining an acceptable level of delay.''

''Ten minutes per aircraft operation will be used at the maximum level of acceptable delay for the assessment of the existing airfield's capacity, subject to future levels of forecast demand. This level of delay represents an upper bound for acceptable delays at major hub airports.''

This relationship between maximum physical throughput and practical, delay-sensitive capacity is illustrated in a FAA chart copied from an FAA report on the subject, Airfield and Airspace Capacity/Delay Policy Analysis, FAA–APO–81–14.

This relationship holds true whatever the input data as to the level of demand or whatever the capacity of the airport under study. Once the demand reaches a point approaching the physical capacity of the airport the delay levels for all traffic at the airport rise geometrically. The acceptable or ''practical capacity'' of the airport is that level where delays are acceptable. To push more traffic beyond that point is a certain invitation to massive delays, major cancellations, and gridlock.

At one point FAA defined the acceptable level for practical capacity of an airport as four minutes average annual delay. That translated into about a 30-minute delay in peak periods. Now FAA, IDOT and Chicago defined the acceptable level of delay to define practical capacity as 10 minutes average annual delay. This translates (in equivalent terms) into more than an hour delay in peak periods.

What is important to emphasize is that all FAA and chicago—and most likely Booz-Allen and United and Ameican—runs of the SIMMOD model for O'Hare show average annual delay at O'Hare is currently in excess of 10 minutes average annual delay—already above acceptable capacity limits without adding more flights. FAA and Chicago and United and American all know that a push 400–500 new flights per day into O'Hare is going to lead to: (1) massive increases in delays and (2) widespread cancellations. FAA (USDOT) A Study of the High Density Rule

illustrates the massive delay increase that adding just a few flights at O'Hare beyond the slot limits will do to all passengers at O'Hare. This analysis shows that adding 400–500 flights per day will lead to disastrous delays for all passengers—more than doubling the delays for all passengers, not just those who are on the new additional flights.

We anticipate that FAA and United and American will claim that the delay and capacity results of DOT in 1995 have been changed because of capacity improvements at O'Hare in intervening years. But if so, a few questions need answering. What are the capacity improvements since 1995? How much new capacity has been provided? What will be the capacity/delay numbers (comparable to DOT's 1995 analysis) with the new capacity? Why were there no public hearings and environmental disclosure on these capacity improvements?

We suspect the answer is that there have not been any capacity changes at O'Hare since 1995 and DOT's numbers remain valid. Conversely, if there have been capacity changes, FAA has failed to inform both affected elected officials (e.g., Congressman Hyde and Senator Fitzgerald) and they have failed to tell the public and give the public an opportunity to be heard.

There is another important point to emphasize about this throughput/delay relationship shown on the FAA charts. Where the airport is at the limits of acceptable delays—i.e., the practical capacity limit—very small shifts in either traffic demand or capacity can dramatically increase delays for all passengers. Thus a small increase in traffic demand beyond the practical capacity limit will generate huge increases in delays for all passengers. Similarly, a slight decrease in capacity—such as experienced this past year when regional jet pilots were refusing Land-And-Hold-Short for safety reasons—can dramatically increase delays with little or no increase in throughput. The point here is that O'Hare is already at the breaking point—brought there by the resistance of Chicago and the Fortress Hub airlines at O'Hare (United and American) to the building of a new regional airport. O'Hare cannot handle 400–500 new flights per day and United and American know it. Their own SIMMOD analysis tells them that.

Why then do United and American announce a literally foolhardy plan to jam 400–500 flights into O'Hare—an announcement made the same day that United's and American's front organization (the Civic Committee) calls for a new runway at O'Hare? By deliberately creating chaos at O'Hare, United and American will then be able to say that delays are at crisis levels and we must immediately build a new runway at O'Hare.

B. The ''Point-To-Point'' Shell Game: Building the South Suburban Airport as a ''Point-To-Point'' Airport Will Not Break the Hub-And-Spoke Monopoly of Fortress O'Hare.

The heart of the monopoly overcharges to travelers in the Chicago market is the absence of competition in the hub-and-spoke market in Chicago. None of the other Big Seven will come into the Chicago market to establish a competitive hub-and-spoke operation.

United and American propose using close to 10 billion dollars (much of it in federal funds) to expand United and American's hub-and-spoke empire at Fortress O'Hare. In an attempt to expand their monopoly and prevent new competition from entering the Chicago market, United and American (along with the ''Civic Committee'' and the Chicagoland Chamber) have sought to distract attention by suggesting a south suburban airport in Chicago as a ''point-to-point'' airport—not unlike Midway. United and American argues that O'Hare should be the only ''hub-and-spoke'' airport in metropolitan Chicago.

By shaping the argument in this fashion, United and American guarantee that they will be allowed to continue and dramatically expand their Fortress Hub monopoly at O'Hare. According to their arguments, the lion's share of all the origin-destination traffic in the region—and all of the connecting and international traffic—should go to the sole hub-and-spoke airport in the region: O'Hare. Any minor overflow of ''point-to-point'' origin-destination traffic that Midway could not handle could be addressed in a small ''point-to-point'' airport like the South Suburban Airport or Gary.

What United and American gloss over is the fact there is plenty of competition in the Chicago market in point-to-point service. The real lack of competition in the Chicago market is in the lack of additional hub-and-spoke competition to challenge the hub-and-spoke duopoly of United and American at Fortress O'Hare. It is this market dominance of the hub-and-spoke market—not the point-to-point—where lack of competition gouges the business traveler and the traveler from ''spoke'' cities. There is a desperate need for new competitive hub-and-spoke service in the Chicago market and the place to put that hub-and-spoke is the new South Suburban Airport.

No federal administration officials appear to be examining whether spending 10 billion dollars (much of it from federal taxpayers) at O'Hare makes economic sense when much more new capacity to support competitive hub-and-spoke operations can be constructed at a new metropolitan airport for less than half the cost. Nor are federal officials examining whether the use of billions of dollars of federal taxpayer funds to expand United and American's hub-and-spoke duopoly at Fortress O'Hare—essentially using billions of dollars of federal taxpayer funds to subsidize expansion of monopoly power—is proper use of federal funds.

C. A New Runway at O'Hare is Intended to Increase Capacity to Expand United and American's Monopoly Power.

As discussed above, the airlines' current public relations argument is that the lion's share of all the origin-destination traffic in the region (and all of the connecting and international traffic) should go to the sole hub-and-spoke airport in the region (O'Hare). Any minor overflow of point-to-point origin-destination traffic that a dramatically expanded O'Hare and Midway could not handle (if any) could be addressed in a small point-to-point airport like the South Suburban Airport or Gary.

Paralleling this argument is the claim by the airlines allies that a new runway at O'Hare is needed to ''reduce delays''. They claim that a new runway would not increase O'Hare capacity but simply reduce delays.

Yet an analysis using FAA's own capacity analysis standards and criteria demonstrates that a new runway at O'Hare would substantially increase the capacity of the airport. As discussed above, the concepts of capacity and delay are closely interrelated. The FAA and Chicago both define capacity as that level of aircraft operations that can be processed at an airport at an acceptable level of delay.

The FAA's published graphic showing the relationship of capacity and delay illustrates a how a so-called ''delay reduction'' at one level of traffic results in an increase in capacity at the airport to accommodate additional levels of traffic.

This capacity increase at O'Hare—by building a runway to ''reduce delay''—would dramatically expand American's and United's hub-and-spoke monopoly at Fortress O'Hare. Further, it would virtually doom the economic justification for the new south suburban airport because the new ''delay'' runway—once built—could easily be used to carry the new additional traffic for which the new airport was intended. Simply by piecemealing incremental expansion at O'Hare, Chicago and American and United can keep the region under the thumb of the Fortress O'Hare monopoly.

14. United's and American's Fight to Preserve and Expand Fortress Hub Monopoly Power at O'Hare has Grave Social, Economic, Public Health, and Quality of Life Consequences for the Region.

In their passion to expand Fortress O'Hare and defeat the prospect of new hub-and-spoke competition coming into a new airport, United and American have disregarded safety, public health, and quality of life for the communities around O'Hare. All parties are in agreement that growth in air traffic should be accommodated with major increases in new airport capacity in the metropolitan Chicago region.

The choices are stark: (1) a new regional airport which will have an environmental land buffer three times the size of O'Hare and plenty of capacity to accommodate new hub-and-spoke competition or (2) an overstuffed O'Hare with no land buffer and continued dominance of the metropolitan hub-and-spoke market by United and American. But for the addiction to monopoly revenues at Fortress O'Hare, the decision is simple—send the traffic growth to a new environmentally sound, competitively open new regional airport.

Instead we have United and American and their political surrogates urging more air pollution, more noise, and more safety hazards be imposed on O'Hare area communities—simply to protect and expand the Fortress O'Hare monopoly. We now live in a bizarre world where the desire to protect and expand violations of antitrust law and illegal overcharges trumps protection of public health, safety and quality of life.

The consequences of these abuses of monopoly power for the metro Chicago region are stark and severe:

O'Hare area communities will be subjected to more noise, more air pollution, and more safety hazards because—under the United, American, and Chicago proposal—all the international, all the transfer traffic, and the lion's share of the origin-destination traffic are jammed into an already overstuffed O'Hare. Any new airport—even if built—will simply receive the origin-destination overflow (if any) from a vastly expanded O'Hare and Midway.

South Chicago and south suburban communities will continue to suffer serious economic decline because the South Suburban Airport—which should have been built years ago—lies hostage to the unholy alliance struck between the monopoly interest of United and American and the political pique of Chicago's mayor. Residents of South and South Suburban Chicago legitimately ask why United and American oppose the hundreds of thousands of jobs and billions in economic benefits that would accrue to this area if the new airport is built. Some attribute United and American's position to racial intent. More accurately, United and American are willing to ignore the severe economic harm their monopolistic position inflicts on an area with a significant African-American population if that harm is a necessary consequence of preserving and expanding their monopoly at Fortress O'Hare. In a world of pure economic rationality, monopoly power and the social and economic injustices incident to that monopoly power might be excused as central to the maximization of profit. However, in a world of

law and justice—where political leaders must account for their failure to correct these abuses—such destructive monopoly power should not be tolerated.

RECOMMENDATIONS

Based on the facts and the antitrust law analysis contained in this report, the Suburban O'Hare Commission recommends the following actions:

The United States Attorney General and the United States Attorney for the Northern District of Illinois should initiate an investigation into the collective refusal of the Big Seven airlines to compete against each other in each other's Fortress Hub Markets. Included in the investigation should be an examination of the role of third party collaborators in the antitrust violations—including the City of Chicago and other private organizations and individuals who have assisted the Big Seven (including United and American) in perpetrating these violations. Because of the involvement by federal officials in affirmatively assisting the Big Seven and the City of Chicago in keeping significant competition out of Chicago, the Attorney General should be asked to consider the appointment of independent counsel.

The United States Attorney General and the United States Attorney should bring a civil action in federal court to enjoin and break up the illegal Fortress Hub geographic market allocation by the Big Seven and prohibit the collective refusal by the Big Seven to compete in each other's Fortress Hub markets. Included in the relief should be a requirement that members of the Big Seven halt their collective refusal to use a new South Suburban Airport in metropolitan Chicago and a requirement that competitive hub-and-spoke operations be established in metro Chicago to compete with United and American.

The State Attorneys General should initiate civil damage actions to recover treble damages for the billions of dollars per year in excess monopoly profits in airfare overcharges that have been charged at the Big Seven's Fortress Hubs. The Illinois Attorney General should bring suit to recover treble damages for the hundreds of millions of dollars in monopoly overcharges by American and United at Fortress O'Hare. On a multiple year basis in Illinois alone, the treble damages recoverable for consumers would exceed several billion dollars.

The GAO and the Department of Justice should undertake an immediate and detailed audit of all federal funds that may have been used to further the refusal of the other members of the Big Seven to compete with United and American in metropolitan Chicago—particularly the campaign by the airlines and Chicago to ''Kill Peotone''.

The United States Department of Transportation should withhold any further approvals of federal funds for expansion of the United and American duopoly at Fortress O'Hare.

The House and Senate Judiciary Committees should conduct immediate hearings on these issues.

Our Governor and our two United States Senators, the Speaker of the House, and our Illinois Attorney General should be respectfully asked what specific actions they will take to (1) break up the Fortress Hub system—particularly Fortress O'Hare; (2) bring new hub-and-spoke competitors into the Chicago market; (3) recover the billions in excess monopoly profits from the Fortress O'Hare overcharges; (4) prevent the Big Seven from continuing to refuse to use the new capacity provided by the South Suburban Airport; and (5) assemble the federal and state resources needed to rapidly build the South Suburban Airport.

Our Governor should hold fast to his promise not to permit any additional runways at O'Hare. To do otherwise would simply enhance and expand the monopoly power of Fortress O'Hare and doom the opportunity to bring in new competition into the region at the South Suburban Airport.

The two candidates for President of the United States—both of whom have likely received large campaign contributions from the Big Seven—should be respectfully asked what they will do to break up the Fortress Hub system nationally and Fortress O'Hare in particular. Vice President Gore in particular should be asked why his administration has for the past eight years looked the other way while the Big Seven has used violations of the nation's antitrust laws to literally steal billions of dollars from American consumers. Mr. Gore should also be asked to explain why his administration has blocked development of new competitive capacity in metro Chicago—i.e. a new South Suburban Airport—at every turn. Finally, Mr. Bush should be asked specifically what he will do to build the South Suburban Airport.

CONCLUSION

The monopoly abuses of the Fortress Hub system—and especially the abuses of Fortress O'Hare and the refusal of the Big Seven to compete in metropolitan Chicago—are a national disgrace. It's time to end it.

SUBURBAN O'HARE COMMISSION—EXECUTIVE SUMMARY

A study prepared by the Suburban O'Hare Commission concludes that the major airlines have committed per se violations of federal antitrust laws by refusing to compete with each other in Fortress Hub markets, such as in the metro Chicago region now dominated by ''Fortress O'Hare''.

The glaring example of these monopolistic practices are documented by the major airline's letter to former Illinois Gov. Jim Edgar which, in effect, said if the state builds a new airport in Chicago's southern suburbs, ''we won't come.''

That leaves United and American airlines, which control over 80 percent of the air traffic at O'Hare in an unchallenged market position. It would be as if Ford Motor Company told General Motors, ''If you agree not to sell cars in Chicago, we will agree not to compete with you in Los Angeles.''

SOC's major findings include:

The de facto agreement among the ''Big Seven'' airlines—Northwest, United, American, Delta, US Air, Continental and Trans World—not to compete in each others hub market is the heart of the monopoly problem.

The resulting fortress hub monopolies are costing American air travelers billions of dollars annually in monopoly induced higher fares, especially the fares charged to time-sensitive business travelers and ''spoke'' passenger who must connect through the hub to get to their ultimate destinations.

The Big Seven's geographic market allocation violates the nation's antitrust laws, based on clear and repeated Supreme Court decisions which have roundly condemned arrangements to carve up geographic markets horizontally.

In Chicago, the clear violation of the antitrust law is demonstrated by the abandonment by major airlines of meaningful competition to United and American at O'Hare and the announcement that they would not use a South Suburban Airport if built.

The airlines can't defend their anti-competitive practices with the ''Noerr-Pennington'' doctrine, which asserts that petitioning the government to help the industry engage in antitrust actions is protected under Free Speech guarantees. Case law doesn't protect anti-competitive practices that have evolved independent of any government authorization, as in the present case.

Nor can the airlines or Chicago defend themselves by the ''state action'' doctrine, which allows states, as a matter of federalism, to consciously participate in monopoly practices. For this defense to succeed, Supreme Court decisions require that the state must clearly endorse and supervise the monopoly practices. Here there has been no such approval of the Fortress Hub monopoly abuses by the State of Illinois.

Chicago and its officials are not immune from antitrust law liability for helping the major airlines avoid competing with the United/American cartel at O'Hare.

Federal taxpayer funds may have been used to suppress competition and violate antitrust laws in the Chicago market.

The Clinton administration has not only looked the other way in not bringing antitrust enforcement action to break up the Fortress Hub system, but has affirmatively assisted Chicago and United and American in blocking significant new competition from entering the region by blocking development of a new regional airport in metro Chicago.

The lifting of slot limitations will not allow significant competition to enter the Chicago market. Instead—as predicted by Senator Fitzgerald and Congressman Hyde—the lifting of the slots will be accompanied by massive increase in delays and by United and American simply expanding their monopoly control at the airport.

Construction of a new runway for ''delay reduction'' is simply subterfuge to expand the size of United and American's Fortress Hub operation at O'Hare. Building a new runway at O'Hare will make the monopoly problem—and resultant air fare overcharges—even worse. Moreover, it will doom the economic viability of the New South Suburban Airport.

Recommendations

Based on these findings, SOC recommends:

Investigations by the U.S. Attorney General and U.S. Attorney for Northern Illinois into activities by the airlines, the city of Chicago, consultants and other third parties which have been used to protect and expand the Fortress Hub system nationally—and in particular to prevent new airport development in the metro Chicago region.

Civil action by the Attorney General and U.S. Attorney here to break up the Fortress Hub system and to compel the major airlines to stop their refusal to compete in metro Chicago.

Action by state attorneys general to recover treble damages for fliers who were charged billions of dollars in excess fares as a result of the Fortress Hub system.

A Government Accounting Office and Department of Justice audit of federal taxpayer funds to subsidies that abetted the antitrust violations, particularly efforts to kill the South Suburban Airport.

Governor Ryan should hold fast to his promise not to permit any additional runways at O'Hare. To allow additional runways would simply enhance and expand the monopoly power of Fortress O'Hare and doom the opportunity to bring in new competition into the region by the South Suburban Airport.

The withholding of U.S. Transportation Department of any more federal funds for expansion of the United and American duopoly at Fortress O'Hare.

An explanation and action by Illinois' highest elected officials as to what they will do to break up the Fortress O'Hare monopoly and provide for a new south suburban airport.

A clear statement by Republican and Democratic candidates for president to state their positions on Fortress Hubs, especially O'Hare and the role of the federal government in either breaking up Fortress O'Hare or building new capacity for new competition at the South Suburban Airport.

STUDY FINDS MAJOR AIRLINES AND CHICAGO VIOLATE FEDERAL ANTITRUST LAWS TO SUPPORT HIGH MONOPOLY FARES AND BLOCK NEW COMPETITION

BENSENVILLE, IL, May 21, 2000.—The nation's major airlines have committed serious violations of U.S. antitrust laws by refusing to compete with each other in ''Fortress Hub'' markets, including Chicago, a study by the Suburban O'Hare Commission concludes.

The study (entitled ''If You Build It, We Won't Come: The Collective Refusal of the Major Airlines to Compete in the Chicago Air Travel Market'') calls for an investigation by the Justice Department into the anti-competitive practices by the airlines, and also by the city of Chicago, its consultants and third party allies, which have been complicit in the antitrust violations. Based on the study, SOC officials also called for:

U.S. Attorney General Janet Reno to begin civil action to break up the hub monopolies.

State attorneys general to recover treble damages for fliers who have been billed billions of dollars in excessive fares made possible by the monopolistic practices. The U.S. Transportation Department to withhold any more federal funds for the expansion, and further strengthening, of the United and American airlines' cartel at O'Hare Airport in Chicago.

General Accounting Office and Department of Justice audits of funds that have been used to abet the antitrust violations, including the airlines' and Chicago Mayor Richard M. Daley's efforts to kill a proposed hub airport in Chicago's south suburbs.

Governor Ryan to hold to his firm commitment not to permit new runways at O'Hare since such runways would expand United's and American's Fortress Hub monopoly at O'Hare and would doom the economic justification for the new South Suburban Airport.

SOC is a government agency representing more than 1 million residents who live in communities surrounding O'Hare airport. The study alleges that the airlines, the city of Chicago, its consultants and allies have used millions of dollars of taxpayers' money to thwart a south suburban airport that would bring competition to the United and American airlines' cartel at O'Hare and to expand the Fortress Hub monopoly at O'Hare.

''The antitrust violations are as clear and as egregious as if Ford said to General Motors, 'We won't compete against you in Chicago, if you agree not to compete against us by selling cars in Los Angeles' '' said John Geils, SOC chairman and mayor of Bensenville, which borders O'Hare Airport. ''The major airlines even went so far as to write two governors of Illinois, in their infamous 'If you build it, we won't come' letters that they would not use a south suburban airport. This extraordinarily pubic flaunting of the nation's antitrust laws simply cannot be tolerated.''

The heart of the antitrust violations, according to the study, is found in the de facto agreement among the big seven airlines—Northwest, United, American, Delta, US Air Continental and Trans World—to not significantly compete in each others' hub markets. The resulting domination by these airlines of their ''own'' airports (such as Delta in Atlanta, TWA in St. Louis and Northwest in the Twin Cities), forces fliers, especially time-sensitive business travelers, billions of dollars in unwarranted and additional fares, government studies have shown.

''Taxpayers should be concerned that millions of dollars of federal money, raised in part through taxes on every passenger using O'Hare, among other airports, have gone towards financing costly public relations and political lobbying campaigns to support this restraint of trade,'' said Craig Johnson, vice president of SOC and mayor of Elk Grove Village. ''At every turn, the recommendation of expert panels to relieve the pressure on O'Hare and the national aviation system by building an airport in Chicago's south suburbs has been stymied by this campaign. It begins with two airlines' insatiable desire to dominate the Chicago market and is abetted by other major airlines interested in protecting their own turf. And it is carried out by a compliant Chicago mayor who is dependent on the political spoils of a monopolistic O'Hare airport and those who share in those spoils—contractors, political consultants, big public relations firms, concessionaires and their friends in corporate board rooms and the media.''

Said Geils: ''The antitrust movement 100 hundred years ago was aimed at breaking up precisely this sort of attack on the public and consumers. After a century, we don't need new laws. What we need are responsible public officials who won't look the other way, who will carry out the sworn duties of their office.''

The hub-and-spoke airline market was made possible by aviation deregulation two decades ago, which gave commercial carriers the right to compete where, when and at what price they wanted. But instead of the robust competition that deregulation was intended to spawn, it led to increasing concentrations of power of separate airlines at separate ''Fortress Hub'' airports. While the industry will argue that this leads to economies of scales that are passed along to some air travelers in the form of price savings, government and independent studies show that large numbers of travelers—especially time-sensitive business travelers—are actually paying billions more.

The costs, said Geils, are paid in more than just higher fares. ''They come in the form of more air pollution, more noise and more safety hazards that the airlines are willing to impose on O'Hare area communities—simply to protect and expand the Fortress O'Hare monopoly. We now live in a bizarre world where the desire to protect and profit from illegal overcharges trump the protection of public health, safety and quality of life.''

[From The Sun Times, May 20, 2000]

GORE'S INTEREST HARDLY PUBLIC

(By Jesse Jackson, Jr.)

At a recent Democratic fund-raiser hosted by Mayor Daley, Al Gore, the vice president and presumptive Democratic nominee, said: ''The Department of Transportation has said at the present time it's a bit premature to build a third airport . . . and I have agreed with that. What happens in the future depends on the best public interest. I know there is a strong public interest in making sure that the health of O'Hare remains very strong.''

Let's look at Gore, O'Hare and the public interest.

First, is the ''best public interest'' served through local or national control of federal transportation policy? Gore came before the Congressional Black Caucus and said that ''federalism'' would be an important issue in the 2000 campaign. Since George W. Bush is openly a ''states' righter,'' I assumed that the vice president was appealing to us for support by saying, as president, he would fight for federal policies that contributed to the public interest. Gore did that in the South Carolina flag issue, but in the case of Elian Gonzalez in Florida and a third airport in Chicago he, too, deferred to the locals.

Gore is right that the DOT has recommended against building a third airport now. However, Gore did not share the rationale for the DOT's recommendation. Did he draw his conclusion after a thoughtful series of dispassionate, hard-nosed government studies? Or were 2000 political considerations uppermost? President Clinton has told some Chicagoans privately that, ''Jesse Jr. may be right about the airport, but this is an election year.'' However, at Daley's request, the Clinton-Gore administration in 1997 took Peotone off the nation's planning list, making it ineligible for federal funds. Thus, one is led to conclude that, in Chicago, local politics control federal aviation policy, rather than the public interest. O'Hare is the new patronage system in Chicago—which includes lucrative no-bid contracts, jobs and vendor access.

Is unbalanced growth in the public interest? Chicago eventually plans to spend at least $15 billion to gold-plate O'Hare (and Midway) and build additional runways at O'Hare. For considerably less money—$2.3 billion—one could build four runways and 140 gates and, more important, achieve balanced economic growth. A recent downtown business study said current plans will add $10 billion to the economy around O'Hare and 110,000 new jobs. Such a plan will meet Chicago's transportation needs for the foreseeable future and ''keep the health of O'Hare . . . very strong,'' as Gore desires. But such a policy will kill Peotone and its potential 236,000 new jobs, and will lead to increased class and caste segregation in the Chicago metropolitan area—a community already well known for such patterns. Was that understanding part of Gore's calculation of the ''public interest'' when he affirmed O'Hare and negated Peotone?

The top 11 businesses in the 2nd Congressional District, with nearly 600,000 residents, employ a mere 11,000 people—one job for every 60 people. By contrast, more than 100,000 people go to work in Elk Grove Village, a city of 36,000 people—three jobs for every person. The effect of Gore's position on O'Hare will only add to this disparity. Apparently, Gore sees the option as either a ''zero sum'' game—if we build Peotone it will hurt O'Hare—or he is willing to accept the consequences of unbalanced growth that would make the southern part of Chicago and Cook County even poorer, blacker, more segregated and dependent on government and taxpayers. Is Gore claiming that such economic imbalance and racial segregation are in the public interest?

Are increased class and caste disparities in the political interests of Gore? Quite naturally, politicians representing areas of excess private jobs will want lower taxes and less government—the Republican agenda. My area, in desperation, will turn to the government as the lifeboat of last resort to keep it afloat at a subsistence level, even as crime soars, social needs rise, services fail and hardworking, middle-class taxpayers revolt against ''welfare cheats and free-loaders.'' With nowhere else to go, these African Americans and poor people who vote will turn to Democrats to save them. Thus, it will perpetuate a Democratic image as the party of big government and undermine Gore's efforts to downsize and ''reinvent'' government.

Balanced economic growth better serves the entire region. In Gore's own political interests, he should look anew at O'Hare and Peotone and make another assessment of what is truly in the public interest.

MEMORANDUM—JULY 13, 2002

To: Senator Peter Fitzgerald, Congressman Henry Hyde, Congressman Jesse Jackson, Jr.

From: Joe Karaganis.

Re: Impact of the Lipinski/Oberstar Bill on Illinois Law and Unchecked Condemnation Powers for Chicago to Condemn Land in Other Communities.

Sandy Murdock asked me to give you some background legal analysis of the impact of the language in the Lipinski/Oberstar bill (see §3 of the bill) to create a federal law override (preemption) of the Illinois Aeronautics Act—specifically as that impact relates to expanding Chicago's power to engage in widespread condemnation and demolition of residential and business properties in other municipalities outside Chicago's boundaries.

As you know, on July 9, 2002 Judge Hollis Webster of the DuPage County Circuit Court entered a ruling declaring that Chicago had no authority under Illinois law to acquire property in other municipalities without complying first with §47 of the Illinois Aeronautics Act, 620 ILCS 5/47 which requires any municipality to first obtain a ''certificate of approval'' from the Illinois Department of Transportation before making any alteration or extension of an airport.

Prior to her ruling, Chicago had proposed to acquire and demolish over 500 homes in Bensenville before seeking a certificate of approval. In testimony at the July 9, injunction hearing before Judge Webster, the lead IDOT official in charge of the IDOT approval process (James Bildilli) testified:

1. Without judicial enforcement of the Illinois Aeronautics Act, Chicago could acquire and demolish all the homes and businesses proposed in Bensenville and Elk Grove (over 500 homes and dozens of businesses) and only after such acquisition and demolition, would IDOT some years later hold a hearing in which IDOT would hear evidence and consider whether the harm caused by the acquisition and demolition justified IDOT's approval of the project. Essentially IDOT, in reaching its decision on the certificate of approval, would hear and consider evidence of the harm caused by the acquisition and demolition and consider this harm as a basis of its decision—but only after the harm (and destruction) had been inflicted.

2. Without judicial enforcement of the Illinois Aeronautics Act, Chicago could acquire by condemnation or otherwise all of Bensenville, Wood Dale, Elk Grove Village (thousands of homes and businesses) and any other municipality—without any need for a prior certificate of approval from IDOT under §47.

Thankfully, Judge Webster rejected Chicago and IDOT's claims and applied and enforced the plain language of the statute—prohibiting Chicago from acquiring and demolishing homes and businesses in another municipality without first obtaining a certificate of approval from IDOT.

It is important for you to understand that the preemption approach of the Lipinski Bill (as well as Durbin's) will not simply federally destroy key provisions of the Illinois Aeronautics Act (namely §§47, 48, and 38.01). The Lipinski legislation has the effect of destroying the entire framework that Illinois has created under the Illinois Constitution and Illinois Municipal Code for preventing abuses of the state law condemnation power by municipalities. Here is the Illinois constitutional and Illinois statutory framework as upheld and enforced by Judge Webster:

1. Under the Illinois Constitution, Chicago has only that condemnation authority to condemn lands in other municipalities for airport purposes that is expressly delegated to Chicago by the laws of the State of Illinois. Article VII, Section 7 of the Illinois Constitution. Under long standing Illinois law (''Dillon's rule'' followed in almost all of the 50 states) any powers delegated to a municipality by the General Assembly under this constitutional provision are narrowly construed against assertions of authority by the municipality.

2. The Illinois General Assembly has delegated to Chicago the authority to condemn lands in other municipalities for airport purposes in the Illinois Municipal Code) (65 ILCS 5/11–102–4) but as an essential element of that authority to condemn has expressly mandated in the Illinois Municipal Code (65 ILCS 5/11–102–10) that this grant of authority to condemn must be in accordance with the requirements of the Illinois Aeronautics Act.

3. Acquisition of land by Chicago without complying with the Illinois Aeronautics Act is thus not only a violation of the Illinois Aeronautics Act, such failure constitutes an unlawful *ultra vires* action by Chicago in violation of the Illinois Constitution and the Illinois Municipal Code. Without compliance with the Illinois Aeronautics Act, Chicago has no authority under either Article VII, Section VII of the Illinois constitution and no authority under the Illinois Municipal Code to acquire land in other municipalities.

The Lipinski (and Durbin) legislation seeks to ''preempt'' and destroy the Illinois Aeronautics Act, but in doing so the Lipinski (and Durbin) legislation attempts to destroy and rewrite the framework created by the Illinois Constitution and the Illinois Municipal Code. Why not just abolish state constitutions and state statutory codes altogether and let Congress rewrite the state constitutions and state statutory codes of all 50 states?

Beyond the enormous legal implication of such action, the practical effect of the Lipinski (and Durbin) legislation is to do exactly what Judge Webster said Illinois law prohibits:

1. The Lipinski (and Durbin) legislation will ''authorize'' Chicago to condemn land in other municipalities even though no such authorization exists for Chicago to do so under the Illinois Constitution or Illinois Municipal Code.

2. The Lipinski (and Durbin) legislation will ''authorize'' Chicago to engage in unfettered condemnation authority with the ability to acquire and destroy thousands of homes and businesses in many other municipalities—all in violation of the limits on Chicago's state constitutional and state Municipal Code authority imposed by the Illinois Constitution and Illinois General Assembly.

As Senator Fitzgerald has pointed out in his remarks in his recent colloquy with Senator Durbin, the Lipinski (and Durbin) legislation would give Chicago unfettered ability to condemn properties outside the City of Chicago. If applied in other states, it would ''authorize'' one municipality (whichever municipality Congress chose) to disregard the limits on that municipality's delegated powers created by that state's constitution and state statutory code) and to condemn land in any other municipality in that state—in total federal preemption of that state's constitution and municipal code.

As we have said before, such radical action is a blatant violation of the federalism/Tenth Amendment Structure of the federal Constitution. But even if Congress did have such power, should Congress be overriding state constitutions and municipal codes to give federal ''authorization'' to one municipality in a state to run roughshod over other municipalities in that state in violation of the state constitution and municipal statutory code?

Postscript: There is another aspect of the Lipinski preemption which may be of interest. The Lipinski bill proposes to preempt §38.01 of the Illinois Aeronautics Act, 620 ILCS 5/38.01. This section requires Chicago to obtain IDOT approval for any grant of federal funding to be used on airport projects which the Illinois General Assembly has authorized Chicago to construct. This is an important financial oversight tool (created by the Illinois General Assembly as a condition of a grant of authority to build airports) which allows the State of Illinois to engage in financial oversight of airport actions by Chicago. Given the widespread abuses in contract awards that have been documented at O'Hare, the Lipinski (and Durbin) legislation will literally ''open the chicken coop'' to widespread potential for corruption.

July 24, 2001.

Hon. DON YOUNG,
Chairman, Transportation and Infrastructure Committee,
Washington, DC.

DEAR CONGRESSMAN YOUNG: I am writing to you about the grave concerns I have with H.R. 2107, The End Gridlock at Our Nation's Critical Airports Act of 2001. I share the concerns of Congressmen Henry Hyde, Jerry Weller and Philip Crane, who have sent a virtually identical letter to you under separate cover. I agree that in H.R. 2107—the attempt to rebuild and expand O'Hare Airport—Congress is inappropriately violating the Tenth Amendment.

In other contexts—specifically with regard to certain human rights—I believe that the Tenth Amendment serves to place limitations on the federal government with which I disagree. Indeed, in the area of human rights, I believe new amendments must be added to the Constitution to overcome the limitations of the Tenth Amendment. However, building airports is not a human right. Therefore, in the present context, I agree that building airports is appropriately within the purview of the states.

I believe attempts by Congress to strip the authority of Governor Ryan and the Illinois Legislature over the delegation and authorization to Chicago of state power to build airports—along with the authority of governors and state legislatures in a host of other states such as Massachusetts (Logan), New York (LaGuardia and JFK), New Jersey (Newark) California (San Francisco airport), and the State of Washington (Seattle)—raise serious constitutional questions.

Under the framework of federalism established by the federal constitution, Congress is without power to dictate to the states how the states delegate power—or limit the delegation of that power—to their political subdivisions. Unless and until Congress decides that the federal government should build airports, airports will continue to be built by states or their delegated agents (state political subdivisions or other agents of state power) as an exercise of state law and state power. Further compliance by the political subdivision of the oversight conditions imposed by the State legislature as a condition of delegating the state law authority to build airports is an essential element of that delegation of state power. If Congress strips away a key element of that state law delegation, it is highly unlikely that the political subdivision would continue to have the power to build airports under state law. The political subdivision's attempts to build runways would likely be ultra vires (without authority) under state law.

Under the Tenth Amendment and the framework of federalism built into the Constitution, Congress cannot command the States to affirmatively undertake an activity. Nor can Congress intrude upon or dictate to the states, the prerogatives of the states as to how to allocate and exercise

state power—either directly by the state or by delegation of state authority to its political subdivisions.

As stated by the United States Supreme Court.

[T]he Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States. . . . We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those Acts. New York v. United States, 505 U.S. 144, at 166 (1992) (emphasis added)

It is incontestable that the Constitution established a system of ''dual sovereignty.'' Printz v. United States, 521 U.S. 898, 918 (1997) (emphasis added)

Although the States surrendered many of their powers to the new Federal Government, they retained ''a residuary and inviolable sovereignty,'' The Federalist No. 39, at 245 (J. Madison). This is reflected throughout the Constitution's text.

Residual state sovereignty was also implicit, of course, in the Constitution's conferral upon Congress of not all governmental powers, but only discrete, enumerated ones, Art. I, Sec. 8, which implication was rendered express by the Tenth Amendment's assertion that ''[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.''

This separation of the two spheres is one of the Constitution's structural protections of liberty. ''Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front. Id at 921 quoting Gregory v. Ashcroft, 501 U.S. 452 at 458 (1991)

The Supreme Court in Printz went on to emphasize that this constitutional structural barrier to the Congress intruding on the State's sovereignty could not be avoided by claiming either a) that the congressional authority was pursuant to the Commerce Power and the ''necessary and proper clause of the Constitution or b) that the federal law ''preempted'' state law under the Supremacy Clause. 521 U.S. at 923–924.

It is important to note that Congress can regulate—but not affirmatively command—the states when the state decides to engage in interstate commerce. See Reno v. Condon, 528 U.S. 141 (2000). Thus in Reno, the Court upheld an act of Congress that restricted the ability of the state to distribute personal drivers' license information. But Reno did not involve an affirmative command of Congress to a state to affirmatively undertake an activity desired by Congress. Nor did Reno involve (as proposed here) an intrusion by the federal government into the delegation of state power by a state legislature—and the state legislature's express limits on that delegation of state power—to a state political subdivision.

H.R. 2107 would involve a federal law which would prohibit a state from restricting or limiting the delegated exercise of state power by a state's political subdivision. In this case, the proposed federal law would seek to bar the Illinois Legislature from deciding the allocation of the state's power to build an airport or runways—and especially the limits and conditions imposed by the State of Illinois on the delegation of that power to Chicago. The law is clear that Congress has no power to intrude upon or interfere with a state's decision as to how to allocate state power.

A state's authority to create, modify, or even eliminate the structure and powers of the state's political subdivisions—whether that subdivision be Chicago, Bensenville, or Elmhurst—is a matter left by our system of federalism and our federal Constitution to the exclusive authority of the states. As stated by the Seventh Circuit in Commissioners of Highways v. United States, 653 F.2d 292 (7th Cir. 1981) (quoting Hunter v. City of Pittsburgh, 207 U.S. 161, 178 (1907)):

Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personnel and real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. . . . The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Commissioners of Highways, 653 F.2d at 297

Chicago has acknowledged that Illinois has delegated its power to build and operate airports to its political subdivisions by express statutory delegation. 65 ILCS 5/11–102–1, 11–102–2 and 11–102–5. These state law delegations of the power to build airports and runways are subject to the Illinois Aeronautics Act requirements—including the requirement that the State approve any alterations of the airport—by their express terms. Any attempt by Congress to remove a condition or limitation imposed by the Illinois Legislature on the terms of that state law delegation of authority would likely destroy the delegation of state authority to build airports by the Illinois Legislature to Chicago—leaving Chicago without delegated state legislative authority to build runways and terminals at O'Hare or Midway. The requirement that Chicago receive a state permit is an express condition of the grant of state authority and an attempt by Congress to remove that condition or limitation would mean that there was no continuing valid state delegation of authority to Chicago to build airports. Chicago's attempts to build new runways would be ultra vires under state law as being without the required state legislative authority.

Very truly yours,

JESSE L. JACKSON, JR.
Member of Congress.

STATEMENT OF U.S. REPRESENTATIVE JESSE L. JACKSON, JR. BEFORE THE U.S. SENATE COMMERCE COMMITTEE—THURSDAY, MARCH 21ST, 2002 WASHINGTON, DC

I want to commend and thank Members of the Committee on Commerce, Science and Transportation for this opportunity to again discuss the future of Chicago's airports. As you know, I sent a letter to each of you stating my opposition to this bill. Many Members responded favorably, and for that I thank them. Today, my position has not changed.

As you know, my commitment to resolving Chicago's aviation capacity crisis predates my days in Congress. I ran on this issue in my first campaign. I won on this issue. It remains my first priority. It was the subject of my first speech in Congress. And it was the topic of my first debate in Washington.

I am elated that this issue—my issue—is now before the Congress. And while I thank Members of the Senate for their interest in trying to resolving this regional and national crisis, I must say that HR 3479 as amended falls woefully short of providing an adequate, equitable solution.

Please know that I do not oppose fixing O'Hare's problems. But I have many, many grave concerns about this specific expansion plan. Concerns about cost. About safety. About environment impact. About federal precedence. And about constitutionality.

Clearly this bill sets dangerous precedence by stating that Congress—not the FAA, not Departments of Transportation, not aviation experts—but Congress shall plan and build airports. Further, it ignores the 10th Amendment to the U.S. Constitution. It guts and/or undermines state laws and environmental protections. And it sidesteps the checks-and-balances and the public hearing process.

My focus today is the same as it's always been. Finding the best fix. And that best fix is the construction of a third Chicago airport near Peotone, Illinois. The plain truth is Peotone could be built in one-third the time at one-third the cost. For taxpayers and travelers, it's a no-brainer.

Unfortunately, this bill mandates expansion of O'Hare yet pays mere lip service to Peotone. It puts the projects on two separate and unequal tracks. That is my opinion. That is also the opinion of the Congressional Research Service, whose analysis I will provide to you.

FEDERAL STUDY CONFIRMS AIRPORT DEAL SHORTCHANGES PEOTONE

An analysis released today by the independent, non-partisan research arm of Congress confirmed what Peotone proponents have said all along: The Ryan-Daley airport agreement puts O'Hare on the fast track and just pays lip service to Peotone.

An analysis released today by the Congressional Research Service concludes that the proposed National Aviation Capacity Expansion Act puts the two projects on separate and unequal tracks.

The CRS analysis states that the Federal Government ''shall construct the runway redesign plan'' at O'Hare but would merely ''review'' and give ''consideration'' to the Peotone Airport project.

In reaction to the release of today's report, Congressman Jackson reiterated his opposition to the measure. ''This study unmasks the bare truth about the agreement between the Mayor and the Governor. For those claiming that the deal is good for the Third Airport, it's not. The masquerade ball is over,'' Jackson said.

''Peotone has been stuck in the paralysis of analysis for 15 years. We don't need any more reviews. We need a Third Airport,'' Jackson said. ''Peotone can be built faster cheaper, safer, and cleaner than expanding O'Hare, and presents a more secure and more permanent solution to Illinois' aviation crisis. This is shortsighted legislation and a bad deal for the public.''

The CRS report states that the Lipinski-Durbin bill ''specifically states that the (FAA) Administrator 'shall construct' the runway redesign plan; however, there is no parallel language regarding the construction of the south suburban airport.''

CRS concludes that the bill ''provides for the Administrator's review of the Peotone Airport project (and) provides for the expansion of O'Hare. The provisions appear to operate independently of each other and are

not drafted in parallel language, and provide different directions to the Administrator.''

CONGRESSIONAL RESEARCH SERVICE
MEMORANDUM—FEBRUARY 6, 2002

To: Hon. Jesse L. Jackson, Jr., Attention: George Seymour

From: Douglas Reid Weimer, Legislative Attorney, American Law Division

Subject: Examination of Certain Provisions of H.R. 3479: National Aviation Capacity Expansion Act

BACKGROUND

This memorandum summarizes various telephone discussions between George Seymour and Rick Bryant of your staff, and Douglas Weimer of the American Law Division. Your staff has expressed interest in certain provisions of H.R. 3470, the proposed National Aviation Capacity Expansion Act (''bill''). These provisions are examined and analyzed in the following memorandum.

The bill contains various provisions relating to the expansion of aviation capacity in the Chicago area. Among the provisions contained in the bill are provisions relating to O'Hare International Airport (''O'Hare''), Meigs Field, a proposed new carrier airport located near Peotone, Illinois (''Peotone''), and other projects. Your office has expressed repeated concern that the news media and various commentators have reported that the bill would apparently implement the various projects in a similar manner and that similar legislative language is used to implement the various projects. The news articles that you have cited concerning the bill tend to report the various elements of the bill without distinguishing the bill language and the differences as to the means in which the various projects may be implemented.

ANALYSIS

The chief purpose of the bill it so expand aviation capacity in the Chicago area, through a variety of means. Section 3 of the bill deals with airport redesign and other issues. Your staff has focused upon the interpretation and the bill language of two particular subsections—(e) and (f)—of Section 3, which are considered below.

''(e) SOUTH SUBURBAN AIRPORT FEDERAL FUNDING.—The Administrator shall give priority consideration to a letter of intent application submitted by the State of Illinois or a political Subdivision thereof for the construction of the south suburban airport. The Administrator shall consider the letter not later than 90 days after the Administrator issues final approval of the airport layout plan for the south suburban airport.''

If enacted, this bill language would relate to the federal funding for the proposed airport to be constructed at Peotone. The ''Administrator'' refers to the Administrator of the Federal Aviation Administration. The Administrator is directed to give priority consideration to a letter of intent application (''application'') submitted by Illinois, or a political subdivision for the construction of the ''south suburban airport'' the proposed airport at Peotone.

The Administrator is given specific directions concerning the application and for the time consideration of the application. Concern has been expressed that the Administrator is given certain duties and directions, but that there is no specific language to ensure and/or to compel that the Administrator will comply with the Congressional mandate, if the Administrator does not choose to follow the Congressional direction. Congress possesses inherent authority to oversee the project, as well as the Administrator's compliance with the statutory requirements, by way of its oversight and appropriations functions. Congress and congressional committees have virtually plenary authority to elicit information which is necessary to carry out their legislative functions from executive agencies, private persons, and organizations. Various decisions of the Supreme Court have established that the oversight and investigatory power of Congress is an inherent part of the legislative function and is implied from the general vesting of the legislative power of Congress. Thus, courts have held that Congress' constitutional authority to enact legislation and appropriate money inherently vests it with power to engage in continuous oversight. The Supreme Court has described the scope of this power of inquiry as to be ''as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.''

Specific interest is focused on the language ''shall consider'' used in the second sentence of the subsection. In the context of this subsection, it should not necessarily be considered to mean the implementation of an accelerated approval/construction process for the airport. While these events may occur, such a course of action is not specifically provided by the legislation.

Your staff has also focused on subsection (f), dealing with the proposed federal construction at O'Hare. The bill provides:

''(f) FEDERAL CONSTRUCTION.—

(1) On July 1, 2004, or as soon as practicable thereafter, the Administrator shall construct the runway redesign plan as a Federal project, if—

(A) the Administrator finds, after notice and opportunity for public comment, that a continuous course of construction of the runway design plan has not commenced and is not reasonably expected to commence by December 2, 2004;

(B) Chicago agrees in writing to construction of the runway redesign plan as a Federal project without cost to the United States, except such funds as may be authorized under chapter 471 of title 49, United States Code, under authority of paragraph (4);

(C) Chicago enters into an agreement, acceptable to the Administrator, to protect the interests of the United States Government with respect to the construction, operation, and maintenance of the runway redesign plan;

(D) the agreement with Chicago, at a minimum provides for Chicago to take over ownership and operations control of each element of the runway redesign plan upon completion of construction of such element by the Administrator;

(E) Chicago provides, without cost to the United States Government (except such funds as may be authorized under chapter 471 of title 49, United States Code, under the authority of paragraph (4)), land easements, rights-of-way, rights of entry, and other interests in land or property necessary to permit construction of the runway redesign plan as a Federal project and to protect the interests of the United States Government in its construction, operation, maintenance, and use; and

(F) the Administrator is satisfied that the costs of the runway redesign plan will be paid from sources normally used for airport development projects of similar kind and scope.

(2) The Administrator may make an agreement with the City of Chicago under which Chicago will provide the work described in paragraph (1), for the benefit of the Administrator.

(3) The Administrator is authorized and directed to acquire in the name of the United States all land, easements, rights-of-way, rights of entry, or other interests in land or property necessary for the runway redesign plan under this section, subject to such terms and conditions as the Administrator deems necessary to protect the interests of the United States.

(4) Chicago shall be deemed the owner and operator of each element of the runway reconfiguration plan under section 40117 and chapter 471 of title 49, United States Code, notwithstanding any other provision of this section or any of the provisions in such title referred to in this subsection.''

The Administrator is directed to construct the O'Hare runway plan as a Federal project if certain conditions are met: (1) construction of the runway design plan has not begun and is not expected to begin by December 1, 2004; (2) Chicago agrees to the runway plan as a Federal project without cost to the United States, with certain exceptions; (3) Chicago enters into an agreement to protect Federal Government interests concerning construction, operation, and maintenance of the runway project; (4) the agreement provides that Chicago take over the ownership and operation control of each element of the runway design plan upon its completion; (5) Chicago provides, without cost, the land, easements, right-of-way, rights of entry, and other interests in land/property as are required to allow the construction of the runway plan as a Federal project and to protect the interests of the Federal Government in its construction, operation, maintenance, and use; and (6) the Administrator is satisfied that the redesign plan costs will be paid from the usual sources used for airport development projects of similar kind and scope.

Paragraph 2 provides that the Administrator ''may'' make an agreement with Chicago, whereby Chicago will provide the work described above in paragraph (1) for the benefit of the Administrator. It should be noted that the use of the word ''may'' would appear to make this language optional, and would not necessarily require the Administrator to enter into such agreement with Chicago.

Paragraph 3 authorizes and directs the Administrator to acquire in the name of the Federal Government those property interests needed for the redesign plan, subject to the terms and conditions that the Administrator feels are necessary to protect the interests of the United States.

Paragraph 4 provides that Chicago will be deemed to be the owner and operator of each element of the runway reconfiguration plan, notwithstanding any other provision of this section.

Discussion has focused on the different legislative language used in subsection (e) and (f). Subsection (f) specifically states that the Administrator ''shall construct'' the runway redesign plan; however, there is no parallel language regarding the construction of the south suburban airport in subsection (e). The provisions of the subsections appear to be independent of each other and provide very different directions to the Administrator, Hence, it may be interpreted that subsection (f) would authorize runway construction (if certain conditions are met), and subsection (e) is concerned primarily with the review and the consideration of an airport construction plan.

It is possible that the Administrator's actions concerning the implementation of this legislation, if enacted, may be subject to judicial review. Judicial review of agency activity or inactivity provides control over administrative behavior. Judicial review of agency action/inaction may provide appropriate relief for a party who is injured by the agency's action/inaction. The Administrative Procedure Act (''APA'') provides general guidelines for determining the proper court in which to seek relief. Some statutes provide specific review proceedings for agency actions. Subsection (h) of the bill provides

for judicial review of an order issued by the Administrator. The bill provides that the bill may be reviewed pursuant to the provisions contained at 49 U.S.C. § 46110.

If the Administrator does not issue an order and judicial review is not possible under this provision, then it is possible that ''nonstatutory review'' may occur. When Congress has not created a special statutory procedure for judicial review, an injured party may seek ''nonstatutory review.'' This review is based upon some statutory grant of subject matter jurisdiction. Therefore, a party who wants to invoke nonstatutory review will look to the general grants of original jurisdiction that apply to the federal courts. It is possible that an available basis for jurisdiction in this case—if the Administrator does not carry out his/her Congressional mandate—may be under the general federal question jurisdiction statute which authorizes the federal district courts to entertain any case ''arising under'' the Constitution or the laws of the United States. An action for relief under this provision is usually the most direct way to obtain nonstatutory review of an agency action. Hence, it is possible that an action could be brought under this statute to compel the Administrator to comply with the provisions contained in the bill.

CONCLUSION

This memo has summarized staff discussion concerning certain provisions contained in the proposed National Aviation Capacity Expansion Act. Subsection (e) provides for the Administrator's review of the Peotone Airport project. Subsection (f) provides for the expansion of O'Hare. The provisions appear to operate independently of each other, are not drafted in parallel language, and provide different directions to the Administrator. The Administrator is given certain responsibilities under both subsections. Congress possesses plenary oversight authority over federally funded projects. This would provide oversight Administrator is given certain responsibilities under both subsections. Congress possesses plenary oversight authority over federally funded projects. This would provide oversight over the Administrator and his/her actions. A judicial proceeding may be possible against the Administrator to compel the Administrator to fulfill the statutory responsibilities provided by the bill.

STATEMENT OF U.S. REPRESENTATIVE JESSE L. JACKSON JR. BEFORE THE U.S. HOUSE AVIATION SUBCOMMITTEE—WEDNESDAY, AUGUST 1ST, 2001 WASHINGTON, DC

I want to thank Members of the House Aviation Subcommittee for this opportunity to discuss Chicago's aviation future. As you may know, I ran on this issue in 1995, and have supported expanding aviation capacity by building a third regional airport in Peotone, Illinois.

Let me begin with a personal anecdote that, from my perspective, illustrates why we're here. I won my first term in a special election and on December 14th, 1995 took the Oath of Office. Congressman Lipinski, my good friend and fellow Chicagoan whose district borders mine, was present and his was the seventh or eighth hand I shook as a new Member. He told me then: ''Young man, I want you to know that I can be very helpful to you during your stay in Congress, but you're never going to get that new airport you spoke about during your campaign.''

Since then, Congressman Lipinski has been helpful and we've worked together on many important issues. But, he's also made good on his word to block a third airport.

It is this rigid stance by many Chicago officials that's allowed a local problem to escalate into a national crisis. Once the nation's best and busiest crossroads, O'Hare is now its worst choke point—overpriced, overburdened and overwhelmed.

And to think it was avoidable. This debate dates back to 1984 when the Federal Aviation Administration determined that Chicago was quickly running out of capacity. The FAA directed Illinois, Indiana and Wisconsin to conduct a feasibility study for a new airport. The exhaustive study of numerous sites concluded almost 10 years ago that gridlock could be best avoided by building a south suburban airport. The State of Illinois then drafted detailed plans for an airport near Peotone.

Unfortunately, despite the FAA's dire warning and the State's best efforts, I watched in amazement as the City of Chicago went to extremes to thwart and delay any new capacity.

In the late 1980s, Mayor Daley mocked the idea of a third airport. By 1990, the City did an about-face and proposed building a third airport within the City. The City even initiated federal legislation creating the Passenger Facility Charge (PFC) to pay for it. But two years later the City reversed itself again and abandoned the plan, yet continued to collect $90 million a year in PFCs. This summer, the City told the Illinois Legislature that O'Hare needed no new capacity until the year 2012, then, in yet another reversal, three weeks ago declared O'Hare needed six new runways.

As the City was spending hundreds of millions of dollars on consultants to tell us that the City didn't, did, didn't, did need new capacity, it continued to be consistent on the one thing—fighting to kill the third airport.

Sadly, that opposition was never based on substantive issues—regional capacity, public safety or air travel efficiency. Instead it was rooted in protecting patronage, inside deals and the status quo. In fact, earlier this year the Chicago Tribute won a Pulitzer Prize for documenting the ''stench at O'Hare.''

Still, for eight years, City Hall leveraged the Clinton FAA to stall Peotone. The FAA, ignoring its own warnings of approaching gridlock, conspired with the city to:

(1) Mandate ''regional consensus,'' thus requiring Chicago mayoral approval for any new regional airport;

(2) Remove Peotone from the NPIAS list in 1997, after it emerged as the frontrunner. Peotone had been on the NPIAS for 12 years;

(3) Hold up the Peotone environmental review from 1997 to 2000.

In short, the same parties who created this aviation mess are now saying ''trust us to clean it up'' with H.R. 2107. But their hands are too dirty and their interests are too narrow. Proponents of this legislation claim to be taking the high road. But this is a dead end.

Fortunately, there is a better alternative. Compared to O'Hare expansion, Peotone could be built in one-third the time at one-third the cost—both important facts given that the crisis is imminent and that the public will ultimately pay for any fix.

Site selection aside, however, there is yet another, even bigger problem with H.R. 2107. It is the United States Constitution.

H.R. 2107 strips Illinois Governor George Ryan of legitimate state power in an apparent violation of the ''reserved powers'' clause of the 10th Amendment.

Under the 10th Amendment, Congress cannot command Illinois to affirmatively undertake an activity, nor can it intrude upon Illinois' prerogative to exercise or delegate its power. As stated by the United States Supreme Court: ''[T]he Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States . . . We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts.'' [New York v. United States, 1992]

Supporters have cited the Commerce Clause in defending his legislation. But the Supreme Court in Printz v. United States specifically emphasized the 10th Amendment barrier to Congress intruding on a state's sovereignty by saying that it could not be avoided by claiming either, one, that congressional authority was pursuant to the Commerce Power, or, two, that federal law ''preempted'' state law under the Supremacy Clause.

Chicago has acknowledged Illinois' authority to build and operate airports by express statutory delegation through the Illinois Aeronautics Act, including the requirement that the State approve any airport alterations. Under the 10th Amendment, if Congress strips away a key element of the Illinois law, Chicago's attempt to build runways would likely be ultra vires (without authority) under Illinois law.

Moreover, H.R. 2017 converts the concept of dual sovereignty into tri-sovereignty, by going beyond states' rights to city rights. It gives Mayor Daley (and the other local officials in charge of the 68 largest airports in the country) a greater say over national aviation policy than the federal government or the fifty governors.

Indeed, H.R. 2107 sets federalism on its head. It makes about as much sense as putting the local police department in charge of national defense.

Such legislation won't improve aviation services. In fact, it increases the likelihood for a constitutional challenge that will further prolong this crisis.

So, from a practical standpoint, I urge the subcommittee to reject this measure, to reject cramming more planes into one of the nation's most overcrowded airport, to reject turning O'Hare into the world's largest construction site for the next 20 years, and to reject sticking the taxpayers with an outrageous bill.

I strongly urge the committee to reject this unprecedented, unwise and unconstitutional attack against our fifty states and our Founding Fathers. Thank you.

SUBURBAN O'HARE COMMISSION, FEBRUARY 13, 2002—A BETTER PLAN FOR CURING THE O'HARE AIRPORT BOTTLENECK

Chicago—A plan for relieving the Chicago aviation bottleneck was unveiled today that costs less, is more efficient, less destructive and can be realized quicker than a ''compromise'' plan that Chicago Mayor Richard M. Daley and Illinois Gov. George Ryan are trying to rush through Congress.

The plan was crafted by the Suburban O'Hare Commission, a council of governments representing a million residents living around O'Hare Airport.

The plan includes runway, terminal and other improvements at O'Hare International Airport, to make it more efficient, competitive and convenient. The plan also includes alternatives to the costly and destructive ''western access'' proposed in the Daley-Ryan plant. The centerpiece of the plan remains, as it has for well over a decade, a major hub airport in the south suburbs that had been urged by experts and government officials from three states, and would be operational now if not for obstruction from Chicago Mayor Richard M. Daley. The plan provides for many more flights to the region, and, consequently, many more jobs.

''We always have been in favor of a strong O'Hare Airport because of its importance to

our communities and to the regional economy,'' said John Geils, SOC Chairman and president of the Village of Bensenville. ''This will come as a surprise only to those who have been taken in by the rhetoric of our opponents, who maliciously tried to portray us as anti-O'Hare zealots, willing to damage or even destroy O'Hare. Our plan will expand the region's aviation and economic growth; the Daley-Ryan plan will stifle that growth.

''The claimed benefits—including delay reductions, job increases, improved safety, greater competition and less noise—of the Daley-Ryan O'Hare expansion plan are untrue. We have a plan that is better for the entire region, and not just for Chicago City Hall and its big business friends.'' Geils said.

Among the improvements are a realistically modernized O'Hare, instead of the impossible attempt by Daley and Ryan to stuff ten pounds of potatoes into a five-pound sack. Terminals would be updated, with an eye to matching them with capacity and making them more user friendly. Selected runways would be widened to accommodate the large new jets, such as the A380X, thus increasing the number of passengers the airport can serve, without increasing air traffic. Western access and a bypass route would be built on airport property, skirting O'Hare to the south—as originally planned, thus avoiding the destruction of uncounted homes and businesses, as under the Daley-Ryan plan.

The SOC Solution also would increase competition at O'Hare, through terminal and other facilities improvements so that air travelers using the competition are not treated as second-class customers. Funding of O'Hare improvements would be disconnected from a complicated bonding scheme that allows United and American airlines to become more entrenched and to continue to charge anti-competitive fares. In addition, some of the lucrative gambling revenues, now going to enrich political insiders, would be used for a competitive makeover of O'Hare.

SOC's plan also would provide better safety and environmental protections. Every home impacted by noise at O'Hare and Midway would be soundproofed, instead of a select few as provided under the current, flawed standards adopted by Chicago. O'Hare neighbors would be spared the concentration of air pollution brought by a doubling of flights at what is already the state's largest single air polluter. Under the Daley-Ryan plan, O'Hare neighbors would find themselves in federally required crash zones at the end of runways, forcing them to either give up their homes or live in devalued property in great risk. Because most of the region's air traffic growth would use the South Suburban airport where pollution and safety buffers are required under current federal standards, fewer total people in the region would be subjected to health and safety risks.

Key to the SOC Solution is the construction of a truly regional hub airport in the South Suburbs, rather than an inadequate ''reliever'' airport as envisioned under the Daley-Ryan plan. Just as New York City and Washington, D.C. have more than one hub airport, a true regional airport in the South Suburbs would give Chicago the kind of potential it needs with three hub airports (O'Hare, Midway and Peotone) to maintain its aviation dominance for decades. Despite the long-made assertions by entrenched interests, such as United and American airlines, that the Chicago area didn't need a second hub airport, Midway already is developing into a hub simply because of market forces. With Midway reaching capacity in just a few years, and O'Hare already at capacity, the sounds of ''no one will come to Peotone'' no longer are heard.

Finally, the SOC Solution will protect taxpayers by creating an oversight board of improvements at all airports, including the south suburban airport and Midway.

''The SOC Solution is not a fragmented plan that simply focuses on O'Hare, which under the Daley-Ryan proposal is merely an instrument for extending the political and economic might of a select few,'' said Geils. ''Ours is a plan for a regional airport system—one that is based on common sense and what is fair and good for the entire public.''

COMPARISONS OF THE DALEY-RYAN PLAN AND THE SOC SOLUTION

	Daley-Ryan O'Hare plan	SOC Plan
Provides Immediate Solution to the Delay Problem at O'Hare?	No—runways will not be built for years and by the time they are built, delays will increase with increased traffic growth.	Yes—delays addressed immediately by FAA recommended demand management techniques such as proposed for LaGuardia.
Which Plan Provides Greatest Capacity Growth for Region?	Max increase of 700,000 operations; likely much less	1,600,000 operations capacity at South Suburban Airport—far more than Daley-Ryan plan.
Which Plan Produces Greatest Opportunity for New Competition and Lower Fares?.	Daley-Ryan O'Hare plan solidifies and expands United-American monopoly dominance—hundreds of millions in losses to Chicago travelers each year.	Wide open opportunity for major competition—both at O'Hare and at South Suburban Airport.
Which Plan Provides Greater Job Growth?	Daley-Ryan O'Hare plan job growth of 195,000 jobs dependent on 700,000 new operations capacity at O'Hare—real capacity unlikely and far less jobs.	Suburban O'Hare Commission plan provides 1.6 million new operations capacity in addition to O'Hare—far more jobs than Daley-Ryan O'Hare plan.
Which Plan Makes Peotone A Reality?	No provision in Daley-Ryan O'Hare plan to actually fund and build Peotone—an exercise in political rhetoric with little likelihood of success.	SOC plan borrows from idea by Senator Patrick O'Malley to use huge excess gambling income now going to political insiders to fund Peotone construction.
Which Plan Produces Less Toxic Air Pollution Impact on Surrounding communities?.	Daley-Ryan O'Hare plan makes toxic emissions at O'Hare much worse—900,000 flights to 1, 600,000—no environmental buffer.	Huge non-residential land buffer at Peotone protects public health and prevents residential exposures.
Which Plan Produces Less Noise Impact on Surrounding communities?	Daley-Ryan O'Hare plan makes aircraft noise at O'Hare much worse—900,000 flights to 1, 600,000—no environmental buffer.	Huge non-residential land buffer at Peotone protects against residential noise exposure.
Which Plan is Safer?	Daley-Ryan O'Hare plan reduces safety margins at O'Hare—more congested airspace, less safety on runways and taxiways, occupied runway crash zones.	SOC plan much safer because South Suburban Airport site can address runway safety concerns much easier than O'Hare because much more land available.
Which Plan Provides Justice and Equity for the South Side and South Suburbs?	Daley-Ryan O'Hare plan guarantees exactly what Daley wants—an empty cornfield at Peotone.	SOC plan insures construction of major new airport with adequate funding.
Which Plan Preserves State Law protections?	Daley-Ryan O'Hare plan destroys state law protections for public, health, the environment, the consumer.	SOC plan preserves and protects state law safeguards for our environment, public health and the consumer.
Which Plan Provides Greatest Economic Benefits Over Costs?	Daley-Ryan O'Hare plan has huge costs that likely far exceed the economic benefits. (which are far less than claimed).	SOC plan provides much greater regional capacity, eliminates the delay problem in the short and long term, and can be built far faster, with far less cost. Also provides much greater potential for new competition and lower fares. A much greater economic bang for far less bucks.

THE DALEY-RYAN PLAN'S ALLEGED BENEFITS AND THE REALITY

Daley-Ryan O'Hare Plan Claims	Reality
Delay Reduction Untrue. Daley-Ryan O'Hare plan claims it reduces bad weather delays by 95% and overall delay by 79%.	Total bad weather and good weather delays will increase dramatically under Daley-Ryan O'Hare plan.
Delay Savings Untrue. Daley-Ryan O'Hare plan claims it will produce delay savings of $370 million annually and passenger delay savings of $380 million annually.	Daley-Ryan O'Hare plan will increase total delay costs by hundreds of millions of dollars annually.
Cost Claims Untrue. Daley-Ryan O'Hare plan says cost is: $6.6 billion	Real Costs—$15 billion to $20 billion.
Capacity Claims Untrue. Daley-Ryan O'Hare plan claims it will meet aviation needs of Region	Real Capacity of Daley-Ryan O'Hare plan:
Increase O'Hare passenger ''enplanements'' (boarding passengers) from current 34 million to 76 million	Falls far short of 76 million passenger capacity and far short of capacity of 1,600,000 operations.
Increase O'Hare operational capacity from 900,000 to 1,600,000 operations	Leaves region with huge capacity gap for both passengers and aircraft operations.
Peotone Claim untrue. Daley-Ryan O'Hare plan says they will build Peotone	Daley-Ryan O'Hare plan destroys economic rationale and funding for Peotone: If Daley-Ryan O'Hare plan meets its capacity claims, no economic justification for Peotone—not needed. If Daley-Ryan O'Hare plan falls short of capacity, $15 billion to $20 billion spent at O'Hare will exhaust federal and state funding resources.
Jobs Claims untrue. Daley-Ryan O'Hare plan says it will create 195,000 jobs	Actual jobs fall far short of the 195,000 jobs claimed because of enormous capacity shortfall; much greater job growth under SOC alternative.
Financial Claims Untrue. Daley-Ryan O'Hare plan says there is plenty of federal and airlines money to expand O'Hare and pay $15 billion to $20 billion cost.	Daley-Ryan O'Hare plan will bankrupt federal airport aid trust fund and United and American cannot afford billions in bonds.
Hiding the Data and Information. Daley-Ryan O'Hare plan claims based on slick Power Point Slides—no backup information provided.	Daley and Ryan O'Hare plan stonewall on documents and data backing up their claims—refuse to produce documents in Freedom of Information requests.
Monopoly Overcharge Problem. Daley-Ryan O'Hare plan makes no mention of monopoly overcharge problem at O'Hare—costing Chicago based travelers hundreds of millions of dollars per year. As Governor-Elect George Ryan said, monopoly overcharges at O'Hare gouged travelers over $600 million per year.	Daley-Ryan O'Hare plan will expand and strengthen the monopoly hold United and American have on Chicago market—costing Chicago business travelers hundreds of millions annually in overcharges.
Where is the Western Ring Road? Daley-Ryan O'Hare plan say western ring road is needed for O'Hare expansion; yet refuse to disclose location, cost, and impact on local jobs, industry, housing.	Western Ring Road route pushed west by Daley-Ryan O'Hare plan into valuable and important industrial and residential areas of Elk Grove Village and Bensenville—leading to huge losses in jobs, tax revenues, economic development and residential quality of life.
Where are all the Terminals? Daley and Ryan say they have identified all the terminals needed for the Daley-Ryan O'Hare plan.	Daley now says all but one of the new terminals shown on the Daley-Ryan O'Hare plan (new Terminals 4 and 6) needed for existing runways and that new (as yet unidentified terminals will be needed for Daley-Ryan O'Hare plan—no locations shown, unidentified billions of dollars in additional unstated costs.
Noise—the Daley Ryan New Math. Daley-Ryan O'Hare plan says noise will be less at 1,600,000 operations than at 900,000 operations.	There will be significantly more noise at 1,600,000 operations than at 900,000 operations.
Toxic Air Pollution. Daley-Ryan O'Hare plan makes no mention of toxic air pollution yet Ryan as Governor said O'Hare should not be expanded because of toxic air pollution problem.	There will be significantly more toxic air pollution at 1,600,000 operations than at 900,000 operations.

THE DALEY-RYAN PLAN'S ALLEGED BENEFITS AND THE REALITY—Continued

Daley-Ryan O'Hare Plan Claims	Reality
Benefit-Cost Analysis. Daley-Ryan O'Hare plan says it meets federal benefit-cost analysis requirements—including requirement that federal government chose the alternative that produces greatest net benefits.	Reality is that benefits of Daley-Ryan O'Hare plan may not exceed the huge costs. It is also clear that placing the new capacity at the new South Suburban Airport rather than an expanded O'Hare produces far grater economic benefits at far less cost than the Daley-Ryan O'Hare plan.
Increased Safety Hazards. Daley and Ryan say their plan is safe	Daley-Ryan O'Hare plan creates major safety hazards, including: increase in traffic incursions (collision risk), destruction of safest runways for bad weather winter storm conditions (14/32s), high congestion in O'Hare area air space, risky runway protection (crash zones) in occupied areas.
Compliance With State Law. Daley and Ryan say that their plan complies with state law and that they are seeking federal preemption of state law only to prevent upsetting Daley-Ryan deal by a future governor.	Daley and Ryan both know that they (not some future governor) have both violated state law by failing to meet the requirements of the Illinois Aeronautics Act; purpose of bill is to immunize this illegality.
$15 Billion into the O'Hare Money Pit: Problems of Corruption in Management of O'Hare. Daley and Ryan make no mention of the history of rampant corruption and kickbacks to Daley friends and cronies in O'Hare contracts or the need for safeguards and reforms to insure the integrity of the process.	Putting $15 or more billion dollars into the corrupt contract management system that infects Chicago public works awards—especially at O'Hare, is pouring public resources into a cesspool. The First Commandment of Chicago O'Hare contracts is that the contractor has to hire one of Daley's friends or political associates on contract awards.
Economic Equity and Justice for the South Side and South Suburbs. Daley-Ryan O'Hare plan offers little but empty rhetoric for Peotone and south suburban economic development.	Daley-Ryan O'Hare plan calls for putting virtually all of the economic growth of aviation demand at O'Hare—leaving South Side and South Suburbs either empty promises, or a white elephant token airport.

GRAVE CONCERNS NEAR O'HARE

(By Robert C. Herguth)

American Indian remains that were exhumed 50 years ago to make way for O'Hare Airport might have to be moved again to accommodate Mayor Daley's runway expansion plans.

That's disturbing to some Native Americans, who say they want their ancestors and relics treated with greater respect.

And it's prompting local opponents of the proposed closure of two O'Hare cemeteries—one of which has Indians—to explore whether federal laws that offer limited protection to Native American burial sites and artifacts could help them resist the city's efforts.

''Maybe the federal law might come to our aid,'' said Bob Placek, a member of Resthaven Cemetery's board who estimates 40 of his relatives, all German and German-American, are buried there. ''The dead folks out there aren't trying to be obstructionists, they're trying to rest in peace. . . . I feel it's a desecration to move a cemetery. It's a disregard for our family's history.''

Resthaven is a resting place for European settlers, their descendants and, possibly, Potawatomi.

It seems unlikely federal law, specifically the Native American Grave Protection and Repatriation Act, would lend much muscle to those opposed to Daley's plan, which calls for knocking out three runways, building four new ones and adding a western entrance and terminal.

''Primarily, the legislation applies to federal lands and tribal lands,'' said Claricy Smith, deputy regional director for the Bureau of Indian Affairs.

Even if someone made the argument that O'Hare is effectively federal land because it uses federal money, the most Resthaven proponents could probably hope for is a short delay, a say in how any disinterment takes place and, if they are Indian, the opportunity to claim the bodies of Native Americans.

''They've got a hard road,'' Smith said of those who might try to halt a Resthaven closure on the basis of Indian remains.

When O'Hare was being built five decades back, an old Indian burial ground that had become a cemetery for the area's white settlers was bulldozed. Some bodies were moved to a west suburban cemetery and some, including an unknown number of Indians, were believed to be transferred to Resthaven, according to published accounts and those familiar with local history.

''Ma used to talk about Indians being buried at Resthaven,'' said the 44-year-old Placek, who believes the Indians share a mass grave. His mother, who died in 1996, also is buried at Resthaven. ''I used to hear as a little kid Potawatomi'' were there.

Regardless of the tribe to which the dead belonged, the Forest County Potawatomi Community of Wisconsin, one of several Potawatomi bands relatively close to Chicago, plans to get involved.

''It's concerning,'' said Clarice Ritchie, a researcher for the community of about 1,000 who hadn't heard about the issue until contacted by a reporter.

''At this stage of the game, who can determine who they were specifically? But we run into this sort of circumstance in many instances throughout the state of Wisconsin, and some in Illinois, and we take care of them as if they were relatives,'' she said. ''We're all related, we're all created from God, so we do the right thing, we take care of anybody and try to see that they're either not disturbed or properly taken care of.''

''I guess we'd have to keep our mind broad as to what would be done,'' Ritchie said. ''Naturally we don't like to see graves disturbed, but somebody has already disturbed them once. . . . I guess what I'd probably do is talk to the tribal elders and spiritual people and other tribes who could be in the area and come to a conclusion of what should be done.''

Bill Daniels, one of the Potawatomi band's spiritual leaders, said spirits may not look kindly on those who move remains.

''It's not good to do that—move a cemetery or just plow over it,'' he said.

Daley's plan, which still must be approved by state and federal officials, also may displace nearby St. Johannes Cemetery, which is not believed to have any Native American bodies.

John Harris, the deputy Chicago aviation commissioner overseeing the mayor's $6 billion project, said this is the first he's heard that there might be Indian remains at Resthaven, and city officials are trying to verify it.

''I have no reason to doubt them at this time, but I have no independent knowledge,'' he said. But ''whether they're Indians or not, we would exercise an extreme level of sensitivity in the interest of their survivors.''

Resthaven, which is loosely affiliated with the United Methodist Church, has about 200 graves, some of which date to the 19th century. It's located on about 2 acres on the west side of O'Hare, in Addison Township just south of the larger St. Johannes.

Self-described ''advocate for the dead'' Helen Sclair has heard there might be Indians buried at Resthaven, but she suspects not all Native American remains were retrieved when Wilmer's Old Settlers Cemetery was closed in the early 1950s to make room for O'Hare access roads.

She said the Chicago region, which used to be home to Potawatomi, Chippewa and other Indians, doesn't have enough cemetery space, and the dead should be treated with more respect.

''We don't have much of a positive attitude toward cemeteries in Chicago,'' Sclair said. ''Do you know why? Because the dead don't pay taxes or vote. . . . Well, technically they don't vote.''

ROSEMARY MULLIGAN,
STATE REPRESENTATIVE 55TH DISTRICT,
Des Plaines, IL, July 5, 2002.

Hon. JESSE L. JACKSON, JR.,
U.S. House of Representatives, Washington, DC.

SUBJECT: VOTE ''NO'' ON H.R. 3479

DEAR REPRESENTATIVE JACKSON, JR.: As an Illinois state legislator, I would like to use this opportunity to express my concern and opposition to the National Aviation Capacity Act. The issue of expansion of Chicago O'Hare Airport is extremely important but has been so misrepresented that I believe it is imperative to make a personal plea on behalf of my local residents to each member of the House of Representatives. This plan in the form it has been presented to you contains gross misrepresentations of fact and will inflict harm on the over 100,000 constituents I have taken an oath to protect.

You may not realize that ''Chicago'' O'Hare Airport is virtually an outcropping of land annexed by the City of Chicago that is over 90 percent surrounded by suburban municipalities. It is the only major city airport where the people directly impacted by airport activity do not elect the mayor or city officials that make decisions about the airport. Therefore, we have had little control or recourse over what happens at the airport. This plan represents a ''deal'' between two men and has never been debated or voted on by the Illinois General Assembly!

My family moved to Park Ridge in 1955, long before anyone had an idea of what an overpowering presence O'Hare would become. Unfortunately, the amount of land dedicated to the airport set its fate long before the current crisis. Plainly speaking, there isn't enough room to expand.

For the past several years, I and other legislators have introduced nearly a dozen measures in the Illinois General Assembly to conduct environmental studies, provide tax relief for soundproofing, defend suburban neighborhoods from unfair ''land grabs,'' require state legislative approval of any airport expansion and to generally protect the people we represent whose residences abut airport property. Because of the political make-up of our body and the great influence of Chicago's mayor, we have been unsuccessful. Our efforts and the health and safety of our constituents are ignored because of politics.

Please, before you vote on HR 3479, consider the following facts:

1. If the people who surround this airport could vote for the mayor of the City of Chicago, an agreement to expand O'Hare could not have been made. Whoever is mayor would have to take into consideration his immediate constituency.

2. Thorough environmental studies are being blocked. There are many documented health concerns related to current pollution levels. 800,000 additional flights will nearly double the environmental hazard.

3. The State of Illinois' rights are being trampled. The House of Representatives vote is setting a precedent that may impact your home state at some later date.

4. The safety of this plan has been questioned, particularly with its inadequate FAA Safety Zones. The lack of land does not allow for significant changes. It jeopardizes surrounding schools, homes and businesses.

5. No matter what configuration or expansion moves forward, O'Hare's Midwest location means it will always be impacted by weather from many directions.

6. Proponents claim a 79 percent decline in delays with reconfiguration of runways. However, when the increase of 800,000 flights is factored in, delays will increase to above their current levels.

Notwithstanding the economic benefits proponents subscribe to this project, the responsibility of elected officials must be first to the health, welfare and public safety of the people we represent.

Lastly, there exists a glaring discrepancy between the legislation before you and what has been told to Illinoisans. A simpler answer to all of the O'Hare congestion problems exists in the development of a third regional airport. The legislation has downgraded the priority of this solution and will further delay any true relief for our nation's transportation woes. This fact is omitted from news reports and official proponent propaganda.

With all due respect, I ask that you vote ''no'' on HR 3479. Let this remain a state's rights issue. Please feel free to contact me anytime if you have any questions at (847) 297–6533. Thank you for your time.

Respectfully,

ROSEMARY MULLIGAN,
Illinois State Representative, 55th District.

NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION,
CHICAGO O'HARE TOWER,
Chicago, IL, November 30, 2001.

Hon. PETER FITZGERALD,
U.S. Senate, Washington, DC.

SENATOR FITZGERALD, As requested from your staff, I have summarized the most obvious concerns that air traffic controllers at O'Hare have with the new runway plans being considered by Mayor Daley and Governor Ryan. They are listed below along with some other comments.

1. The Daley and Ryan plans both have a set of east/west parallel runways directly north of the terminal and in close proximity to one another. Because of their proximity to each other (1200′) they cannot be used simultaneously for arrivals. They can only be used simultaneously if one is used for departures and the other is used for arrivals, but only during VFR (visual flight rules), or good weather conditions. During IFR (instrument flight rules, ceiling below 1000′ and visibility less than 3 miles) these runways cannot be used simultaneously at all. They basically must be operated at one runway for safety reasons. The same is true for the set of parallels directly south of the terminal; they too are only 1200′ apart.

2. Both sets of parallel runways closest to the terminal (the ones referred to above) are all a minimum of 10,000′ long. This creates a runway incursion problem, which is a very serious safety issue. Because of their length and position, all aircraft that land or depart O'Hare would be required to taxi across either one, or in some cases two runways to get to and from the terminal. This design flaw exists in both the Daley and the Ryan plan. A runway incursion is when an aircraft accidentally crosses a runway when another aircraft is landing or departing. They are caused by either a mistake or mis-understanding by the pilot or controller. Runway incursions have skyrocketed over the past few years and are on the NTSB's most wanted list of safety issues that need to be addressed. Parallel runway layouts create the potential for runway incursions; in fact the FAA publishes a pamphlet for airport designers and planners that urge them to avoid parallel runway layouts that force taxiing aircraft to cross active runways. Los Angeles International airport has lead the nation in runway incursions for several years. A large part of that incursion problem is the parallel runway layout; aircraft must taxi across runways to get to and from the terminals.

3. The major difference in Governor Ryan's counter proposal is the elimination of the southern most runway. If this runway were eliminated, the capacity of the new airport would be less than we have now during certain conditions (estimated at about 40% of the time). If you look at Mayor Daley's plan, it calls for six parallel east-west runways and two parallel northeast-southwest runways. The northeast-southwest parallels are left over from the current O'Hare layout. These two runways simply won't be usable in day-to-day operations because of the location of them (they are wedged in between, or pointed at the other parallels). We would not use these runways except when the wind was very strong (35 knots or above) which we estimate would be less than 1% of the time. That leaves the six east/west parallels for use in normal day-to-day operations. This is the same number of runways available and used at O'Hare today. If you remove the southern runway (Governor Ryan's counter proposal), you are leaving us five runways which is one less than we have now. That means less capacity than today's O'Hare during certain weather conditions. With good weather, you may get about the same capacity we have now. If this is the case, then why build it?

4. The Daley-Ryan plans call for the removal of the NW/SE parallels (Runways 32L and 32R). This is a concern because during the winter it is common to have strong winds out of the northwest with snow, cold temperatures and icy conditions. During these times, it is critical to have runways that point as close as possible into the wind. Headwinds mean slower landing speeds for aircraft, and they allow for the airplane to decelerate quicker after landing which is important when landing on an icy runway. Landing into headwinds makes it much easier for the pilot to control the aircraft as well. Without these runways, pilots would have to land on icy conditions during strong cross-wind conditions. This is a possible safety issue.

These are the four major concerns we have with the Daley-Ryan runway plans. There are many more minor issues that must be addressed. Amongst them are taxiway layouts, clear zones (areas off the ends of each runway required to be clear of obstructions), ILS critical areas (similar to clear zones, but for navigation purposes), airspace issues (how arrivals and departures will be funneled into these new runways) and all sorts of other procedural type issues. These kinds of things all have to go through various parts of the FAA (flight standards, airport certification etc.) eventually. These groups should have been involved with the planning portion from day one. Air traffic controllers at the tower are well versed on what works well with the current airport and what does not. We can provide the best advice on what needs to be accomplished to increase capacity while maintaining safety. It is truly amazing that these groups were not consulted in the planning of a new O'Hare. The current Daley-Ryan runway plans, if built as publicized, will do little for capacity and/or will create serious safety issues. This simply cannot happen. The fear is that the airport will be built, without our input, and then handed to us with expectations that we find a way to make it work. When it doesn't, the federal government (the FAA and the controllers) will be blamed for safety and delay problems.

Sincerely,

CRAIG BURZYCH,
Facility Representative, NATCA-O'Hare Tower.

HOUSE OF REPRESENTATIVES,
Washington, DC, January 31, 2001.

Re Key Points Why The Chicago Region Needs A New Airport—And Why New O'Hare Runways Are Contrary To The Region and Nation's Best Interests.

Hon. ANDREW H. CARD,
Chief of Staff to the President,
The White House, Washington, DC.

DEAR ANDY: A matter of great importance to us is the need for safe airport capacity expansion in the metro Chicago region. At your earliest convenience, we would like to schedule a meeting with you and Secretary Mineta to discuss the situation. Enclosed is a detailed memorandum summarizing our views. We are convinced that we must build a new regional airport *now* and, for the same reasons, we believe that construction of one or more new runways at O'Hare would be harmful to the public health, economy and environment of the region.

As set forth in that memorandum:

Most responsible observers agree that the Chicago region needs major new runway capacity now.

The question is where to build that new runway capacity—1) at a new regional airport, 2) at O'Hare, 3) at Midway, or 4) a combination of all of the above. An assessment of these alternatives reaches the following conclusions:

1. The new runways can be built faster at a new airport as opposed to O'Hare or Midway.

2. More new runway capacity can be built at a new site than at O'Hare or Midway.

3. The new runways can be built at far less cost at a new airport than at O'Hare or Midway.

4. Construction of the new capacity at a new airport will have far less impact on the environment and public health than would expansion of either Midway or O'Hare.

5. Construction of the new capacity at a new airport offers the best opportunity to bring major new competition into the region.

6. The selected alternative cannot be expansion at O'Hare *and* construction of a new airport. New runways at O'Hare would doom the economic feasibility of the new airport, guarantee its characterization as a ''white elephant'' and insure the expansion of the monopoly dominance of United and American Airlines in the Chicago market.

The memorandum contains a series of related questions and a detailed list of suggestions that would ensure the rapid development of major new runway capacity in the Chicago region, open the region to major new competition, and accomplish these objectives in a low-cost, environmentally sound manner.

Again, we would appreciate the opportunity to discuss these matters with you and Secretary Mineta at your earliest convenience.

Very truly yours,

HENRY HYDE,
JESSE JACKSON, JR.

To: White House Chief of Staff Andrew Card.
From: Congressman Henry Hyde, Congressman Jesse Jackson, Jr.
Re: Key Points Why Chicago Region Needs A New Airport—And Why New O'Hare Runways Are Contrary To The Region and Nation's Aviation Best Interests
Date: January 31, 2001.

This memorandum summarizes our views in the debate over the need for airport capacity expansion in the metro Chicago region. For the reasons set forth herein, we are convinced that we must build a new regional airport now and, for the same reasons, believe that construction of one or more new runways at O'Hare would be harmful to the public health, economy and environment of the region.

The debate can best be summarized in a simple question and answer format.

Does the Region need new runway capacity now? Unlike The City of Chicago—which has for more than a decade privately known that the region needs new runway capacity while publicly proclaiming that new runway capacity is not needed—bipartisan leaders like Jesse Jackson, Jr. and myself have openly acknowledged the need for, and urged the construction of, new runway capacity in the region.

The need for new runway capacity is not a distant phenomenon; we should have had new runway capacity built several years ago. While 20 year growth projections of air travel demand show that the harm caused by this failure to build capacity will only get worse, the available information suggests that the region has already suffered serious economic harm for several years because of our past failure to build the new runway capacity.

If the answer to the runway question is yes—and we believe it is—the next question is where to build the new runway capacity? Though the issue has been discussed, the media, Chicago and the airlines have failed to openly discuss the alternatives as to where to build the new runway capacity—and especially, the issues, facts and impacts to the pros and cons of each alternative.

The alternatives for new runway capacity in the region are straightforward: (1) build new runways at a new airport, (2) build a new runways at O'Hare, (3) build new runways at Midway, or (4) a combination of all of the above. Given these alternatives, the following facts are clear:

1. The new runways can be built faster at a new airport as opposed to O'Hare or Midway. Simply from the standpoint of physical construction (as well as paper and regulatory planning) the new runways can be built faster at a ''greenfield'' site than they can at either O'Hare or Midway.

2. More new runway capacity can be built at a new site than at O'Hare or Midway. Given the space limitations of O'Hare and Midway, it is obvious that more new runways (and therefore more new runway capacity) can be built at a new larger greenfield site than at either O'Hare and Midway. We acknowledge that additional space can be acquired at Midway or O'Hare by destroying densely populated surrounding residential communities—but only at tremendous economic and environmental cost.

3. The new runways can be built at far less cost at a new airport than at O'Hare or Midway. Again, it is obvious that the new runways—and their associated capacity—can be built at far less cost at a ''greenfield'' site than they can at either O'Hare or Midway. Given the enormous public taxpayer resources that must be used for any of the alternatives—and the relative scarcity of public funds—the Bush Administration should compare the overall costs of building the new runway capacity (and associated terminal and access capacity) at a new airport vs. building the new capacity at O'Hare or Midway.

4. Construction of the new capacity at a new airport will have far less impact on the environment and public health than would expansion of either Midway or O'Hare. Midway, and later O'Hare, were sited and built at a time when concerns over environment and public health were far less than they are today. As a result, both existing airports have virtually no ''environmental buffer'' between the airports and the densely populated communities surrounding these airports. In contrast, the site of the new South Suburban Airport has, by design, a large environmental buffer which will ameliorate most, if not all, of the environmental harm and public health risk from the site. Indeed, prudence would suggest an even larger environmental buffer around the South Suburban site than is now contemplated. We can create the same or similar environmental buffer around O'Hare or Midway—but only at a cost of tens of billions of dollars and enormous social and economic disruption.

5. Construction of the new capacity at a new airport offers the best opportunity for bringing major new competition into the region. When comparing costs and benefits of alternatives, the Bush Administration must address the existing problem of monopoly (or duopoly) fares at ''Fortress O'Hare'' and the economic penalty such high fares are inflicting on the economic and business community in our region. Does the lack of significant competition allow American and United to charge our region's business travelers higher fares than they could if there was significant additional competition in the region? What is the economic cost to the region—in both higher fares and lost business opportunities—of the existing ''Fortress O'Hare'' business fare dominance of United and American?

The State of Illinois has stated that existing ''Fortress O'Hare'' business fare dominance of United and American costs the region many hundreds of millions of dollars per year. Bringing in one or more significant competitors to the region would bring enormous economic benefits in increased competition and reduced fares.

And the only alternative that has the room to bring in significant new competition is the new airport. Certainly the design of Chicago's proposed World Gateway program—designed in concert with United and American to preserve and expand their dominance at O'Hare—does not offer opportunities for major competitors to come in and compete head-to-head with United and American.

6. The selected alternative cannot be expansion at O'Hare and construction of a new airport. The dominant O'Hare airlines are pushing their suggestion: add another runway at O'Hare and allow a ''point-to-point'' small airport to be built at the South Suburban Site.

That is not an acceptable alternative for several reasons:

First, it presumes massive growth at O'Hare, as it is based on the assumption that all transfer traffic growth—along with the origin-destination traffic to sustain the transfer growth—stays at O'Hare. If that assumption is accepted, the airlines already know that demand growth for the traffic assumed to stay at O'Hare will necessitate not one, but two or more additional runways. This increase in traffic at O'Hare will have serious environmental and public health impacts on surrounding communities.

Second, this alternative destroys the economic justification for the new airport. With massive new capacity at O'Hare, there would be no economic need for the new airport.

Third, assuming the new airport is built anyway, as a ''compromise'', this alternative guarantees that the new airport will be a ''white elephant''—much as the Mid-America airport near St. Louis is today because of the Fortress Hub practices of the major airlines and as was Dulles International as long as Washington National was allowed to grow. With limits on the growth of National finally recognized, Dulles is now the thriving East Coast Hub for United.

RELATED QUESTIONS

If the Region needs new runways, what is the sense of spending over several billion dollars—much of it public money—to build the World Gateway Program at O'Hare if we decide that new runway capacity should be built elsewhere? If the decision is to build the new runways at O'Hare, then much of the 5–6 billion dollar terminal and roadway expansion proposed for O'Hare may be justified.

But if the decision is that the new runway capacity should be built elsewhere, then the proposed multi-billion dollar expansion makes no sense. We will be spending billions of dollars in taxpayer funds for a massive project that standing alone—without new runways—will not add any new capacity to our region.

The airlines know this fact and that is why they—and their surrogates at the Civic Committee and the Chicagoland Chamber—are pushing for new runways.

If the Region needs new runways and we wish to explore the alternative of putting the new runways in at O'Hare, what is the full cost of expanding O'Hare as opposed to constructing a new airport? If others wish to explore the alternative of an expanded O'Hare as the place to build the new runways capacity for the region, let's have an honest exploration and discussion of the full costs of expanding O'Hare with new runways and compare it to the cost of building the new airport. Chicago and the airlines already know what the components of an expanded O'Hare would be.

These components are laid out in Chicago's ''Integrated Airport Plan and include a new ''quad runway'' system for O'Hare and additional ground access through ''western access''.

Based on information available, we believe that the cost of the O'Hare expansion would exceed ten billion dollars. These costs should be compared with the costs of a new airport.

Are the delay and congestion problems experienced at O'Hare self-inflicted? Sadly, when Chicago and the major O'Hare airlines advocated lifting of the ''slot'' restrictions at O'Hare and other major ''slot'' controlled airports, the Clinton Administration and others ignored the warnings of Congressman Jackson, and myself that the airport could not accommodate the additional flights without a chaotic increase in delays and congestion. Indeed, the chaos we predicted has come true and we now have a ''Camp O'Hare'' where air traffic is managed by cancellation rather than by adequate service.

Like Cassandra, our prophecy was ignored. The Clinton Administration endorsed lifting the slot controls and chaos ensued.

But just because our warnings were ignored doesn't mean that practical solutions should continue to be ignored. The delays and congestion were predictable and certain—predicted based on delay/capacity analysis conducted by the FAA. Just as certain are the short term remedies.

Just as the congestion was brought on by overstuffing O'Hare with more aircraft operations than it can handle, the congestion and delay can immediately be reduced to acceptable levels by reducing the scheduled air traffic to the level that can be easily accommodated by O'Hare without the risk of unacceptable delays. The delay chaos was self-inflicted by ignoring the flashing warnings put

out by the FAA and other experts. The solution can be easily administered by the FAA recognizing—as it has at LaGuardia—that limits must be placed on uncontrolled airline desire to overscheduled flights.

Should the short-term ''fix'' to the delays and congestion include ''capacity enhancement'' through air traffic control devices? Absent new runways, the FAA has encouraged and permitted a variety of operational devices designed to allow increased levels of departures and arrivals in a set period of time. These procedures—known as ''incremental capacity enhancement''—focus on putting moving aircraft closer together in time and space—to squeeze more operations into a finite amount of runways. Typically, this squeezing is done in low visibility, bad weather conditions because these are the conditions where FAA wants to increase capacity.

While the air traffic controllers remain mute on the safety concerns raised by these procedures, the pilots sure have not:

''We have seen the volume of traffic at O'Hare pick up and exceed anyone's expectations, so much so, that on occasion *mid-airs were only seconds apart*. O'Hare is at maximum capacity, if not over capacity. It is my opinion that *it is only a matter of time until two airliners collide making disastrous headlines*.'' Captain John Teerling, Senior AA Airline Captain with 31 years experience flying out of O'Hare January 1999 letter to Governor Ryan (emphasis added)

Paul McCarthy, ALPA's [Airline Pilots Association] executive air safety chairman, condemned the incremental capacity enhancements *as threats to safety*. Each one puts a small additional burden on pilots and controllers, he said. Taken together, they *reduce safety margins*, particularly at multiple runway airports, to the point that they invite a *midair collision*, a *runway incursion* or a *controlled flight into terrain*. Aviation Week, September 18, 2000 at p. 51 (emphasis added)

It is clear that FAA's constant attempts to squeeze more and more capacity out of the existing overloaded runways—through such ''enhancement'' procedures as the recently announced ''Compressed Arrival Procedures'' and other ATC changes—is incrementally reducing the safety margin so cherished by the pilots and the passengers who have entrusted their safety to them.

The answer to growth is new runways at a new airport—not jamming more aircraft closer and closer together at O'Hare. The answer to delays and congestion with existing overscheduled levels of traffic is to reduce traffic levels to the capacity of the runways without the need to jam aircraft closer and closer together.

Does the current level of operations at O'Hare (and Midway) generate levels of toxic air pollutants that expose downwind residential communities to levels of these pollutants in their communities at levels above USEPA cancer risk guidelines? Though our residents have complained for years about toxic air pollution from O'Hare, none of the state and federal agencies would pay attention. Recently however, Park Ridge funded a study by two nationally known expert firms in the field of air pollution and public health to conduct a preliminary stud of the toxic air pollution risk posed by O'Hare. That study, Preliminary Study and Analysis of Toxic Air Pollution Emissions From O'Hare International Airport and the Resultant Health Risks Caused By Those Emissions in Surrounding Residential Communities (August 2000), found that current operations at O'Hare—based on emission data supplied by Chicago—created levels of toxic air pollution in excess of federal cancer risk guidelines in 98 downwind communities. The highest levels of risk were found in those residential communities that O'Hare uses as its ''environmental buffer''—namely Park Ridge and Des Plaines.

Is the Park Ridge study valid? Park Ridge has challenged Chicago, the airlines, and federal and state agencies to come forward with any alternative findings as to the toxic air pollution impact of O'Hare's emissions on downwind residential communities. And that does not mean simply listing what comes out of O'Hare. The downwind communities are entitled to know how much toxic pollution comes out of O'Hare, where the toxic pollution from O'Hare goes, what are the concentrations of O'Hare toxic pollution when it reaches downwind residential communities, and what are the health risks posed by those O'Hare pollutants at the concentrations in those downwind communities.

Should not something be done to control and reduce the already unacceptable levels of toxic air pollution coming into downwind residential communities from O'Hare's current operations?

Should not the relative toxic pollution risks to surrounding residential communities created by the alternatives of a new airport, expanding O'Hare, or expanding Midway be added to the analysis and comparison of alternatives?

What about the monopoly problem at Fortress O'Hare and what should be done about it? We have already alluded to the factor of high monopoly fares as a consideration in choosing alternatives for the new runway capacity. But the monopoly problem of Fortress O'Hare will be relevant even if no new airport is built. The entire design of the proposed World Gateway Program is premised on a terminal concept that solidifies and expands the current market dominance of United and American at O'Hare and in the Chicago air travel market.

What can the Bush Administration do if indeed there is a monopoly air fare problem at O'Hare or monopoly dominance is costing Chicago area business travelers hundreds of millions of dollars per year?

When these questions were raised in the Suburban O'Hare Commission report, If you Build It We Won't Come: The Collective Refusal Of The Major Airlines To Compete In The Chicago Air Travel Market, Chicago and the airlines responded with smoke and mirrors. First they produced glossy charts showing that more than 70 airlines serve O'Hare. What they neglected to show was that United and American control over 80% of those flights with the remaining 60 plus airlines operating only a small percentage.

Similarly, the airlines and Chicago talked about the competitive low fares charged to passengers. What they emphasized, however, were low fares for reservations far in advance. The major business travel organizations representing business travel managers report that business travelers predominantly use unrestricted coach fares since they have to respond on short notice to business needs. An examination of fares for unrestricted business travel from Chicago to major business markets shows that these routes are dominated by United and American and that they charge extremely high ''lock-step'' fares to business travelers to these business markets.

Finally, the airlines and Chicago argued that O'Hare is ''competitive'' with fares charged to business travelers in other Fortress Hub Markets. That statement ignores the fact that all the major airlines are gouging captive business travelers in all their own Fortress Hub markets. Indeed, a repeated anecdote is the fact that a passenger from a ''spoke'' city—e.g., Springfield, Illinois—pays a lower fare for a trip to O'Hare and then to Washington D.C. than a Chicago based traveler who gets on the same plane to Washington. Why? Because the Springfield traveler has the choice of hubbing either through O'Hare or St. Louis while the Chicago based business traveler is locked into Chicago.

Where are the antitrust enforcers to break up these geographic cartels? Equally important, in addition to antitrust enforcement powers, the federal government has enormous leverage to break up the cartels through the funding approval process of the Airport Improvement Program (AIP) and Passenger Facility Charge (PFC) programs. Yet billions of federal taxpayer funds go to United and American without so much as a raised eyebrow.

What about Noise? Shouldn't we be happy to exchange some soundproofing for new runways at O'Hare? The City of Chicago has a residential soundproofing program which was created on the advice of its public relations consultants to create a spirit of ''compromise'' that would lead to acceptance of new runways at O'Hare.

But here are some facts that are little publicized:

1. Most of our residents feel that soundproofing—while improving their interior quality of life—essentially assumes that we will give up living-out-of-doors or with our windows open in nice weather.

2. Whereas many major airport cities with residential soundproofing programs are soundproofing all homes experiencing 65 DNL (decibels day-night 24-hr. average) or greater, Chicago and the airlines are only committing funds to the 70 DNL level. Result: Chicago is only soundproofing less than 10% of the homes that Chicago itself acknowledges to be severely impacted.

3. Chicago came into our communities asking to put in noise monitors to collect ''real world'' data as to the levels of noise. Yet, despite promises to share the data, Chicago refuses to share the data with our communities.

4. Instead of an atmosphere of trust, these tactics by Chicago have created additional animosity as neighbors on one side of an alley or street get soundproofing while their neighbors across that alley or street get no soundproofing. Indeed, Chicago's residential soundproofing program—because it is so limited in scope and ignores thousands of adversely impacted homes—has caused even more animosity in our communities.

In short, residential soundproofing is not the panacea that Chicago and many in the downtown media perceive it to be. Moreover, it does nothing to address the toxic air pollution and other safety related concerns of our residents.

Can we have more than one ''hub'' airport operating in the same city? Faced with the potential inevitability of a new airport, the airlines for the last two years have been arguing for an expansion of O'Hare (instead of a major new airport) with the argument that a metropolitan area cannot have more than one hub airport. Based on that premise, United and American say that the sole hub airport in metro Chicago should be O'Hare. That simply is not correct:

1. There are several domestic and international cities with more than one hubbing airport. Competing airlines create hubbing operations wherever airport space is available. Thus, there are multiple hubbing airports in metro New York (JFK and Newark), Washington, D.C., London, and Paris.

2. The Lake Calumet Airport proposed by Mayor Daley would have been a second hub airport.

3. There is simply no reason—given the size of the business and other travel origin-destination market in metro Chicago—that a new hub competitor could not establish a major presence at a new south suburban airport.

How do we fund new airport construction? The answer is simply and the same answer Mayor Daley had for the proposed Calumet Airport. Daley proposed using a mix of PFC and AIP funds to induce carriers to use the new airport. Indeed, the entire justification for his urging the passage of PFC legislation was to collect PFCs at O'Hare and use them for the new airport.

But United and American claim that the PFC revenues are ''their'' money. On the contrary, the PFC funds are federal taxpayer funds no different in their nature as taxpayer dollars than the similar ''AIP'' tax charged to air travelers. These funds don't belong to the airlines. They are federal funds collected and disbursed through a joint program administered by the FAA and the airport operator.

Nor are these federal taxpayer funds ''Chicago's'' money. Chicago is simply a tax collection agent for the federal government.

But how do we get the funds from O'Hare to the new airport? We do it the same way Mayor Daley is transferring funds from O'Hare to Gary and the same way he proposed getting federal funds collected at O'Hare to the Lake Calumet project: a regional airport authority.

SUGGESTIONS

We have respectfully posed some questions and posited some answers for the President's and your consideration. We believe that a thorough and candid examination and discussion of these questions leads to only one conclusion: we should build a new airport and we should not expand O'Hare.

But more than raising questions, we also have several concrete suggestions for addressing the region's air transportation needs:

1. Let's stop the paper shuffling and build the new airport. The program we outline is this letter is virtually identical to the proposal drafted by Mayor Daley for construction of the Lake Calumet Airport. We believe that a cooperative fast-track planning and construction program for a new airport could see the new airport open for service in 3–5 years.

2. The money, resources and legal authority to build the new airport can be assembled by passage of a regional airport authority bill similar to the regional airport authority bill drafted in 1992 by Mayor Daley for the Lake Calumet project. So the Illinois General Assembly is a necessary partner in any effort. But equally important is the dominant role of the federal Administration in controlling the use of AIP and PFC funds and in assertive enforcement of federal antitrust laws. Let's put together a federal-state partnership to get the job done.

3. Give the O'Hare suburbs guaranteed protection against further expansion of O'Hare. Such guarantees are needed not only for our protection but for the viability of the new regional airport.

4. Provide soundproofing for all of the noise impacted residences around O'Hare and Midway. The new airport addresses future needs; it does not correct existing problems caused by existing levels of traffic.

5. Initiate a regulatory program to control and reduce air toxics emissions from O'Hare.

6. Fix the short-term delay and congestion at O'Hare by returning to a recognition of the existing capacity limits of the airport. The delay and congestion now experienced at O'Hare is a self-inflicted wound brought about by airline attempts to stuff too many planes into that airport. The delays and congestion will be dramatically reduced immediately by reducing scheduled traffic to a level consistent with the exiting capacity of the airport.

7. Demand a break-up and reform of the Fortress Hub anti-competitive phenomenon—both at O'Hare and at other Fortress Hubs around the nation. This can be done with either aggressive antitrust enforcement or with proper oversight of the disbursal of massive federal subsidies.

8. The entire World Gateway Program should be exmained in light of the questions raised here and should be modified or abandoned depending on the answers provided to these questions.

We would appreciate the opportunity to discuss these matters with you and Secretary Mintea at your convenience.

HOUSE OF REPRESENTATIVES,
Washington, DC.

FIVE REASONS TO OPPOSE THE NATIONAL AVIATION CAPACITY EXPANSION ACT (HR 3479)

DEAR COLLEAGUE: This legislation to expand O'Hare International Airport is fatally flawed because it will:

1. SET A TERRIBLE PRECEDENT: This bill will allow the federal government to preempt state law requiring approval of airport construction and expansion—approval that requires the blessing of the state legislature. Will your state legislature be next to lose its power to decide local airport matters?

The bill also will lead to a rash of demands from various localities for priority standing for airport funding, bypassing reasonable administrative planning and environmental review processes.

2. THREATEN SAFETY AND THE ENVIRONMENT: This legislation attempts to superimpose what amounts to an airport the size of Dulles International on a land-locked airport the size of Reagan National—an absurd idea on its face. Former U.S. Department of Transportation Inspector General Mary Schiavo has called this proposal ''a tragedy waiting to happen.''

Putting 1.6 million planes a year into the O'Hare airspace already overcrowded with 900,000 flights doesn't make sense. It increases the risk of a serious accident and it jeopardizes surrounding schools, homes and businesses.

A third regional airport that can be built in one-third of the time and at one-third of the cost of expanding O'Hare.

O'Hare is already the largest polluter in the Chicago region. With expansion, noise and air pollution will increase exponentially.

3. UPROOT THOUSANDS OF FAMILIES: This legislation will destroy the single largest concentration of federally assisted affordable housing in one of the nation's most affluent counties. These are the homes that low-income people and other minorities, particularly Hispanics, depend on.

Up to 1,500 or more homes will be destroyed. These homes will be condemned or taken by eminent domain, leaving those homeowners few options to find affordable housing elsewhere.

4. THREATEN THOUSANDS OF JOBS; This legislation will destroy as much as one-third of the nation's largest contiguous industrial park, threatening tens of thousands of jobs. How many jobs will be created by the airport expansion? That remains a great mystery.

5. COST TOO MUCH: This legislation will require the expenditure of $15 billion or more once the entire infrastructure, relocation, soundproofing and other costs are figured in. This is much more costly than the $6.6 billion that supporters keep touting.

Commits Chicago, Illinois and federal taxpayers to a plan whose costs have not been adequately detailed. We have requested documentation of the costs, but have been rebuked. That is why a Freedom of Information lawsuit is pending in Illinois court.

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

[From the Chicago Tribune, March 20, 2001]

DALEY AND THE STENCH AT O'HARE

Maybe after 12 years in office the mayor of Chicago thinks he owns the chair.

And why not. Richard M. Daley's decision to let his pals run wild, and put the best interests of citizens a distant second makes sense.

After all those years of worrying about appearance, who wouldn't let his buddies bend a few rules? Who wouldn't get tired of staring cameras and pretending that every decision is being made for the good of Chicago? And who wouldn't be fed up with annoying questions from the newspaper gnats about ethics?

Truth is, the growing trail of pols and pals who use their connections with Daley to get rich—and to trash the mayor's reputation in the process—is a marvel. So is the chutzpah that leads the boodlers to think they won't be found out.

Unless, with their millions already stuffed in their pockets and Daley as their see-no-evil patsy, the boodlers just don't care any more.

The latest to be outed is Jeremiah Joyce, an old Daley buddy who reportedly has been exploiting his connections to line his pockets. Joyce is a player—a richly paid one at that—in an increasingly—seamy drama: ''Why the Mayor Doesn't Want a Third Airport.''

Unless, of course, it's a city-owned third airport, not some paved-over cornfield outside Chicago. If Daley's cronies had three airports to play with, they could do an even better job of cashing out their friendships with the mayor. Sure, they look bad, hiring on as fixers to help companies land contracts from Daley's puppets at the city Aviation Department. But so what? There's big money to be made. And if Daley doesn't care about his good name, why should they?

Joyce's rental of his name and reputation reported Monday by the Tribune's Laurie Cohen and Andrew Martin. In 1992, McDonald's Corp. bid on a contract to handle concessions at O'Hare Airport's new international terminal. McDonald's didn't get the deal. But a few months later McDonald's and Duty Free International hired Joyce. Voila!—the O'Hare contract was up for grabs again, and the companies landed a deal worth millions. The arrangement appears to have earned Joyce $1.8 million last year alone.

But not to worry. Everyone denies everything. Joyce denies using his contacts at City Hall to help the companies win their exclusive O'Hare business just one month after they retained him. What role did his clout play? ''I would say none,'' Joyce says. ''I would say zero.''

David Mosena, then the city's aviation commissioner, agrees. ''The significance of Jerry Joyce in the deal was nil,'' Mosena says.

The Daley administration probably wants to deny the obvious. But the mayor's people say they just can't find the public documents that would explain how the O'Hare pact came together. Don't you hate it when things get lost?

This fiction that nobody knew nothin' about deals at O'Hare is familiar. Power pal Oscar D'Angelo gets at least $480,000 for lobbying on behalf of a contractor, even though he doesn't register as a lobbyist. D'Angelo lobbies the city on behalf of a company that uses a subcontractor run by two women with ties to Maggie Daley, the mayor's wife. Most recently, Victor Reyes, the mayor's former political henchman, winds up in the middle of a billion-dollar O'Hare construction deal just weeks after leaving Daley's payroll. At every turn, nobody knew nothin'.

Mr. Mayor, spare all of us the calls for a tougher ethics ordinance and the angry glare when you deny that you knew about the Joyce deal. Hey, maybe you didn't know about the Joyce deal.

What you did know, and have known for years, is that your pals are oinking at the O'Hare through. And they can oink all they want, because nobody wills top them. This game has only two rules; Don't get caught. And don't say ''Peotone.''

The rest of us now see O'Hare for the economic engine it really is. Not just for shrewd contractors and patronage hacks, but for the select few who call the mayor of Chicago by his first name.

[From the Chicago Tribune, Nov. 21, 2000]

POLITICS SNARL O'HARE

STALEMATE BLOCKS NEW AIRPORT, MORE RUNWAYS

(By Andrew Martin and Laurie Cohen)

The parochial and petty politics that have turned O'Hare International Airport into a treasure trove for concessionaires and contractors also are at the heart of why the transportation hub is a quagmire of delays, hassles and heartaches.

The political self-interests that have gotten in the way of expanding the world's second-busiest airport—or building a new airfield—are quietly on display on the vaulted corridors of the United Airlines terminal.

Buy a carton of cigarettes at the duty-free shop and some of your money finds its way into the pockets of Jeremiah Joyce, who has been one of Mayor Richard Daley's key political strategists.

Need a book or a magazine to pass the time? The airport's bookseller, W.H. Smith, has paid for political advice from mayoral pal Oscar D'Angelo, and its partners include Grace Barry and Barbara Burrell, friends of the mayor's wife.

Satisfy a sweet tooth and you're patronizing the candy shop partially owned by Rev. Clay Evans and Elzie Higginbottom, both influential supporters of the mayor in the African-American community.

Now, take a look at the passengers killing time because of delays or sleeping on rollaway cots because of cancellations. They're where they are because of politics too.

The hidden motives that determine everything from contracts to projections for growth at O'Hare have created an airport that works for the politicians, their friends and the airport's two major airlines, but not for the public.

Political wheeling and dealing at the airports extends to the debate over new runways and a new airport, though with much higher stakes and a wider impact on the tens of thousands of passengers traveling through O'Hare each day.

Daley seems determined to protect the cookie jar of jobs, concessions, contracts and economic largesse that is O'Hare. His administration, the Tribune has found, has manipulated statistics to downplay the need for a new airport near the Will County town of Peotone. At the same time, Delay has benefitted from a friendly Clinton administration, which has stalled the Peotone proposals.

Opposing him are a Republican governor and other politicians trying to transform a soybean field in Peotone into another major airport that almost certainly would alleviate some gridlock and would placate constituents who live on the edge of O'Hare and are weary of airport noise and pollution.

At a time when other parts of the country are achieving political compromises to facilitate a surging number of the travelers with new runways and air travelers with new runways and airports, the stalemate in Illinois is especially vexing.

U.S. Sen. John McCain (R. Ariz.) in September blamed local political squabbling for sacrificing the interests of the entire Chicago region and the nation.

''I say pox on all of them,'' McCain said recently in an interview. ''Chicago is one of the most gridlocked places in America and a critical transportation hub. We can't get O'Hare expanded, and we can't build another airport. And those are the only two options.''

Political dealmaking—the airport that clout built

O'Hare has been inexorably, linked with politics and the Daleys since the day the airport—formerly a military airfield and orchard—opened in 1955. Its transformation into an aviation crossroads provides a lesson in Machiavellian politics and lucrative dealmaking.

The late Mayor Richard J. Daley was instrumental in breaking a long impasse between the city and the airlines, which had been reluctant to move from Midway Airport, then the nation's busiest, and cover the costs of a new airport.

Daley also resolved the sticky issue of how the City of Chicago could control an airport outside its borders. The solution: The city annexed 5 miles of Higgins Road, creating a controversial ''O'Hare corridor'' that linked the city with its new airport.

From the start, O'Hare was used by City Hall as a means to reward political allies. Richard J. Daley's administration, for instance, gave the right to sell flight insurance to a company that had hired Daley's City Council floor leader, Thomas Keane, and it handed millions of dollars in construction work to another company that employed Keane.

Since then, as annual flights have grown to about 900,000 and City Hall has received vastly more money to spend at the airport, the basic formula at O'Hare hasn't changed much.

O'Hare's budget for the coming year is $511 million, which is paid for by airline landing fees, terminal rentals, concessions charges and parking revenues—though not by property taxes. Another $506 million is set aside for construction projects, paid for by bond issues, federal grants and a passenger ticket tax.

O'Hare helps Daley at election time. Airport vendors, concessionaires and other business tied to O'Hare—and their executives and lobbyists—donated about $360,000 to Daley's campaign in an 18-month period beginning in July 1998. Daley was re-elected in February 1999.

And Daley's political machine, as well his loyalists and friends, benefits from the jobs at O'Hare. Due to the length of Dailey's tenure, he has hired nearly 60 percent of the 1,900 employees who work for the city's Department of Aviation, which managers O'Hare, Midway and Meigs Field, according to a Tribune review of payroll records.

His administration has hired campaign workers and the sons, wives, nephews and brothers of City Hall insiders. For instance, the City employed the son of Cook County Sheriff Michael Sheahan, also named Michael Sheahan, in 1992. A campaign worker for Daley, the younger Shealan is now the $65,000-a-year coordinator of security projects at O'Hare and Midway.

The city has also brought; in the brother of Ald. Patrick Levar (45th), who heads the City Council's Aviation Committee. Hired in 1990, Michael Levar is now a $77,500 supervisor of construction and maintenance at O'Hare.

Dominic Longo, a longtime Democratic operative who was convicted of vote fraud in 1984, was hired to supervise truck drivers at the airport one year after Daley was elected in 1989. He was moved to another city department five years later amid allegations that he had sold jobs and pressured workers to buy tickets to campaign events for Daley and others. Longo has denied the charges.

But the money paid for salaries is a fraction of the dollars paid to contractors for everything from engineering and architecture to snow removal: For example, the Aviation Department has contracts with 29 architectural and engineering firms totaling $356 million, $36 million worth of contracts for snowmelting and removal, and $660,000 for seasonal decorations.

Landrum & Brown, the city's long-time aviation planning consultant, provides a case study in how politics and contracts mingle at O'Hare.

The Cincinnati-based firm, which is now paid $12 million a year and has played a crucial role in the city's efforts to block Peotone, operated on the same no-bid city contract from 1968 to 1995, when it got another no-bid deal.

Besides donating to the mayor's campaign and charities overseen by Daley's wife, the firm hired Oscar D'Angelo as its political adviser shortly after Daley took office. It also has handled subcontracts to companies owned by Daley allies. Former campaign manager Carolyn Grisko helps with public relations, Democratic fundraiser Niranjah Shah does engineering work, and Chicago Housing Authority Chairwoman Sharon Gist Gillian is a computer consultant.

United States has used a similar formula. The biggest airline at O'Hare, United States relies on the city for long-term, exclusive gate leases.

Besides donating hunreds of thousands of dollars to city-sponsored events, charities favored by the Delays and political campaigns. United has hired the mayor's younger brother and his former chief of staff as lobbyists.

William Daley lobbied for United before he became U.S. secretary of commerce in the Clinton administration, and Gery Chico, now chairman of the Chicago school board, lobbies for United States at City Hall.

A long battle—the fight for a third airport

Given the success of O'Hare—as an important hub in the nation's air traffic system, as an economic engine and as a source of patronage and contracts—it's not surprising that both Daleys wanted new airports, so long as they were subject to mayorial control.

But the push for a third airport has always bogged down in politics, statistical sleight of hand and mixed signals from Washington, D.C.

In the late 1960s, the elder Daley proposed building a major jetport on land-fill in Lake Michigan, an indea that never flew because of cost and environmental concerns.

The idea of a third airport didn't gather steam again until the mid-1980s, when state officials were looking for sites for a third airport to relieve O'Hare, on the orders of the Federal Aviation Administration. The sites considered were in rural areas south of Chicago, including Peotone.

City officials had publicly argued that O'Hare and Midway could handle the region's aviation growth. But, privately, consultants were urging city officials to immediately find a Chicago site for a third airport so they wouldn't lose out to the surburbs.

A suburban airport probably would be controlled by a regional authority consisting of state officials, local lawmakers and, perhaps, Daley appointees.

In 1990, Daley dropped a bombshell, announcing plans for a $5 billion new airport at Lake Calumet on the city's Southeast Side.

The mayor argued that the new airport would take pressure off O'Hare and appease the northwest suburbs that were opposed to O'Hare expansion. He proposed to pay for the airport with a new $3 passenger ticket tax that Chicago Democrats pushed through Congress.

But the Lake Calumet proposal immediately hit turbulence because of concerns over its spiraling costs and resistance from South Siders who didn't want Midway shuttered. The airport plan fell apart after Republicans helped kill it in the state Senate in summer 1992, and Daley abandoned the idea.

By focusing attention on Lake Calumet, the city ''succeeded again in preventing [the state] from making any meaningful progress towards developing a new airport in a suburban location,'' Landrum & Brown President Jeff Thomas wrote in a memo to city officials.

''Thus the city has conducted & protracted but successful guerrilla war against the state forces that would usurp control of the city's airports.''

It also left Daley with a huge new pot of money, the passenger ticket tax, which has funneled more than $600 million into the city's coffers since it was passed by Congress in 1990. The city has spent the money on runway resurfacing, terminal upgrades and consultants' fees, but not on new runways or a new airport.

Lake Calumet was dead, but the battle for Peotone was just beginning. At the end of President George Bush's tenure, in 1992, the FAA approved $2 million to start the planning process for building an airport in Peotone.

But after President Clinton took office with some key campaign help from the Daley family, the Peotone proposal ground to a virtual standstill in Washington.

Under the Clinton administration, some of the mayor's staffers assumed key positions in the U.S. Department of Transportation and the FAA with over-sight over new airports. For instance, Susan Kurland, former chief counsel for the city's Department of Aviation, was an associate administrator for airports for the FAA from 1996 to 1999.

Catherine Lang, a former assistant commissioner in the Department of Aviation, is now director of the FAA's Office of Airport Planning and Programming, which oversees the passenger ticket tax and approval for new airport projects. And Frank Kruesi, Daley's first chief of policy, was assistant secretary in the U.S. Department of Transportation from 1993 to 1997. He now heads the Chicago Transit Authority.

Daley and other Illinois Democrats also played a key role in the appointment of Clinton's first FAA administrator, David Hinson, former head of Midway Airlines.

A few months after Hinson's appointment, the Clinton administration pulled planning funds for the Peotone study, citing a lack of ''regional consensus.''

Illinois Transportation Secretary Kirk Brown—who handles the push for a Peotone airport under Gov. George Ryan, a Republican—recalled that Hinson told him he had favored Peotone but would ''have to consult with the mayor'' before he proceeded with the airport plan.

Hinson, in an interview, said he didn't remember that conversation with the mayor, though he recalled that Daley objected to a Peotone airport.

Four years later, while Kurland oversaw the program, the FAA quietly pulled the Peotone airport proposal off a list of planned airport projects eligible for federal funding. The Peotone project had been on the planning list since 1986.

Republican leaders maintain the Daley administration has used its influence in Washington to block airport approval.

''It's the mayor through his political influence,'' said state Senate President James ''Pate'' Philip. ''He's been able to stop it.''

The FAA denies that politics have affected its decisions on Peotone, and Kurland declined to comment.

Contributing to the lack of progress toward a Peotone airfield was fierce opposition from United and American Airlines, which dominate O'Hare and vowed not to use a third airport.

In 1995, United spearheaded a ''Kill Peotone'' campaign that included a letter from 16 airline executives to then-Gov. Jim Edgar voicing their displeasure, according to records.

American also sent a representative to Downstate chambers of commerce to recruit allies in its opposition to Peotone. The airline also has urged its employees who live in the northwest suburbs to press local officials to drop out of the Suburban O'Hare Commission, a coalition of suburbs that staunchly oppose O'Hare expansion.

The status quo benefits the airlines because they control 85 percent of the flights at O'Hare and, without a new airport, none of the other large carriers has an entree into the Chicago market.

But, once again, passengers are the losers in this economic equation. Many studies, including those by the U.S. General Accounting Office, have shown that passengers pay substantially more at airports dominated by one or two major airlines.

Statistical shell game—ups and downs

The City of Chicago's political success in holding off a Peotone airport can also be traced to a powerful tool: questionable statistics.

For years, Chicago officials have engaged in a statistical shell game to mask the need for a new airport and to hide O'Hare's capacity woes.

As Jay Franke, Daley's first aviation commissioner, said in an interview, ''Forecasts are generally made to order.'' Franke was ousted in 1992.

In the debate over airports, the key numbers are forecasts of how many passengers are expected to fly out of an airport. By comparing predicted demand to an airport's capacity—how many flights an airport can handle without excessive delays—airport officials try to determine whether a new runway or a new airport is needed.

Forecasts by City Hall's own aviation consultants have repeatedly indicated since 1980 that O'Hare is running out of room. But this became a problem when Peotone emerged as the leading option.

City officials have used a grab bag of tricks to fix the problem. They have changed the formula for devising forecasts and tossed aside forecasts that didn't match their arguments.

And they have insisted that O'Hare can handle more flights because of anticipated improvements in air traffic control that haven't yet materialized, records show.

For example, a 1993 forecast by Landrum & Brown showed that O'Hare would be out of capacity in two years.

''If this is the case, then why build anything at all except a new airport?'' wrote Doug Trezise, another city consultant in a 1993 memo to Chicago aviation officials.

The solution was simple: Change the formula.

The original calculation was based on how many passengers would use O'Hare if enough runways were built to meet the demand. City officials asked Landrum & Brown to base the new forecast on how many passengers would use O'Hare given its existing capacity.

The resulting numbers were much more palatable.

The numbers game continued two years later. Landrum & Brown came out with new forecasts that were uncomfortably close to predictions that state officials were using to tout the need for Peotone. But this presented a problem for the city.

''Clearly the similarities between the L&B numbers and those developed by the [state's consultants] will make it more difficult for the city to debate the third-airport issue on the basis of demand forecasts,'' consultant Ramon Ricondo wrote in a 1995 letter to a top aviation official.

The Daley administration didn't change its position. It simply chose not to release the 1995 forecasts, the Tribune learned from court records.

Then, in 1998, the Daley administration pulled its best statistical stunt yet, again with the help of Landrum & Brown.

The consultants finally delivered a forecast that the city could not only live with but trumpet. The new figures were 25 percent lower than the previous prediction.

The forecasting change was made possible, in part, by careful manipulation of the numbers. Landrum & Brown plugged a population forecast into its formula that was lower than many other population estimates.

The lower number—which called for the Chicago area's population to grow at about half the rate of previous years—had the effect of dampening the aviation forecast.

Where Landrum & Brown had forecast 61 million passengers for the year 2015 in its 1995 study, it now predicted only 46 million passengers in its revised forecast. (Last year, about 36.3 million passengers boarded planes at O'Hare.)

''A realistic forecast proves a new rural airport is not necessary for the region,'' Landrum & Brown concluded in a summary of its findings.

Though it's too soon to say if Landrum & Brown's prediction is off the mark, one thing is certain: The population number it used was far too low. Already, the population in the Chicago region has exceeded the forecast for 2007 that Landrum & Brown used for its study, according to estimates by the U.S. Census Bureau.

''What L&B did was just go looking for low numbers,'' said Suhail al Chalabi, a state aviation consultant. ''Nobody has used numbers this low before.''

Officials at Landrum & Brown declined to comment.

Despite some misgivings, the FAA accepted the city's low forecasts for O'Hare, even though its forecasts show that the number of passengers at O'Hare will grow twice as fast in the next 15 years as the city predicts.

''The problem is one of political intrusion into the technical process,'' U.S. Rep. Jesse Jackson Jr. (D–Ill.) wrote in a Sept. 20 letter to Transportation Secretary Rodney Slater. ''Mayor Daley has argued that there is no need for new runways, not at O'Hare and definitely not in the south suburbs.

''He has made sure the statistics agree,'' wrote Jackson, who believes a Peotone airport would help his district. ''The aviation planning process in Chicago, once a national model, is being corrupted and is truly a technical disgrace.''

Changing positions—running from runways

The latest position out of City Hall is that it won't stand in the way of Peotone—''They can go build it,'' the mayor now says—and that new runways at O'Hare are unnecessary.

The Daley administration now says it can meet demand at O'Hare through a $3.2 billion building program called World Gateway that is under review by the FAA. It calls for new terminals, parking spaces and expanded light-rail service.

It does not call for new runways, and city officials contend O'Hare has sufficient capacity through 2012. Officials, however, decline

to say exactly how many planes the airport can handle, and some experts think O'Hare is out of room now.

''On the whole, the system works awfully well,'' Aviation Commissioner Thomas Walker said in a recent interview. ''We will have to get used to the occasional inconveniences.''

Though it might be logical for the city to lobby heavily for additional runways at O'Hare, it would be bad politics.

If Daley were to argue for a new runway, his Republican foes likely would pounce on that as evidence that a new airport in Peotone is needed.

Also, the Republicans hold all the cards when it comes to O'Hare expansion. Final approval for new runways rests with the governor's office, and a Republican has been governor since 1977.

To make room for the runway, Daley would have to use the city's condemnation powers to take a significant chunk of Bensenville, a leader in the efforts to block an expansion of O'Hare. Among the properties the city would bulldoze are the Garden Horseshoe neighborhood—home of more than 2,000 people—as well as 28 businesses, a cemetery near St. John's Catholic Church and a water tower.

While Daley remains noncommittal on runways, his longtime supporters in the business community now say they are crucial to the future of O'Hare and the local economy. United Airlines and the Civic Committee of the Commercial Club of Chicago, an influential business group, say there is an immediate need for a new runway at O'Hare.

The Republican opposition to new O'Hare runways has been staunch. With political power bases in the airport's shadows, Philip, U.S. Rep. Henry Hyde (R–Ill.) and state Atty. Gen. Jim Ryan have fought on behalf of constituents who don't want jet noise to increase in their communities.

A suburban airport, which is supported by Gov. George Ryan and other key Republicans, also would give Republicans access to the aviation jobs and contracts that Daley now solely controls.

While Chicago remains mired in political gridlock, mayors and other governmental officials across the nation have risked the political capital to increase capacity at their airports.

Since 1995, relatively little airport expansion took place nationally—a total of four new runways, five runways extensions and one runway reconstruction at nine of the 27 hub airports.

However, over the next eight years, the pace of construction will triple. Seventeen of the hubs are building or have plans for 17 new runways, 12 extensions and one reconstruction, all to be completed by 2008.

One important reason for the shift in to high gear is that the opposition of neighboring municipalities to airport expansion is now being blunted or overridden. For decades, complaints about noise and pollution have kept airport expansion projects in check.

But increasingly, court officials and legislators are deciding those concerns are outweighed by the importance of the air traffic system to the U.S. economy and the needs of millions of air travelers.

''Virtually every other major airport in the country has added or is adding ground capacity,'' said R. Eden Martin, president of the Civic Committee of the Commercial Club of Chicago, whose members include the major airlines and which has opposed a major airport in Peotone.

''Why don't we do in Chicago what an enlightened airline industry, business community and political leadership was able to do in Atlanta?'' Martin said.

In Atlanta, city, regional and state leaders came together in support of a new runway at Hartsfield International Airport, which is now outdistancing O'Hare as the world's busiest airport. Yet, in winning expansion, Hartsfield had one huge advantage over O'Hare: Partisan politics was never an issue because nearly all major political players in Atlanta and Georgia are Democrats.

Even so, negotiations took nearly a decade, and it wasn't until late last year that a key compromise was reached with College Park, a municipality that borders the airport and will be truncated by the new runway. The town got money to move a convention center and develop hotels, office buildings and car rental facilities. In return, it will lose 100 businesses and the homes of 2,500 people to demolition.

That's the same sort of price that Bridgeton, a middle-class suburb of St. Louis, is going to pay because of plans to expand Lambert-St. Louis International Airport.

Unlike College Park, Bridgeton has been in court, fighting the plans that would level six schools, at least two parks, six churches, 75 businesses and nearly 2,000 homes. But, in April, the Missouri Court of Appeals overruled the municipality's objections to the expansion, concluding, ''The substantial benefits conferred by the operation of the airport on the public clearly outweigh the interest of Bridgeton. The expansion of Lambert Airport is essential to its survival.''

Among the 27 hub airports in the U.S., O'Hare is the only one that hasn't built a new runway and has no plans to do so.

Former Gov. Edgar, a Republican who participated in the airport feud during his eight years in office, now says the time has come to forget politics and address a critical issue for the region.

''There's a good case for a new runway at O'Hare,'' Edgar said. ''There's a good case for a new airport in the south suburbs. The longer we wait, the more acute the problem is going to be.''

THE THIRD CHICAGO AIRPORT FACT SHEET

The Federal Aviation Administration has called for a major expansion of U.S. airports to meet increased demands on aviation. In 2020, Chicago's regional demand will be two and a half times that of 1993, double that of 1999. By 2001, over 7.1 million projected enplanements in the Chicago region will not be accommodated unless the South Suburban Airport is built.

Five independent studies on the need for an additional airport in the Chicago region concluded a third airport should be built. The studies concluded the third airport will have no negative impact on either Midway or O'Hare Airports. Instead, it would bring over $9 billion, annually, to our region, above and beyond that of the existing airports by 2010; over $16 billion by 2020.

The initial study, the Chicago Airport Capacity Study, concluded that neither Midway nor O'Hare Airports could be expanded to meet Chicago's long-term air transportation needs. With the release of the state's 1994 and 1995 demand forecast studies, it became clear that Midway and O'Hare Airports would be at or near capacity by the year 2000. By 1999, we have watched capacity constraints cause major delays at O'Hare; and, by ripple effect, throughout the nation.

Building a new airport ensures that Chicago remains the nation's prime aviation hub into the next century. It also creates a wide array of airport-related jobs and contributes major revenues to state and local governments. A third airport means 236,000 new jobs and $5.1 billion in annual wages, by 2020.

IDOT studies state that capacity constraints at O'Hare will, first, cause airlines to eliminate commuter air service and, then, all aviation services to cities within 150 miles of Chicago. This trend began in 1992, with airlines increasing fares to downstate communities, resulting in less passenger traffic. The airlines then cut commuter service and, eventually, may eliminate all service to downstate communities; many already have lost service. Eventually, the ability of the Chicago region to attract and retain businesses, jobs and residences would be affected. In 1998 and 1999 some of these lost services were restored, due to adverse publicity, intensive lobbying by officials, and pending Federal legislation.

In 1996, IDOT stated that, in order for the Chicago region to continue as a major transportation and commercial center in the 21st century, the South Suburban Airport should be ready by 2001. However, political maneuvers have kept the project in limbo. But capacity constraints and their impacts continue to multiply. O'Hare already operates, for safety reasons, under FAA restrictions on the number of flights; but Congress is planning to lift these caps. Midway cannot be expanded to include more or longer runways, barring the displacement of surrounding homes and businesses. Although it will not increase capacity, more than $2 billion will be spent on landside improvements at these airports.

Over the next 20 years, employment in the 14-county region is expected to grow by almost two million jobs. With the new airport, jobs from Chicago's three airports will grow to 674,000, almost 10 percent of the region's total employment in 2020. Without the new airport, projected job growth in the 14-county region will be reduced by 535,000. In the six-county region, the reduction would be 415,000 jobs. The economies of many cities within 150 miles of Chicago will be adversely affected as their traditional businesses, financial and personal ties are cut or strained and transferred to competing regional hubs.

The location selected for the third airport is 23,845 acres of land 15 miles south of the Chicago city limits. The new airport will result in a better distribution of jobs to the existing population; improved accessibility to jobs for minority populations: and a more-balanced regional growth. The site is the closest feasible to the Chicago urban area and has no significant environmental concerns.

The proposed Third Airport would bring jobs and development to a mature portion of the region, hard hit by industrial automation. It makes use of an in-place transportation infrastructure and provides access to nearby inexpensive land for development. It will allow residents of the South Side to reduce both travel time and costs to their jobs. It will bring revenues to municipalities with the highest tax assessments in the region. It is smart growth.

[From Crain's Chicago Business, Jan. 29 2001]

HIGH COST OF GRIDLOCK

STALEMATE OVER AIRPORT EXPANSION IS STARTING TO INFLICT DAMAGE

(BY GREG HINZ)

Gov. George Ryan had barely dispatched his bagel and eggs when members of the Illinois Business Roundtable gave him cause for indigestion.

Chicago's economic crown jewel, its once world-leading aviation system, is in trouble, the audience of leading corporate executives bluntly told the governor at the private breakfast meeting late last fall. O'Hare International Airport is not being taken care of, the executives asserted.

In fact, O'Hare now is so beset by delays, congestion and cancellations that financial services giant Household International Inc.

is locating new jobs out of state, Chairman and CEO William Aidinger informed Mr. Ryan. When Prospect Heights-based Household has been expanding, he said, it's been expanding someplace else.

That message is every bit as ominous as it sounds for the Chicago-area economy. A decade of scorched-earth political warfare over O'Hare is beginning to take a toll, threatening the city's status as the nation's transportation center and its draw as a corporate headquarters and services center.

Now, the engine that has generated an estimated 500,000 jobs and $35 billion a year is at risk of losing momentum. And continued constraints at O'Hare could cost the region up to $10 billion a year in lost economic activity—from business meetings to larger-scale corporate investment—according to one recent study.

Clearly, business, jobs and investment aren't coming to Chicago—at least not to the extent they might be, had government leaders resolved the fight over whether to add runways at O'Hare or build a new airport in Peotone. In the end, they may have to do both. In the meantime, cities such as Denver are nabbing marketshare.

''Could Chicago lose critical mass as a business services center? It's a strong possibility,'' says William Testa, senior economist and vice-president of the Federal Reserve Bank of Chicago. ''Everything that's growing (in the Chicago economy) is dependent on that engine called O'Hare Airport.''

Already in a hole

The situation is so troublesome that former Gov. Jim Edgar for the first time is revealing that he tried to cut an airport expansion deal just before he left office two years ago. Pressure is rising fast on Mr. Ryan and Mayor Richard M. Daley to finish the job.

Most of the evidence of damage is so far circumstantial. Few business people will talk about why they chose to locate a new facility elsewhere. But as former Chicago Aviation Commissioner Jay Franke puts it, ''By the time you know for sure you've been hurt in this business, it's too late. It will take 15 years to dig out the hole.''

How deep is the hole? Though some data are debatable, a general trend is clear:

The city is losing marketshare in the nationwide aviation business, with O'Hare passenger volume growing at just two-thirds the national rate in the past four years and domestic enplanements—the number of people boarding planes—down two years in a row.

''The picture at O'Hare continues to deteriorate,'' says Robert Baker, vice-chairman of American Airlines, which is buying Trans World Airlines and intends to expand TWA's St. Louis hub. ''Unless O'Hare is operated better than it has been and is allowed to grow with the rest of the economy, its competitiveness will decline.''

O'Hare's connecting, or hub business, is moving elsewhere, dropping from 60 percent of domestic enplanements in 1993 to a projected 52 percent by early in the next decade, according to the Department of Aviation.

The loss of hub traffic means that O'Hare stands to lose the large number of destinations and flights that make Chicago such a draw for corporate meetings, trade shows and even business expansion. That loss could jeopardize O'Hare's far more lucrative long-haul domestic and international business, which draws on passengers from feeder cities.

''The challenges Chicago is facing give us an opportunity to pick up some of their traffic,'' says Amy Bourgeron, deputy manager of aviation at Denver International Airport, a key and fast—growing hub for Elk Grove Township-based United Airlines. ''We have the ability to grow.

Decisionmakers say that O'Hare's reputation as a good place from which to do business is down—way down—with congestion costing Chicago businesses an estimated $3 billion last year in lost time and expenses, according to an analysis by Deloitte & Touche LLP (Crain's, July 31).

Terrible reputation

''In the marketplace, the perception is that Chicago is a horrible place to go through,'' says Stephen Stoner, a facilities location expert who heads the U.S. real estate consulting practice for Arthur Andersen LLP. ''If I were the mayor, I'd be nervous. ''

Confirmation that a problem exists comes from a surprising source—Mr. Edcrar, a Republican known for his supposed anti-Chicago attitude and support for a third airport at Peotone.

The former governor says he quietly attempted to negotiate a pact with Mr. Daley at the end of his term in 1998 in which he would have agreed to a new runway at O'Hare, in exchange for the mayor signing off on construction of a Peotone airport using state and federal funds.

Mr. Daley says such a conversation never occurred. But Mr. Edgar says he made the previously unreported offer because he concluded that airport gridlock is costing Illinois. ''If we don't do something now, we're going to be in trouble in years to come,'' he says. (See story, this issue.)

National political leaders, too, are getting involved. ''We either expand O'Hare Airport, or we build another airport, or both,'' Sen. John McCain, R-Ariz., declared during a Senate Commerce Committee hearing last summer.

Capacity issue is critical

The shortage of runway space—''capacity constraints'' is the industry label—obviously isn't the only cause of O'Hare's woes. Labor strife and technological snafus, bad weather and federal limits on the number of flights all have contributed to the airport's declining stature.

But at the center of the problem is the need for one or more runways, which would offset or ease the other constraints as O'Hare gears up for possible expansion with the scheduled lifting of flight slot controls in 2002.

''The region needs new runway capacity,'' argues Chicago attorney Joseph Karaganis, who has made a career fighting O'Hare but does not dispute the notion that something must be done. ''The question is where to put them.''

Two major studies in recent years concluded that the local economy would take a big hit if the airport capacity problem were not solved. The first was a 1996 Dallas/Fort Worth review by the Regional Economics Applications Laboratory (REAL), a joint venture between the University of Illinois and the Federal Reserve Bank of Chicago.

REAL concluded that allowing airport capacity here to grow as much as the market demands would create up to 55,000 jobs in aviation-related fields alone by 2018, and add $15.7 billion in direct value to the metropolitan-area economy.

Geoffrey Hewings, one of the chief authors of that study, says he has not since attempted to measure whether capacity constraints indeed have begun to exact a toll, but believes they're ''starting to. We were suggesting, that, by 2001 or 2002, we'd begin to see a 1 percent or 2 percent loss (of potential growth).''

Two subsequent studies by the Chicago office of Booz Allen & Hamilton, a consulting firm commissioned by the Civic Committee of the Commercial Club of Chicago, reached similar conclusions. Even if some version of Peotone is built, ''artificially constraining O'Hare at the current levels of 900,000 (flights a year) could cost $10 billion annually'' in direct spending on passenger services and indirect benefits from economic activity such as corporate meetings, the study concluded.

Incentives disappearing

Booz Allen derived that number by making a key but logical assumption: When capacity is limited, airlines will focus on the most profitable side of their business here and ignore less lucrative traffic.

As Booz Allen saw it, high-margin international passengers are the most valued, worth $2,310 each to the regional economy. Next in line are Chicago-area residents flying to or from other North American cities—known as origin and destination (O&D) passengers—worth $1,200 each. Last in the priority queue: those flying here from smaller Midwestern cities, and connecting passengers who can be dispatched to other hubs, such as Atlanta, Dallas and Denver; they're worth $430 each.

Over time, connecting traffic and flights to smaller cities will tend to be displaced, Booz Allen concluded. If enough of those go, there eventually will be ''less incentive for airlines to focus international growth investments on Chicago.''

The reason: Why should, say, Iberia Airlines run service to Chicago rather than Detroit if Detroit has more flights to smaller American cities where Iberia's passengers live?

Right now, international traffic is perking along nicely at O'Hare, rising nearly 50 percent in just the past four years. But the process of dumping short flights in favor of long flights, and connecting traffic in favor of O&D business, has begun, according to Suhail and Margery at Chatabi, principals in Chicago-based at Chalabi Group, the state consultant on the proposed Peotone airport.

While Chicago once was an aviation leader known for above-average growth, O'Hare operations have been flat in recent years, and domestic enplanements actually are down, Ms. al Chalabi notes. ''The airlines are putting more of their (connecting) schedule in other hubs.''

Consistent with that loss of hub traffic, Mr. al Chalabi points to figures he's derived from federal reports that suggest O'Hare is indeed losing marketshare. O'Hare enplanements were up just under 9.0 percent between 1995 and 1999, those data indicate—compared with an average 13.5 percent increase for the nation's 68 largest airports, and well below increases at rival hub airports such as Dallas/Fort Worth (17.2 percent), Denver International (15.3 percent) and Atlanta Hartsfield (29.7 percent).

If booming Midway Airport is included, the metro-Chicago hike is slightly more than 13 percent, near the 9 national average, Mr. al Chalabi concedes- But Midway soon will hit capacity and be unable to capture O'Hare overflow, he argues, and the O'Hare increase largely is driven by international, not domestic, business.

Aviation Department reports indicate that O'Hare's domestic business almost certainly fell for the second year in a row in 2000, down 1.2 million passengers, or nearly 2 percent, and that the number of O&D enplanements is at its lowest level since 1995. Remarkably, that flat-to-down performance came during, a period of unparalleled prosperity, when air travel nationally was rising 2 percent to 3 percent a year.

Runways not the key, city says

But City Aviation Commissioner Thomas Walker reads the figures differently. Chicago's aviation market is ''mature,'' he insists, and O'Hare won't need any O'Hare is losing new runways until at least 2012.

O'Hare has been held back not by a runway shortage but by federal slot rules, argues Mr.

Walker, whose boss, Mayor Daley, has made it clear the city does not want to discuss runways now. In fact, Mr. Walker says, ''the runway capacity we have isn't matched'' by the number of available gates, taxiways and other ground facilities needed to handle the planes that do land.

O'Hare plans to remedy that situation with its $3-billion World Gateway plan, which will add two terminals and up to 32 gates, Mr. Walker says. Even so, O'Hare will grow more slowly than other U.S. airports, he concludes. ''There just aren't that many more destinations to serve, or that many which are underserved.''

Ramon Ricondo, a consultant who works for O'Hare and other airports around the country, says it's ''too soon'' to worry about recent weakness in O'Hare's domestic business. ''You could have any number of things going on,'' he says, with one major carrier or another temporarily moving traffic to suit its particular needs.

''If O'Hare was less desirable,'' Mr. Ricondo concludes, ''you wouldn't see United and American fighting so hard to get more oates here.''

But other data released by Mr. Walker's department indicate that O'Hare's hub business has been down over an extended period, dropping from 60 percent of the airport's domestic enplanements in 1989 to 55.5 percent in 1995. The figure has recovered a bit in the intervening years, but the city projects it will fall to 51.8 percent by 2012.

Additionally, while O'Hare continues to attract non-stop service to new destinations, many of them overseas, it is losing flights to smaller Midwestern cities.

Between December 1996 and December 2000, O'Hare added non-stop service to 32 new locations—including Hong Kong; Istanbul, Turkey; Osaka, Japan, and Krakow, Poland—according to Official Airline Guides, an Oak Brook-based division of Britain's Reed Elsevier plc Group. During the same period, the airport lost non-stop service to 15 cities, including Decatur, Danville and Sterling, Ill. Terre Haute, Ind., and Mason City and Sioux City, Iowa.

Future performance a concern

Industry experts say there is reason for Chicago to be concerned.

American Airlines' Mr. Baker says he worries that O'Hare's performance will further deteriorate when carriers try to add more flights after the slot cap is lifted in 2002. He points to the chaos that enveloped New York's LaGuardia Airport last summer when slot controls were lifted temporarily there.

''There's no way to add Chicago capacity without dragging (performance) down,'' says Mr. Baker, who was interviewed before American announced plans to buy TWA. ''That would affect Chicago's viability.''

Thomas Hansson, one of two chief authors of the Booz Allen report, concurs that O'Hare operations are ''at capacity.''

Walter Aue, American's vice-president for capacity planning, confirms that his airline's expansion here will be ''focused internationally,'' even though it also would like to add service from Chicago to the East Coast.

Other carriers' decisions in recent years to open hubs in cities such as Cincinnati and Detroit are a sign of what's occurring, he adds. ''They're a reflection that O'Hare hasn't grown in 20 years. O'Hare should be growing at a greater rate than it is,''

Howard Putnam, a former United vice-president who later headed Southwest Airlines and the now-defunct Braniff Airways, says he hears one statement a lot from top airline pros: ''We don't have enough concrete'' in Chicago.

Mr. Putnam says he hasn't examined the latest data on whether O'Hare is losing marketshare, and notes that the data likely can be interpreted in various ways, but he's nonetheless made up his mind about O'Hare: ''I haven't been there in three years. I go anywhere else I can to avoid it.''

Even Chicago's hometown airline, United, is avoiding Chicago to some degree. Though its headquarters is on the north edge of the airport, the carrier confirms that other hubs like Denver are getting business that O'Hare can't handle. (See story, this issue.)

Things are so tight here that a labor action or bad weather has a ripple effect—for example, the stranding of thousands of United passengers last summer.

As serious as O'Hare's problems are, the more basic question for Chicago is whether the airport wars have begun to claim victims throughout the broader economy.

Some say not yet, but they're worried.

''There is such a solid base of business here that they see themselves surviving in spite of O'Hare,'' says Laurie Stone, president of the Greater O'Hare Assn. of Industry and Commerce, a 1,200-member business group. ''I don't see very much political leadership.''

Marginalizing O'Hare

Others—particularly in growing, transit-dependent fields such as law, accounting and banking—have begun to adjust their work habits, or fear they will have to soon.

Diane Swonk, chief economist at Chicago's Bank One Corp., crew so fed up with O'Hare that she began flying, out of much smaller, but more dependable, Midway. Once there, she discovered that a lot of other bankers already had made the move.

Michael Krauss, chief marketing officer at DiamondCluster International Inc., says employees at his Chicago-based high-tech consulting firm survived last summer's flying, woes by, among other things, making more conference calls.

But some companies already have decided to sidestep O'Hare.

Michael Lynch, director of public affairs at Illinois Tool Works Inc., says flying personnel to Detroit for a weekly meeting with big, auto clients became such a hassle that the Glenview-based manufacturer has cut way back on trips. Instead, the firm taps the teleconferencing network it recently built at 20 locations worldwide.

In fact, the company is so fed up with O'Hare that it almost located a new manufacturing facility near St. Louis, deciding on Ottawa, in LaSalle County, at the last minute only because of other factors, Mr. Lynch says. ''O'Hare is being, marginalized.

No. I priority

That view is being expressed more and more.

Lester Crown, the industrialist and financier who heads the Civic Committee's aviation panel, says that when he speaks with his colleagues from other cities, they say two things about Chicago It's ''a wonderful place to be,'' and ''O'Hare is a mess. What a shame.''

For those who want to keep the region prosperous, he adds, ''nothing, could be of more benefit'' than ending Chicago's air gridlock. ''Anything else pales in comparison.''

IS POLITICAL BREAKTHROUGH ON THE RADAR?

Amid the harsh words and political flak that dominate Chicago's airport wars, a surprise is emerging: the outline of a potential compromise.

At first glance, airport peace seems as likely as a Cubs World Series sweep. After all, O'Hare's politically powerful neighbors, led by the Suburban O'Hare Commission, not only want to cap growth but also complain bitterly about noise and air pollution. And Mayor Richard M. Daley, by all accounts, is unwilling to even acknowledge that an airport capacity problem exists, much less sit down and bargain.

But after a decade of dogfights over O'Hare and Peotone, there are signs the region may be at a critical turning point. With a new president, a governor perhaps in search of a legacy and a business establishment that's increasingly vocal about O'Hare's importance to its growth, the logjam could break.

The wild card is Mr. Daley and whether he's willing to push when pushing might work. Asked repeatedly in various forums about the airport problem, Mr. Daley dismisses discussions about the need for additional runway space. As for Peotone, the mayor usually responds, ''If they want to build it, they should go buy the land.''

There are reasonable compromises out there,'' says U.S. Rep. William O. Lipinski, D-Chicago, who holds a crucial bargaining post as the ranking Democrat on the House Aviation Subcommittee. ''Whether there are people out there who are reasonable, I don't know.''

Another top Democrat may be jumping into the fray. Illinois House Speaker Michael Madigan is considering forming a committee on aviation, aides to the Chicago Democrat confirm. The panel would give Mr. Madigan a platform to raise his profile on the subject of runway and airport expansion.

One sign auguring in favor of the obvious compromise—a runway or two plus new western ground access at O'Hare, and a small airport at Peotone—is that the public positions of some of the major players are closer than is generally realized.

For instance, while Suburban O'Hare Commission lawyer Joseph Karaganis argues that Peotone will be a financial flop unless limits are imposed on O'Hare operations, state Transportation Secretary Kirk Brown, Peotone's original patron, disagrees.

He says Peotone ''absolutely'' needs neither caps at O'Hare nor a portion of O'Hare-generated passenger fees: ''You don't need to take traffic from O'Hare.'' Mr. Brown wants the state to build a $500–million starter field at Peotone using state and federal funds.

The goal is to build an airport with point-to-point flights, not a hub, that would start out slowly and build, like Midway,'' he says.

Such a position should please executives such as Robert Baker, vice-chairman of American Airlines. He says American does not want to be forced to pay for dual hubs at O'Hare and Peotone, since the vast majority of its passengers live closer to O'Hare, but concedes that ''some small amount of local service might work'' at Peotone.

The Midway factor

Another example: City gripes that building Peotone could kill Midway Airport appear to be overblown, at least legally.

It is true that leases signed by Southwest Airlines and other Midway carriers allow them to leave under certain conditions. But those conditions are limited to cases in which the city itself develops another airport within 50 miles, or in which someone else does and thereby forces ''material limitations on operations'' at Midway, according to the city's lease with Southwest.

One well-placed city official concedes that the language is ''intentionally vague.'' And Southwest's director of property, Peter Hampton, acknowledges that mere competition from Peotone would not be enough to cancel the lease, but argues that the meaning of ''material limitations'' might have to be resolved in court.

Driving a possible compromise: political change. The relationship between Mr. Daley and Gov. George Ryan is as congenial as the relationship between Mr. Daley and former Gov. Jim Edgar was icy—and both officials

are under increasing pressure to work things out now, while they still can.

Though the mayor flatly denies that he met with Mr. Edgar to discuss airport issues in 1998, Arnold Weber, who was president of the Civic Committee of the Commercial Club of Chicago, says the big-business lobbying group helped arrange the meeting and that Mr. Edgar briefed him on its outcome two or three days later.

I never ever had a conversation with him on that subject,'' Mr. Daley says. Asked if he could work with Mr. Ryan on a compromise, he says, ''I don't know. This is the governor's standoff.''

Why the mayoral reticence?

Some say Mr. Daley never got over his bad airport experience of several years ago, when the proposed Lake Calumet field was quickly shot down, and is unwilling to expend more political capital. Other political insiders say Mr. Daley's mind is on a more practical matter: tens of millions of dollars in jobs and contracts that friends and associates control at O'Hare.

But the mayor may not be able to duck much longer. With Republicans, rather than the anti-Peotone Clinton White House, now running the U.S. Department of Transportation, Mr. Daley runs the risk of the GOP winning crucial federal approval to build Peotone without giving O'Hare anything.

The pressure on Mr. Ryan is even more acute. A dealmaker par excellence, Mr. Ryan could cut the mother of all deals on Chicago airports, State law gives him the power to unilaterally approve more runways at O'Hare. But with federal prosecutors having badly damaged his reputation, Mr. Ryan's time in office may be running short.

Hastert could weigh in

There is one other key figure: U.S. House Speaker J. Dennis Hastert, R-Yorkville.

Unlike powerful DuPage County politicians such as Illinois Senate President James ''Pate'' Philip and U.S. Rep. Henry Hyde, R-Addison, he tends to favor O'Hare expansion because his district is far enough from the airport to be insulated from noise problems but close enough to share its economic benefits. If the city, as part of a runway deal, agrees to add a western entrance to O'Hare—just minutes away from Mr. Hastert's district—the speaker might bite, insiders say.

Bottom line: ''A deal is possible. There's probably as good a chance now as ever,'' says one top Springfield insider. ''At some point, I think the governor will be willing to talk.'' But will Mr. Daley talk, too?

DENVER'S SKIES FRIENDLIER AS UNITED EXPANDS

With 450 departures a day from O'Hare International Airport and its corporate headquarters just a few blocks away from the terminals, United Airlines might be said to have a major investment in Chicago's aviation system. But when it comes to growing its mid-continent hubs, United's rising star is located a thousand miles away from its hometown, in Denver.

United has added dozens of flights at Denver International Airport since 1995, while its O'Hare operations and passenger flow have barely edged up.

''Our ability to grow (O'Hare) has been limited,'' says Kevin Knight, United's vice-president in charge of route development, blaming a shortage of gates that will be only partially alleviated by O'Hare's pending expansion, about-to-expire federal slot rules and a shortage of runways that shows no sign of easing.

''One of the major challenges we face is getting airplanes out of the airport,'' he say. ''That means runways.''

The carrier's pending acquisition of US Airways Group Inc., with its coveted East Coast routes that will provide a lucrative feed for long-haul domestic and international flights, will enable United to grow faster than before. But with O'Hare's current constraints, it's possible that Chicago won't reap the benefits of a larger, more powerful United.

The numbers tell a simple story.

At the 6-year-old Denver International, where United and its United Express feeder line are dominant, operations have been rising about 4 percent a year for the past five years—about the same as in other airlines' mid-America hubs, such as Detroit, according to Mr. Knight. Much of that service is provided by increasingly popular regional jets, which carry fewer passengers but require almost as much runway space as large aircraft.

But at O'Hare, United's operations and enplanements—the number of passengers boarding planes—are up just 1 percent, Mr. Knight says.

Since United still wants to grow its high-margin international business in Chicago and to serve as many local residents as possible an their domestic trips, something has had to give. The something is connecting hub service, in which out-of-towners fly here to get a flight to a third city. That service has begun to head elsewhere.

''The percentage of our passengers that are local in Chicago has been increasing,'' Mr. Knight says, jumping from 38 percent in 1994 to 44 percent in 1999. That means connecting passengers are down, to 56 percent from 62 percent.

''While we continue to serve the local Chicago market very effectively, we are increasing local service at the expense of connections,'' Mr. Knight concedes. ''Some of that traffic that could go to Chicago is going elsewhere.''

Mr. Knight doesn't identify any particular flight or city that's vanished from United's service roster. He insists that United's recent decision to drop non-stop service from Chicago to Honolulu—O'Hare passengers now have to change planes in Los Angeles or San Francisco en route to Waikiki, just like the folks from Des Moines—was based on other factors.

But there are big smiles in Denver, where the total number of passengers leapt 21 percent to an estimated 39.2 million last year from 32.3 million in 1996, far surpassing Chicago's modest 5 percent increase to an estimated 72.4 million in the same period.

United already has added 50 flights a day in Denver since the city's old Stapleton Airport closed in early 1995, and United Express service is up 25% in three years. The airline has agreed to lease 10 more gates in Denver—more than the eight additional spots it will get under O'Hare's pending World Gateway expansion—and announced last June that it's building a $100-million, 36-gate regional concourse there.

''They are growing here. We like that,'' says Amy Bourgeron, Denver's deputy manager of aviation. ''We have competitive advantages over other airports that have congestion and traffic problems.''

Mr. Knight does have a little good news for O'Hare. For at least the next five years, it will remain United's single largest hub.

Meanwhile, he has a sharp reply to contentions by city officials that Chicago is a ''mature'' market in need of little new service: ''I couldn't agree with that. This is a viable, growing market.''

[From the Chicago Sun-Times, Feb. 17, 2001]

MAYOR STANDS EXPOSED ON AIRPORT

(By Jesse L. Jackson, Jr.)

Mayor Daley's erratic posturing on a third airport in Chicago reminds me of the fabled emperor with no clothes.

No matter what the emperor said, believable or not, his followers displayed blind loyalty.

In the late 1980s, Daley mocked the idea of a third airport, calling it unnecessary. In 1990, he did an about-face and proclaimed that Chicago needed another airport or else the city would ''continue to lose business to Denver, Dallas, Atlanta and others.'' Two years later, in another reversal, Daley declared that Chicago had enough airport capacity for another 20 years.

So, throughout the '90s, the city paid hundreds of millions of dollars to consultants, lobbyists and public relations firms to force-feed incorrect data to the public and the federal government, supporting the mayor's bogus claim that the city needed no new capacity. All the while, O'Hare was choking on congestion, delays and gridlock.

As recently as last month, the mayor and the city Aviation Department reiterated that O'Hare needed no new runways until 2012.

Then on Feb. 1, the mayor flipped again, dropping all pretense and admitting the obvious—that Chicago needed additional capacity. Now the mayor is calling for new runways at O'Hare.

Unfortunately for taxpayers, the mayor's deception has come with a heavy price tag.

To pay for his ill-fated third airport, Daley in 1992 leveraged Congress to enact a $3 ticket tax on air travelers. The so-called passenger facility charge was, according to Congress, to be used to increase airport capacity and enhance airline competition.

Instead, the city committed $3 billion in passenger facility charge receipts—all those to be collected through 2017—to expand and gold-plate terminals, improve taxiways and aprons, and pay consultants—none of which adds capacity or competition to the overcrowded, overpriced O'Hare.

Consequently, passengers are paying for a new airport but getting increased fares, delays, cancellations and congestion at ''O'Nightmare.''

Now, given the mayor's renewed call for runways, it is inevitable that City Hall and O'Hare's dominant carriers, United and American airlines, will return hat-in-hand to ask the federal government and the public to pony up more money.

After violating the public trust so often, the mayor wants to be the steward of it. But his tactics have led to misplaced priorities and misallocation of funds. Chicago deserves better.

Fortunately, there is an alternative. The State of Illinois has proposed building a third airport near Peotone. As proposed, the inaugural airport could be built faster, cheaper, cleaner and safer than a new runway at O'Hare.

With Peotone's stock suddenly rising with the new administration in Washington, Daley and his supporters in business and the media are promoting a compromise. Many are advocating that O'Hare get a new runway in exchange for Peotone getting off the ground. Of course, a new runway at O'Hare makes Peotone unnecessary for at least several more years.

I oppose such a deal. The city has strained its credibility and blocked the doorway of opportunity long enough. The region is paying with lost jobs, market share and tourism. Passengers are paying with high fares and poor service.

For the sake of safety and fairness, Peotone must be the taxpayers' new first priority. Because the naked truth is, the city, the mayor and the airlines no longer can be blindly trusted to ensure that Illinois gets the best deal.

A MESSAGE FROM THE MAYOR

(By Richard M. Daly)

Chicago's Southeast Side, along with the entire Calumet region, has been in a state of economic decline since the steel industry and its related businesses left the area.

The loss of this industrial base proved devastating to many thousands of families forced to endure years of harder times.

Over the years that followed, there were many promises of revitalization and major new industry. None of them amounted to anything.

There are two realistic futures for this area.

One is to continue struggling, fighting for dwindling resources that will never be enough to restore the area to economic and environmental health.

A comprehensive clean-up of the industrial pollution alone would cost hundreds of millions of dollars that simply are unavailable from the federal government.

The other future is one that offers tremendous hope: the prosperity of hundreds of thousands of new jobs and an economic rebirth that includes a cleanup-up environment.

It is a future that will cost billions of dollars to create. And there is only one possible way to raise this money: the Lake Calumet Airport.

While my airport proposal is good for the entire City of Chicago, it is the Calumet region that will most benefit.

Construction and operation of this international airport will create a huge economic engine that will pump new life into this region.

It will bring new prosperity to the entire area, making it the most dynamic in the state.

The economic benefits of this project are so immense—we are talking billions of dollars each year—that it will present no difficulty to create new communities for those residents who must someday relocate nearby.

These communities can even be modeled after what is now in place—if that is what the residents desire.

We can do all this. It's that big a project.

Chicago is a city of neighborhoods and of families. Many Southeast Side residents have roots in the area going back generations.

All of this can be preserved, both in the city and throughout the Calumet region, as the new airport takes shape.

I wouldn't have it any other way.

A few opponents of the airport believe the area is being asked to sacrifice itself for the good of the rest of Chicago.

I ask no sacrifice other than to give up the false promises of the past, in favor of a real future for the community and all who call it home.

LAKE CALUMET AIRPORT: THE FUTURE OF CHICAGO

Chicago's O'Hare International Airport is again the busiest in the world for 1990, but this coveted title did not come by chance. Chicago worked hard to become the transportation hub of the nation.

Competition in the aviation world is more intense than ever. Today other cities aggressively pursue this prestigious leadership position in the nation's air transportation system and the jobs and economic benefits that go with it.

Not all passengers using Chicago airports begin or end their trips here. About half are connecting passengers using the major airline hub operations at O'Hare.

This arrangement not only makes them customers of the airport bringing in revenue, but also makes available a huge selection of direct destinations for Chicagoans to points around the world. This, in turn, makes Chicago a very attractive location for business and industry that rely heavily on convenient passenger and air freight service.

Aviation leadership means a great deal to Chicagoans. If the new airport is not built, the city will likely continue to lose business to Denver, Dallas, Atlanta and others that more aggressively compete with new and improved facilities. Should airline business go elsewhere, Chicago will lose many of the jobs it now enjoys.

The central position occupied by Chicago in the nation's air transportation system has been extremely important to the economic growth and development of the entire region. The economic impact of O'Hare—the state's seventh-largest employer—is more than $9 billion each year and the airport supports over 180,000 jobs. The Lake Calumet Airport will be larger in size and generate even greater economic benefits and jobs.

Forecasts for the future of air travel indicate that Chicago's present airports will not be able to handle the increased demands of air transportation expected in the next century. As demand for air service increases, delays and congestion at Chicago's airports are getting worse. As a result, the share of business handled by Chicago already has begun to decline.

In 1986, the Illinois Department of Transportation began a feasibility study for a third Chicago airport. The results clearly demonstrated that the location that would provide efficient service to the most passengers is between Chicago's Loop and Gary, Indiana.

Chicago Mayor Richard M. Daley proposed the Lake Calumet airport site as the best means for revitalization of the north-eastern Illinois and northwestern Indiana region. Located halfway between the Loop and Gary, it is ideally situated to attract a significant share of Chicago's air transportation market. News organizations including the Chicago Sun-Times, Crains's Chicago Business, the Chicago Tribune and the Southtown Economist have recognized the benefits of the Lake Calumet Airport concept, as have a broad cross section of community, labor and business leaders.

Sponsored by the states of Illinois and Indiana and the City of Chicago, a major study is now underway of five new airport sites: the Chicago Lake Calumet location; expansion of the Gary Municipal Airport; Rockville Township in northwest Kankakee County; Peotone, Illinois in Will County; and a location on the Illinois-Indiana state line east of Beecher, Illinois—also in Will County.

The results of this study, to be completed in Fall 1991, will compare the suitability of these sites as airports under established financial, environmental, social and technical criteria. The Bi-State Airport Policy Committee, made up of the appointed representatives of the three sponsors, will review these findings and recommend a site to be developed as an airport for the region.

The advantages of the Lake Calumet site are that it addresses the region's need for a new airport, not only by attracting passengers, but also by improving the environment (see ''Airport to provide health and environmental benefits'', page 2). These advantages make it a strong contender.

The lead time for developing a major airport is very long—15 years or more. Several complex steps must be taken after site selection is completed. They include: master planning, environmental review, financing, land acquisition, site preparation and construction.

The expenses are enormous. At a cost of $5 billion, only location with the financial resources to cover such expenditures can realistically aspire to build an airport in today's environment. Chicago is the only site with that capacity.

A new airport will allow Chicago to retain its leadership in aviation well into the next century and continue to enjoy the many economic benefits inherent in that position.

CHICAGO AVIATION MILESTONES

1927—''Chicago Airpark'' (now Midway) opens as the first municipally owned and operated airport in United States.

1932—Midway Airport, the birthplace of municipal aviation, becomes the world's busiest airport, serving 100,847 passengers annually.

1963—O'Hare International Airport is dedicated by President John Kennedy, heralding the beginning of the jet age in Chicago.

1970—O'Hare continues as the world's busiest airport, serving 29 million passengers annually.

1990—On February 15, Mayor Daley unveils his proposal for the Lake Calumet Airport to ensure Chicago's aviation leadership into the 21st Century.

AIRPORT WILL GENERATE NEW JOBS

As the residents know, the Lake Calumet areas has been in an economic slump that has lasted for nearly two decades. Since many steel mills, factories and neighborhood businesses were closed, many former workers have had to take lower paying jobs.

Despite the many promises of jobs from same local politicians over the years, nothing has been found to replace the good-paying jobs that used to be plentiful for area residents.

This is why the Lake Calumet Airport project is so important for the area. It brings far more than just an airport. It will revitalize the Southeast Side of Chicago and the entire Calumet region. The airport will generate thousands of jobs and business opportunities.

The Lake Calumet Airport will provide an economic rebirth for an area with a rich heritage founded on a strong work ethic. The airport is expected to generate nearly $14 billion each year and bring approximately 200,000 new jobs to the region once it becomes operational in the year 2010. The jobs include every line of work in the aviation industry, along with thousands of positions in airport spin-off businesses.

The project will require thousands of construction workers to build the airport facilities and the new housing and business developments that will spring up around the airport. These jobs will offer competitive wages.

The Mayor is committed to establishing a program that gives residents from the affected communities the first opportunity to train and apply for these jobs.

The city will develop a comprehensive job training and employment program by working with unions, business developers, women- and minority-owned businesses and area schools. City colleges and vocational schools will be encouraged to establish courses to train residents for the jobs that will be needed at the airport and in the many spin-off businesses.

The city will encourage business developers to support the job training programs. Contractors for the numerous project tasks will be selected, in part, based upon their commitment to support the local employment pool.

PARTIAL LIST OF THE JOBS THAT SUPPORT AIRPORT OPERATIONS

Occupation	Middle Range Earnings *
Ticket Agent	$26,208–$34,996

PARTIAL LIST OF THE JOBS THAT SUPPORT AIRPORT OPERATIONS—Continued

Occupation	Middle Range Earnings*
Line Maintenance Inspector	36,400–44,262
Motor Vehicle Mechanic	30,555–41,808
Aircraft Inspector	36,400–45,302
Aircraft Mechanic	30,784–39,728
Ramp Service Helper	20,093–34,778
Stock Clerk	24,814–33,488
Aircraft Cleaner	15,413–28,600
Computer Programmer	25,766–30,576
Computer Systems Analyst	34,684–59,202
Janitor, Porter, Cleaner	11,315–27,706
Dispatchers	29,640–55,120

*In 1989 dollars.

Source: U.S. Dept. of Labor, Bureau of Labor Statistics.

SOUTH SUBURBAN AIRPORT: AVIATION DEMAND IN THE CHICAGO REGION

BACKGROIUND ASSUMPTIONS FOR DEMAND FORECASTS

Aviation demand is derived from a few basic factors:

The national/international growth in aviation.

The socio-economic dynamics and growth of the region.

The location/desirability of the region for providing connecting flights.

The ability of the region to accommodate this demand depends on:

The capacity of its airports.

The competitiveness of its fares.

NATIONAL/INTERNATIONAL AVIATION GROWTH

The FAA forecasts a doubling in aviation growth over a 15 year period.

International enplanements and freight are growing even more rapidly.

The FAA and the Airports Council International have equated this growth to 10 O'Hare Airports.

By 2012, there will be more than 1 billion enplanements, 2 billion passengers in the U.S.

SOCIO-ECONOMICS CREATE DEMAND

Since the original aviation forecasts, made in 1994, the socio-economic performance of the Chicago region has matched or exceeded expectations:

In 1990–1996, population and employment for the 14- and 9-County regions grew at rates and volumes slightly above those forecast.

The Chicago Consolidated Area (Kenosha to Michigan City) produced 1,311,000 jobs between 1970 and 1996; and added 617,260 persons.

The regional planning agencies have increased their 2020 forecasts, to reflect this growth. So has NPA, author for forecasts used by City of Chicago.

Woods & Poole Economics (the national forecast used by IDOT), in its 1999 edition, expects the Chicago region to produce the largest volume growth in employment of any metropolitan region in the U.S.: for 1996—2020, a 1,118,660 job growth; for 1990—2020, a 1,635,570 job growth.

Chicago's economy can continue its robust growth only if it can provide excellent aviation access. And, it can serve the region fairly, only if it provides that access to the south suburbs.

LOCATION DRIVES CONNECTING FLIGHTS

Because of its central location and high concentration of jobs and population, the Chicago region is a critical location for connecting flights:

The recent Booz•Allen study, prepared for the City, forecasts an international growth that is higher than IDOT's; and claims that high ratios of connecting to O/D are not just desirable, but necessary.

The City of Chicago, in 1998, forecast connecting enplanements based on regional location; their connecting forecasts were higher than IDOT's.

O'Hare's current connecting is 54.7%, slightly under its past average. IDOT assumed 50% connecting for O'Hare in 2001; 51% for the region.

AVIATION GROWTH PARALLELS IDOT FORECASTS

Since their national forecasts of 1994 (base for IDOT forecasts), the FAA has generated five 12-year forecasts, five long-range national forecasts through 2020, and five terminal area forecasts.

All the FAA national forecasts are higher than the study's base forecast.

Although it continues to contest IDOT's forecasts, the City of Chicago and its consultants are using forecasts that are nearly identical.

The City and State are using IDOT socio-economic and aviation forecasts for all short- and long-term regional transportation planning.

Other aviation plans (Gary Airport Master Plan; Booz•Allen forecasts for O'Hare International) are consistent with IDOT forecasts.

CAPACITY CONSTRAINTS JEOPARDIZE ECONOMIC AND AVIATION GROWTH

The ability of the region's airports to accommodate demand is a most-serious concern. The Chicago region has reached aviation capacity. These aviation capacity constraints have dampened regional growth:

Since 1995, O'Hare's growth in commercial operations has stopped.

Domestic enplanements at O'Hare have declined this year.

Small cities have been dropped from service.

Booz•Allen says the international market is not being well served.

Fares at O'Hare have risen above the average for large airports.

O'Hare delays have been much greater this year than last; O'Hare's delays are among the nation's highest and cascade throughout the nation's airports.

The FAA has long forecasted such capacity problems and resultant delays. In 1992 it forecasted a doubling of airports with delay problems by 2001.

The forecasts have arrived a bit ahead of schedule. Without additional capacity, the economic well-being of both Chicago and the nation are jeopardized.

THE GROWING IMBALANCE IN THE REGION'S GROWTH, AND ACCESS TO JOBS

1. The Chicago region has grown robustly over the past 25–30 years.

Over 1.310 million jobs (1970–96) for the consolidated area.

Over 275,000 jobs between 1990 and 1997, alone, for the six-county area.

2. This growth has been very uneven. The North has prospered, while the South has languished.

3. The region's center has migrated from Downtown Chicago (with its excellent public transportation access) to the area around O'Hare (dependent on autos).

4. The City of Chicago lost over 27,000 jobs between 1991 and 1997; 11,000 of these losses were from the South Loop.

5. The suburbs grew by 300,000 jobs. The areas to the north, northwest and west (O'Hare-influenced) contributed nearly 200,000 of this growth.

6. With 500,000 jobs in Chicago's CBD, versus 450,000 in North Suburban Cook and 150,000 in Northeast DuPage, the economic center of the region has shifted from Downtown to O'Hare.

7. Consequently, residents of the South Side and South Suburbs have commutes to work that are among the nation's longest. There is little public transit between suburbs.

8. These same residents do have the region's highest tax rates, however; without businesses and industries, the residents, alone, must pay for all their services.

9. New businesses and industries want access to major airports. O'Hare's nearby communities have run out of space to offer. The South Side has ample land, but no airport. The ample land also allows the construction of an environmentally-sensitive airport.

10. To accommodate the economic growth anticipated over the next 20 years, the Chicago region needs additional airport capacity. To balance the economic growth, it needs a South Suburban Airport.

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The regional planning agencies—primarily NIPC, but also NIRPC have increased their 2020 forecasts, to reflect this growth.

Woods & Poole Economics (the national forecast used in the former IDOT study), in its 1999 edition, expects the Chicago region to produce the largest volume growth in employment of any metropolitan region in the U.S.: for 1996–2020=1,118,660 job growth; for 1990–2020=1,635,570 jobs growth.

NPA, author of the forecasts used by the City of Chicago in 1998 and once much lower, in 1999 raised their economic forecasts to match those of W&P.

LOCATION DRIVES CONNECTING FLIGHTS

Because of its central location and high concentration of jobs and population, the Chicago region is a critical location for connecting flights:

The recent Booz Allen study, prepared for the City, forecasts an international growth that is higher than IDOT's; and claims that high ratios of connecting to O/D are not just desirable, but necessary.

The City of Chicago, in 1998, forecast connecting enplanements based on regional location; their connecting forecasts were higher than IDOT's.

The FAA's latest estimates put O'Hare's connecting at 54.70% slightly under its average percentage of the past 15 years. IDOT assumed 50% connecting for O'Hare in 2001; and 51% for the region.

AVIATION GROWTH PARALLELS IDOT FORECASTS

Since their national forecasts of 1994 (base for IDOT forecast), the FAA has generated five 12-year forecasts, five long-range national forecasts through 2020, and five terminal area forecasts.

All the FAA national forecasts are higher than the study's base forecast.

Although it continues to contest IDOT's forecasts, the City of Chicago and its consultants are using forecasts that are nearly identical.

The City and State are using IDOT socio-economic and aviation forecasts for short- and long-term regional transportation planning.

Other aviation plans Gary Airport Master Plan; Booz Allen forecasts for O'Hare international are consistent with IDOT forecasts.

CAPACITY CONSTRAINTS JEOPARDIZE ECONOMIC AND AVIATION GROWTH

While forecasts are an issue, it is the ability of the region's airports to accommodate demand that is most serious. The Chicago region has reached capacity. Aviation capacity constraints have dampened regional growth:

Since 1995, O'Hare's growth in commercial operations has stopped.

Domestic enplanements at O'Hare have declined this year.

Delays have been significantly greater this year than last.

Small cities have been dropped from service.

Booz Allen says the international market is not being well served.

Fares at O'hare have risen about the average for large airports.

ABILITY TO ACCOMMODATE REGIONAL DEMAND IS DECLINING

In 1998, (FAA statistics) O'Hare slipped to second place, behind Atlanta's Hartsfield, in enplanements. Capacity limited O'Hare's growth. The City of Chicago claimed that we should, ''look at the Chicago aviation system (O'Hare and Midway) which combined, make Chicago the world's busiest system.'' Unfortunately, this claim is wrong; but a look at the major regional aviation systems in the country shows that Chicago is slipping in accommodating its regional demand.

In 1993, the Chicago regional system ranked second, behind New York, only. By 1998, it was about to slip behind Los Angeles, but rallied at year's end. By 2015, however, Chicago will have slipped to fourth, behind New York, Los Angeles and Atlanta.

MAJOR AIRPORT SYSTEMS

[Enplanements in thousands and regional rank]

Region	1993	1998	1993–98 growth (percent)	2015
Chicago (O'Hare, Midway)	33,017 (2)	39,231 (2)	16	65,551 (4)
Atlanta	22,282 (6)	35,255 (4)	53	65,719 (3)
New York (JFK, Laguardia, Newark)	36,855 (1)	43,895 (1)	20	70,514 (2)
Los Angeles (LAX, John Wayne, Ontario, Burbank)	31,878 (3)	38,510 (3)	25	71,377 (1)

[1] FAA—Terminal Area forecasts Summary: fiscal Years 1998–2015 estimates had Chicago slipping to 3rd in 1998. FAA—Terminal Area Forecasts Summary: Fiscal Years 1999–2015—source of above data.

Chicago's slippage, over the five-year period (1993–1998) shown, indicates its inability to accommodate regional aviation demands.

Chicago's regional growth, at 16%, lagged far behind Atlanta's, at 53%.

Chicago also lagged behind the regions that have capacity-constrained major airports—New York, Washington, San Francisco and Los Angeles—because those regions have utilized third and fourth airports.

Recent statistics indicate that O'Hare has slipped behind in operations, as well as enplanements, a clear indication of capacity constraints.

There are no socio-economic reasons for a dampened regional demand.

OPPORTUNITIES ALREADY HAVE BEEN LOST; OTHERS WILL FOLLOW

It is always difficult to document events and forecasts that do not materialize. But if you trust your forecasts, some estimates can be made and general conclusions reached.

Over the past decade, the Chicago region has missed the following opportunities:

When Delta could not accommodate its demand at O'Hare, it moved its Midwest hub operations to Cincinnati. Cincinnati, with a metro area population of 1.729 million in 1980 and 1.969 million in 1999, has watched its airport grow from 2.300 million enplanements, in 1986, to 9.327 million enplanements, in 1997; and is forecast to grow to 21.826 million enplanements by 2015.

Both the U.S. Postal Service and Fed Ex have built major facilities at Indianapolis Airport. United Airlines built its maintenance facility there, as well. UPS built major facilities at Louisville and Rockford Airports.

United Airlines, Chicago's hometown airline, has developed its European hub at Dulles Airport. It now is transferring increasing numbers of connections to Denver, the airport it opposed so vehemently.

Major conventions have been lost, in total or in part, to the Chicago area. An IDOT study showed that average fares from across the country to Orlando and to Las Vegas were lower than to Chicago despite the fact that average distances to Chicago are smaller.

Chicago, over the past several years, has lot major headquarters. Although many losses were due to acquisitions/mergers, few new corporate headquarters have chosen to locate in the Chicago region. Although proximity to a major airport is one of three factors determining corporate location, such proximity in Chicago is both costly and rare.

The region has missed a window of opportunity when: jobs have grown beyond expectation; financing was available; business economic conditions were very good; and commercial development rebounded.

Without a major investment in airport infrastructure, by 2020 the Chicago region will have forfeited: 30.7 million regional enplanements unaccommodated; 500,000 jobs and attendant economic opportunities lost.

CHICAGO'S THIRD AIRPORT AND THE FUTURE OF THE CHICAGO REGION: AN OPPORTUNITY FOR SMART GROWTH, INFILL REDEVELOPMENT AND REGIONAL BALANCE

The Midwest and, in particular, the Chicago Metropolitan Area, has had a remarkable turnaround in economic fortune over the past decade. It has shed its ''rust-belt'' image and has produced remarkable economic growth.

Between 1990 and 1998, the six-county Chicago area grew by 505,500 persons, a 7 percent increase. While this percent increase is moderate, the numerical increase is equivalent to a city larger than Denver.

Between 1990 and 1997, the six-county area grew by 275,000 jobs, a 9 percent increase. Between 1970 and 1996, the region (Kenosha to Michigan City) grew by 1.310 million jobs, the fifth largest increase in the nation.

Between 1996 and 2020, the Chicago region is projected to grow by 785,000 persons. This is a city the size of San Francisco.

Between 1996 and 2020, the Chicago region is projected to have the largest growth of any metro area in the U.S., adding 1.118 million jobs.

In spite of these significant regional turnarounds, the City of Chicago continued to lose ground. Between 1991 and 1997, the City of Chicago lost over 27,000 jobs; 11,000 were from the South Loop. Every one of the City's eight major community areas experienced losses, with the exception of North Michigan Avenue and the Northwest area around O'Hare International Airport. The Far South, Southwest and South communities experienced the greatest losses.

This development trend extended to the suburban area. While the six-county Chicago Area grew by 275,000, the north and northwest suburbs were the major beneficiaries. DuPage, Lake and Northwest Suburban Cook (around O'Hare) Counties contributed 194,000 jobs, or 71 percent of the net growth. With 500,000 jobs in Chicago's Central Business District versus 450,000 in North Suburban Cook County and 150,000 in Northeast Du Page County, the economic center of the region has shifted from downtown to O'Hare.

O'Hare International Airport is, undoubtedly, the great economic engine it is portrayed. But, it has run out of space, both in the air and on the ground. Its enormous attraction, to business and industry, has brought thousands of enterprises, hundreds of thousands of jobs, millions of visitors and billions of dollars, annually, to the Chicago region. On this, we all agree. But, the area surrounding it is choking on the development. Other areas, particularly the South Side, are in great need of both jobs and better airport access. In fact, the two issues are closely related.

The massive development attracted by O'Hare Airport makes airport expansion there costly, time-consuming, difficult and intrusive. Traffic often is brought to a near halt on the expressways leading to O'Hare; future traffic problems would be compounded many times over. O'Hare's neighbors—well-aware of its many economic contributions—also are wary of expansion, weary of noise and traffic, and fearful of possible future compromises on safety. On the opposite side of the region—and the other side of the ledger—are the communities of the Chicago South Side and the South Suburbs. By all accounts, these areas find themselves overlooked and under-served—primarily due to their distance from the region's airports. This economic disparity is clearly evident from the following maps, which show job concentrations in 1960 and 1990. This period marked major declines in manufacturing jobs in the region's South Side; and a rise in both manufacturing and service jobs in the North/Northwest, around O'Hare. Airport access was the difference.

The solution to the region's needs is the Third Chicago Airport. Development of the Third Chicago Airport is a true urbanist's dream: obtaining multiple benefits from one investment. Why, then, is it being ignored? When you have two powerful and thoughtful representatives of the people—Congressman Henry Hyde saying ''we've had enough,'' and Congressman Jesse Jackson, Jr. saying ''let us have some''—perhaps we should listen to them. Other representatives—Congressmen Jerry Weller, Bobby Rush, and Tom Ewing, Senator Peter Fitzgerald, Governor George

Ryan, Senate President Pate Phillip—plus scores of local mayors, hundreds of local businesses and hundreds of thousands of residents, have joined in the effort to bring the airport to the South Suburbs. Perhaps, with the airport in place, we can begin to truly balance growth, encourage infill development and share the wealth of the region.

THE PLANNING PROCESS: TWELVE YEARS OF FINDINGS

The state agency responsible for planning the region's transportation infrastructure, the Illinois Department of Transportation (IDOT), has been planning for the region's aviation needs for the past twelve years. IDOT, and its aviation consultants, are convinced, without a doubt, that Chicago's aviation demands will more than double by 2020. The Federal Aviation Administration (FAA), the Airports Council International (ACI) and other industry groups have forecasted national growth of similar magnitude. For a brief time, the City of Chicago agreed, as well. The Chicagoland Chamber study predicts a five-fold increase in international traffic. IDOT's studies support the contention that Chicago has an excellent opportunity to be the dominant North American hub for international flights, as well as its premier domestic hub, into the next century. That point has been stated and documented on many occasions by IDOT. The State's forecasts have been corroborated, independently, by a decade of observations. They are reinforced in the latest study for the Chicagoland Chamber of Commerce. It is agreed, by all key interest groups, that the Chicago region must increase its aviation capacity.

The region cannot double its aviation service without building major new airport capacity. O'Hare and Midway are now at capacity. Enplanements already are being affected, with growth limited to increases in plane size or load factor; neither is expected to increase further. The City's $1.8 billion investment in terminals will not increase capacity. But, the adverse impact on the region already is evident. Businesses and residents are witnessing major increases in fares in the Chicago region, according to IDOT, the USDOT, the GAO and the FAA, itself. Perhaps in response to these obvious constraints, both the Chicagoland Chamber and the Commercial Club of Chicago have begun to address the region's aviation issues. The Chamber calls for O'Hare expansion. The ''Metropolis 2020'' study also recognizes the need for additional aviation capacity, with a call for expansion of O'Hare and land banking of the Third Airport site in Peotone. This call for action comes none too soon. There are many indications that the Chicago region has begun to suffer from capacity constraints.

Ten years ago, Chicago was one of the nation's least expensive regions to fly to, due to its central location. Obviously, its location has not changed; however, now, due to O'Hare's capacity overload and higher fares, it is cheaper to fly from all around the country to many other cities than to Chicago. For instance, according to data supplied by the airlines to the U.S. Department of Transportation, it is now cheaper to fly from Green Bay to Las Vegas than from Green Bay to Chicago. It is cheaper to fly from Seattle to Orlando than from Seattle to Chicago. Something is wrong. Due to capacity constraints, O'Hare's airlines are over-charging their patrons by $750 million, annually (the difference between average fares for large U.S. airports and those at O'Hare). This fact is beginning to affect regional development—especially conventions and tourism—but, it also affects every major and start-up business, every individual with family and friends in far-flung places. As is well-known, access to a major airport is one of the top three requirements of a locating or expanding business. But, access must be at competitive fares. Expanding O'Hare will simply buttress the monopolistic behavior of its airlines. Such monopolistic practices currently are a major concern of Congress.

THE DEVELOPMENT ALTERNATIVES

Aviation infrastructure must be expanded—and expanded soon—to bring true competition, lower fares and increased service to the region. The alternatives are two: adding runways to O'Hare; or building the Third Chicago Airport. The two alternatives have far different consequences. The question is:

''Will we continue to spend great outlays of public-private funds on an area that is overwhelmed with both riches and the congestion those riches bring; or do we make those investments in mature urban areas that are wanting for jobs and economic development?''

As is clearly documented by a recent Chamber study, O'Hare's benefits are conferred, primarily, on the west, north and northwest suburbs. Virtually all of O'Hare's employees reside near it. In addition, it has garnered high concentrations of development. These concentrations, however, have led to congestion and increased land values. High land prices have forced businesses and developers to plan future growth on the most environmentally-sensitive fringes of the region and in areas farther removed from the region's central core.

THE TWO SIDES OF THE COIN

While unprecedented growth takes place around O'Hare, to the north, the three million residents of the region who reside south of McCormick Place are left with long trips to the airport for flights and out of the running for the many jobs it produces. The consequences, for South Side/South Suburban residents and the dwindling businesses that serve them, are the highest property tax rates in the State. Because jobs have disappeared, residents have some of the longest trips to work in the nation. Because transit only to the Loop is convenient, recent job losses in that area, as well, (11,000 since 1991; 25,000 since 1983) have compounded the job searches of the South Side's residents. For decades, regional planning agencies have called for the development of moderate-income housing near job concentrations. Instead, let us bring the jobs to the residents.

Recent public forums on the disparity of property tax rates in Cook County's north and south communities have led to the South's designation as the ''Red Zone,'' signifying its concentration of highest property tax rates. This disparity was not always so. It has occurred over the last three decades and proliferated in the last two, as shown below. The ''Metropolis 2020'' study addresses this disparity issue by calling for a sharing of revenues with the ''lesser haves.'' The more-responsive, enduring and—ultimately—more-equitable solution is to provide the South Side with the economic opportunities generated by the Third Chicago Airport.

Whether the region expands O'Hare or builds a supplemental airport, OHare's riches will remain and grow. It is currently enjoying a $1 billion public investment to upgrade its terminals. Midway, as well, will continue to thrive, as the recipient of an $800-million-publicly-funded new terminal. However, this $1.8 billion investment will not increase capacity. The initial infrastructure investment of $500 million ($2.5 billion through 2010) to build the Third Chicago Airport, will. And, it will produce more than just added aviation capacity. The Third Chicago Airport will provide 235,000 airport-related jobs—in the right places—by 2020. Additional airport access jobs will benefit the entire region. In addition, it will reinforce the City of Chicago's role as the center of the region's growth.

Spokesmen for the incumbent airlines claim that other airlines will not invest in the Third Chicago Airport; this is a traditional response to discourage competition. Furthermore, the financing of any airport comes, principally, from its users. The Third Chicago Airport market comprises 16.5 percent of the region's current air trip users, with a potential for contributing 20 percent. They should not be left behind. Upfront airport development costs, for planning and engineering and land acquisition, traditionally have come from the federal government. In this ''Year of Aviation'', these funds are expected to increase by 50 percent; and Passenger Facility Charges (PFC's) are expected to increase from $3 to $6. Currently, $1 in PFC's at O'Hare yields $37 million per year. At the Full-Build forecast and $6 rate, the Third Chicago Airport will generate $100 million in PFC's annually by 2010. The FAA must provide the needed approvals and normal up-front funding. A Third Airport development in the South Suburbs can provide social and economic parity; and it can do it with a hand-up rather than a hand-out.

THE ARGUMENT FOR SMART GROWTH WITH CHICAGO'S THIRD AIRPORT

Independent studies have demonstrated, overwhelmingly, the need for expanded aviation capacity in the Chicago region.

Demand will more than double by 2020.

Needed is a Third Airport that can grow as future demand dictates.

The need is now. The region is beginning to experience the costs of capacity constraints. These are:

Dampened aviation growth.

Increased and non-competitive fares.

Lost jobs, conventions and other opportunities.

There are two alternatives for meeting the region's demand:

Adding runways at O'Hare—an area already well-served and suffering the effects of overdevelopment and congestion, or;

Building the Third Chicago Airport—investing in an existing, mature part of the region suffering losses due to changes in the national/regional economies and lack of access to a major airport.

Doubling traffic at O'Hare drives new development farther away from the region's core—the Chicago Central Area—and its residents and businesses to the South.

It will encroach on environmentally-sensitive areas.

It will compound noise, pollution and traffic congestion; and impose these on hundreds of thousands of additional residents.

It will buttress monopolistic behavior by major airlines.

Building the Third Chicago Airport is a true urbanist's dream. It solves multiple problems with one investment.

It develops an environmentally-sensitive, new airport, that can provide increased capacity for decades to come.

It provides nearby, inexpensive land for development.

It brings jobs and development to mature portions of the region.

It allows three airport facilities to function at optimal capacity.

It maintains the Chicago region as the nation's aviation capital.

Because of planning already completed, the Third Chicago Airport can be built before additional runways at O'Hare.

Resources are available to build the airport.

Federal Funds for airport development will increase by 50 percent.

The U.S. Congress, many businesses and consumers are demanding access to and through the Chicago area.

Ultimately, the passenger pays through Passenger Facility Charges.

CHICAGO'S THIRD AIRPORT AND THE FUTURE OF THE CHICAGO REGION: AN OPPORTUNITY FOR SMART GROWTH, CONGESTION RELIEF AND REGIONAL BALANCE

AN EMERGING CONSENSUS

Finally, after nearly nine years of intense debate, there is near unanimous agreement on the need for additional airport capacity in the Chicago region. This is due, in part, to several inescapable facts:

Operations at O'Hare have been at a virtual stall since 1994; hourly capacities have been reached; every day is Thanksgiving eve.

The region's enplanements have grown only as Midway has been able to take up a portion of the demand unaccommodated at O'Hare; and as small markets are abandoned in favor of large.

International enplanements have grown at rates over 9 percent, annually, but at the expense of domestic.

Domestic enplanements at O'Hare have grown by only 1.9 percent, annually, since 1993; and actually have declined since 1998.

In 1998, Atlanta's Hartsfield Airport surpassed O'Hare as the nation's busiest airport; it remained first in 1999 and 2000.

In 1999, the regional air system (O'Hare/Midway) nearly slipped to third place, behind New York and Los Angeles. It is forecast by the FAA to fall to fourth place (behind Atlanta) by 2015.

In 2000, O'Hare had the nations worst delays.

Now, nearly all those who claimed that Chicago could handle forecasted growth into the foreseeable future, are admitting that the gap between demand and the ability to accommodate it are growing farther apart and at a faster pace.

1998 studies by Booz-Allen & Hamilton (BAH) for the Chicagoland Chamber claim that Chicago's capture of international traffic—although considerable—is stifled.

BAH's recent (2000) update for the Commercial Club of Chicago shows an international demand that is even higher than estimated a year ago and higher than estimates made by IDOT.

Overall forecasts undertaken by the City of Chicago's consultants—and recently made public—are similar to the forecasts of IDOT, but with higher connecting volumes.

Both United and American Airlines have called for the construction of an added runway at O'Hare. United funded the 1998 BAH study.

Calls for an added runway also have come from the Chicagoland Chamber, the Commercial Club and the Chicago Tribune.

When the State of Illinois Department of Transportation started planning for the regions Third Airport, in 1986, it was suggested that the need would be evident by the turn of the century. Later, detailed forecasts documented an unmet demand of 7.1 million enplanements, by 2001. We have nearly reached that first milestone and the evidence of unmet demand, indeed, is great. Recent studies indicate that, by 2001, the Chicago region will have lost or foregone a large portion (5.1 million) of the 7.1 million enplanement forecast for the Third Airport.

The question no longer is whether we should add capacity to the region but, rather, where we should add it.

Whether the region expands O'Hare or builds a supplemental airport, O'Hare's riches will remain and grow. It is currently enjoying a $1 billion public investment to upgrade its terminals. Midway, as well, will continue to thrive, as the recipient of an $800-million-publicly-funded new terminal. However, in spite of this $1.8 billion investment, the region's capacity will not be increased. The initial infrastructure investment of $500 million ($2.5 billion through 2010) to build the Third Chicago Airport, will increase it, And, it will produce more than just added aviation capacity. The Third Chicago Airport will provide 235,000 airport-related jobs—in the right places by 2020. Additional airport access jobs will benefit the entire region, In addition, it will reinforce the City of Chicago's role as the center of the region's growth. Furthermore, both businesses and residents of the airport's environs want it.

Spokesmen for the incumbent airlines claim that other airlines will not invest in the Third Chicago Airport; this is a traditional response to discourage competition. Furthermore, the financing of any airport comes, principally, from its users. The Third Chicago Airport market comprises 16.6 percent of the region's current air trip users, with a potential for contributing 20 percent. They should not be left behind. Upfront airport development costs, for planning and engineering and land acquisition, traditionally have come from the federal government. In 2000, these funds increased by 50 percent; and Passenger Facility Charges (PFC's) increased from $3 to $4.50. Currently, $1 in PFC's at O'Hare yields $37 million per year. The Third Airport market contributes nearly one fifth of these funds for O'Hare. At the Full-Build forecast and $4.50 rate, the Third Chicago Airport will generate $75 million in PFC's annually by 2010. The FAA must provide the needed approvals, and normal upfront funding, A Third Airport development in the South Suburbs can provide social and economic parity; and it can do it with a hand-up rather than a hand-out.

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Independent studies have demonstrated, overwhelmingly, the need for expanded aviation capacity in the Chicago region.

Demand will more than double by 2020.

Existing airports are at capacity.

Needed, is a facility to grow as future demand dictates.

The need is now. The region is beginning to experience the costs of capacity constraints. These are:

Travel delays, often the nations worst.

Dampened aviation growth.

Increased and non-competitive fares.

Lost jobs, businesses and other opportunities.

There are two alternatives for meeting the region's demand; they are:

Adding runways at O'Hare—an area already well-served and suffering the effects of overdevelopment and congestion, or;

Building the Third Chicago Airport—investing in an existing, mature part of the region suffering losses due to changes in the national/regional economies and lack of airport access.

Doubling traffic at O'Hare forces job development farther away from the region's core—the Chicago Central Area—and from the South Side.

It will require additional land and structure acquisition.

It will encroach on environmentally-sensitive areas.

It will compound noise, pollution and traffic congestion; and impose these on hundreds of thousands of additional residents.

It will buttress monopolistic behavior by major airlines.

It will take 10–15 years to achieve capacity increases.

Building the Third Chicago Airport is a true urbanist's dream. It solves multiple problems with one investment.

It develops an environmentally-sensitive, new airport, that can provide increased capacity for decades to come.

It provides nearby, inexpensive land for development.

It brings jobs and development to mature portions of the region.

It allows three airport facilities to function at optimal capacity.

It maintains the Chicago region as the nation's aviation capital.

Because of planning already completed, the Third Chicago Airport can be built before additional runways at O'Hare.

Residents and businesses nearby want it built.

Resources are available to build the Third Airport.

The U.S. Congress, many businesses and consumers are demanding access to and through the Chicago area.

Federal funds for airport development have increased by 50 percent.

Ultimately, the passenger pays through Passenger Facility Charges; PFC rates have increased from $3.00 to $4.50 per trip segment.

At full build, PFC's will provide $75 million, annually, by 2010.

CLAIMING THE TIME IN OPPOSITION (JACKSON)

[You need to be on your feet when the bill is called up]

[After the Speaker recognizes Mr. Lipiniski and Mr. Young]

Mr. Speaker: Point of order Mr. Speaker. May I inquire as to whether either gentleman is opposed to the bill. As I understand it, the bill was ordered reported favorably by unanimous voice vote, and both of these gentleman were present. Under the provisions of Rule XV, clause 1(c), debate on a motion to suspend the rules is ''one-half in favor and one-half in opposition, thereto.''

The notes to the Rule state where the time in opposition is contested, ''The Speaker will accord priority first on the basis of true opposition. . . .''

Mr. Speaker, I will state for the record that I am in true opposition to this bill, I therefore claim the time in opposition.

RULES OF THE HOUSE OF REPRESENTATIVES

Rule XV, clause 1

(c) A motion that the House suspend the rules is debatable for 40 minutes, one-half in favor of the motion and one-half in opposition thereto.

This provision (former clause 2 of rule XXVII) was adopted in 1880 (V, 6821). It was amended and redesignated from clause 3 to clause 2 of rule XXVII in the 102d Congress to conform to the repeal of the former clause 2, relating to the requirement of a second (H. Res. 5, Jan. 3, 1991, p. 39). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2 of rule XXVII. Former clause 2 consisted of paragraph (b) and another provision currently found in clause 1(a) of rule XIX permitting 40 minutes debate on an otherwise debatable question on which the previous question has been ordered without debate (H. Res. 5, Jan. 6, 1999, p ——). Before the adoption of this provision in 1880 (V, 6821) the motion to suspend the rules was not debatable (V, 5405, 6820). The 40 minutes of debate is divided between the mover and a Member opposed to the bill, unless it develops that the mover is opposed to the bill, in which event some Member in favor is recognized for debate (VIII, 3416). Where recognition for the 20 minutes in opposition is contested, the

Speaker will accord priority first on the basis of true opposition, then on the basis of committee membership, and only then on the basis of party affiliation, the latter preference inuring to the minority party (VIII, 3415; Nov. 18, 1991, p. 32510). The Chair will not examine the degree of opposition to the motion by a member of the committee who seeks the time in opposition (Aug. 3, 1999, p. ——). When the mover and the opponent divide their time with others, the practice as to alternation of recognitions is not insisted on so rigidly as in other debate (II, 1442). Debate should be confined to the object of the motion and may not range to the merits of a bill not scheduled for suspension on that day (Nov. 23, 1991, p. 34189).

This paragraph formerly included a provision dealing with the Speaker's authority to postpone further proceedings on motions to suspend the rules and pass bills or resolutions. It was added in the 93d Congress (H. Res. 998, Apr. 9, 1974, pp. 10195–99), amended in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70), and amended further in the 96th Congress (II. Res. 5, Jan. 15, 1979, pp. 7–16). It was deleted entirely in the 97th Congress (H. Res 5, Jan. 5, 1981, pp. 98–113) when all of the Speaker's postponing authorities were consolidated into clause 5 of rule I (current clause 8 of rule XX).

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OPENING STATEMENT OPPOSING H.R. 3479

There are many reasons why I oppose H.R. 3479. 1 want to share some reasons why you too should be opposed to the National Aviation Capacity Expansion Act.

1. RESPECT FOR THE INSTITUTION OF THE HOUSE

The Suspension Calendar is reserved for NON-CONTROVERSIAL bills. This is a HIGHLY CONTROVERSIAL bill. This should offend every House traditionalist and institutionalist. It violates the integrity of the established, respected, and utilitarian processes set up by the House of Representatives. Even if you agree on the substance, you should be against the process. H.R. 3479 should be a ''stand-alone'' bill that is fully debated before the House—with the possibility of adding amendments to improve the bill. It should not be on the Suspension Calendar.

2. H.R. 3479 DOES NOT REFLECT THE AGREEMENT BETWEEN MAYOR DALEY AND GOVERNOR RYAN

Most of you believe you are voting to codify an agreement between Chicago Mayor Richard M. Daley and Illinois Governor George Ryan. But this bill does not reflect that deal. Their agreement promised ''priority status'' for a south suburban airport in Peotone and O'Hare expansion. This bill provides for O'Hare expansion, but does not give ''priority status'' to Peotone.

3. IF THE ISSUE IS RESOLVING THE AIR CAPACITY CRISIS, THIS BILL IS NOT THE MOST EFFECTIVE OR EFFICIENT WAY TO SOLVE THAT PROBLEM

Both sides agree there is an air capacity crisis at O'Hare. The disagreement comes over how best to resolve it. A new south suburban airport in Peotone offers a faster, cheaper, cleaner, safer, and more permanent solution. What do I mean? I mean after O'Hare expansion is completed—if air travel expands as projected—we'll still be in the same capacity crisis that we're in today. So why spend more money, take longer, increase environmental problems, put the flying public at greater risk, support a temporary solution, and increase the economic and racial divide in Chicago, when there is a better way of resolving the current aviation capacity crisis?

4. A NEW SOUTH SUBURBAN AIRPORT IS A MORE ECONOMICALLY JUST SOLUTION

O'Hare Airport is the economic magnet that provides jobs and economic security for Chicago's North Side and the northwest suburbs. Midway Airport is the economic magnet that provides jobs and economic security for Chicago's southwest side. There is no similar economic engine for Chicago's South Side and south suburbs. O'Hare expansion puts 195,000 new jobs and $19 billion of economic activity in an area that already has an over-abundance. For example, the biggest beneficiary of O'Hare is Elk Grove Village, a city of 35,000 people where over 100,000 people come to work everyday—three jobs for every one person. The greatest beneficiary of O'Hare, Mayor Craig Johnson of Elk Grove Village, is one of the biggest supporters of Peotone. By contrast, some communities in my district have 60 people for every one job. Finally, it just so happens that the areas where O'Hare and Midway Airports are located are primarily where whites live. African Americans live primarily south and in the south suburbs. But African American families need economically stable families and communities, who have a future, and can send their children to college too. We need greater economic balance in the Chicago Metropolitan area so that all of the people have jobs and economic security.

5. PEOTONE IS ENVIRONMENTALLY CLEANER

Mr. Lipinski says fifteen environmental groups, including the Sierra Club, support the language in this bill. He's implying they've endorsed it, but he knows better. They've not endorsed it. I also asked Mr. Lipinski to supply me with the names of the other environmental groups he says support the language in this bill—and he's failed to do so. O'Hare is already the largest polluter in the Chicago area. Doubling the number of flights into the 7,000 acres that houses O'Hare means pollution levels will explode. A recent study found there was an excess of 800 new incidences of cancer each year—over and above what would be expected based on the state's average—in eight northeastern communities downwind of O'Hare. Peotone's 24,000 acre site has a built-in environmental safety zone.

6. THIS BILL IS PRECEDENT SETTING

For economic reasons, San Francisco wanted to add new runways, but there were environmental groups that objected. In Atlanta a few years back, Fulton County commissioners went to battle to stop a proposed sixth runway at Hartsfield. In New York, a controversy sprung up over a 460-foot safety overrun at LaGuardia because objections were raised by residents. Mayor James Hahn made a campaign pledge opposing expansion at LAX in Los Angeles, but a pro-expansion coalition is forming. H.R. 3479 sets a precedent that if these controversies can't be worked out locally, they can always be brought to Congress and passed by a suspension of the rules without debate or amendments. This is like putting the Inglewood Police in charge of homeland security!

7. PEOTONE WOULD PROVIDE MORE COMPETITION AND LOWER AIRFARES

The O'Hare expansion plan is an anti-consumer measure. Two airlines—American and United—control roughly 90 percent of the flights in and out of O'Hare. It's a duopoly. And due to a lack of competition, fares at O'Hare continue climbing higher and faster than the national average. Six years ago, O'Hare fares were 21 percent above the national average. Today, they are 33 percent above the national average and cost consumers an extra $1 billion annually.

8. THE SUPREME COURT WILL LIKELY FIND H.R. 3479 UNCONSTITUTIONAL

The U.S. Supreme Court stated in Printz v. United States (1997) that ''dual sovereignty'' is incontestable. It emphasized that the constitutional structural barrier to Congress intruding on a State's sovereignty could not be avoided by claiming that congressional authority was: (a) pursuant to the Commerce Power—it will create 195,000 jobs and $19 billion in economic activity; (b) the ''necessary and proper'' clause of the Constitution—there's an aviation capacity crisis; or (c) that the federal law ''preempted'' state law under the Supremacy Clause—that Congress can use its power to solve the impasses by overriding the state. In short, all of the arguments the Daley/Ryan forces have been using are unconstitutional.

CONCLUSION

If you care anything about the institutional integrity of the House, you should vote *against* this bill because it's inappropriately on the alleged ''non-controversial'' Suspension Calendar. If you think you're voting to build O'Hare and Peotone simultaneously, *you're not*—and you should vote against this bill. If you think you're solving the air capacity crisis in Chicago, *you're not*—vote against H.R. 3479. If you think you're voting for a morally sound, and an economically and racially just bill, *you're not*—vote no. If you think you're protecting the environment and consumers, *you're not*—again you should be against this bill. If you think H.R. 3479 is constitutional, *it's not*—and both Democrats and Republicans should vote against this bill. Vote ''No'' on H.R. 3479!

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ECONOMIC IMBALANCE

Make no mistake. A ''YES'' vote on this bill today is a vote to widen and reinforce the economic and racial divide in Chicago.

For too long, the Chicago area has been fractured—divided in two by geography, opportunity and race.

One Chicago—the North Side and Northwest suburbs—is exploding with growth. With O'Hare having replaced the Downtown Loop as Chicago's economic center, jobs and investment located near the airport have increased dramatically. Today, some North West suburbs, which are primarily white and affluent, have 3 jobs for every person. This Chicago boasts the best schools, the least crime and the lowest property tax rates.

In sharp contrast, the other Chicago—the South Side and south suburbs—is slumping in depression. Today, in some South Side neighborhoods and south suburbs, which are predominantly Black and poorer, there are 60 people for every one job. Jobs and factories have been replaced with unemployment, welfare and crime; local property values have slumped; and local school funding has withered as prison construction has blossomed. In this Chicago, the lack of jobs and investment is disrupting lives, corrupting children and destroying communities.

Look at this Rand McNally easy finder map of Chicago. It includes O'Hare, but doesn't include much of the south side and none of the south suburbs. It's as if Chicago ends at the Museum of Science and Industry.

This tale of two cities is a classic and persistent divide for which Chicago, although not unique, has long been infamous. But rather than bridging this gap and uniting these two Chicagos with a third airport, this bill further concentrates all aviation and economic growth in the already over-saturated corridor from Downtown Chicago to O'Hare. Meanwhile, the South Side and beyond, get nothing.

This imbalance now poses a problem for aviation expansion. The massive development surrounding O'Hare makes airport expansion there costly, time-consuming, difficult and intrusive. Congestion often brings area expressways to a halt; O'Hare is the state's largest polluter; and safety is a growing concern because O'Hare is surrounded by

residential neighborhoods. Expansion would only compound these problems.

The question we must ask ourselves is: Do we continue to invest in an area that is overwhelmed with riches and congestion or do we invest in areas that desperately need jobs and economic development?

I brought with me just some of the many books that document the damaging effects of Chicago's persistent disparities between north and south.

Let me read a passage from just one of these, titled ''When Work Disappears,'' by noted University of Chicago and Harvard University scholar William Julius Wilson. Professor Wilson writes, ''Over the last two decades, 60 percent of the new jobs created in the Chicago metropolitan area have been located in the northwest suburbs of Cook and DuPage County (surrounding O'Hare). African-Americans constitute less than 2 percent of the population in these areas.'' He concluded, ''The metropolitan black poor are becoming increasingly isolated.''

Let's not add to this hefty volume. Let's not continue to perpetuate and exploit this divide. Let's relegate these books to the history section and begin our own new chapter of balanced economic growth and justice in Chicago. I urge a ''no'' vote on this bill.

SUSPENSION CALENDAR ARGUMENTS TO BE AGAINST H.R. 3479

The Suspension Calendar is a procedure that allows House members to vote on noncontroversial bills—like paying tribute to Ted Williams.

Putting H.R. 3479 on the Suspension Calendar, for House traditionalists and institutionalists, ought to strike you as violating the integrity of the established, respected, and utilitarian rules set up in the House. It is inconsistent with the institutional traditions of this body. This is an abuse of power!

It is highly unusual for a bill defeated under suspension of the rules to ever be brought back in the same manner—not to mention a week later. In the entire 106th Congress, no bill defeated on the Suspension Calendar was brought up again. Six Suspension bills have failed in the 107th Congress—all six during the second session. Two of the six were later passed as stand-alone bills in regular order. Not one of the six was brought up again under suspension of the rules. This is an arrogant use of power!

H.R. 3479 should be a ''stand-alone'' bill that is fully debated before the House—with the possibility of adding amendments to improve the bill.

Even if you are with this bill on substance you should be against it on process. This makes a mockery of the suspension of the rules, which is reserved for noncontroversial bills.

This does not have the full support of the Illinois delegation. In the other body, one Illinois senator staunchly opposes it, and one strongly supports it.

This bill is far from being non-controversial. It is controversial for the Illinois delegation, controversial for the community surround O'Hare, controversial for the South Side and south suburbs, and controversial throughout the entire state. The Speaker's participation and the lobbying effort of the last few days underscores the controversy. It does not conceal, but reveals that this is a controversial issue. It does not obscure it, it underscores it. It's so controversial that it's on the Suspension Calendar in order to limit discussion and debate, and prevent amendments.

Today's vote is not about the most efficient and effective way to resolve the aviation capacity crisis at Chicago's O'Hare International Airport. It is not about sound policy and regular procedure, but raw politics and brute political power. This should not be on the Suspension Calendar!

H.R. 3479 DOES NOT REFLECT THE DALEY/RYAN AGREEMENT

This bill has been touted as codifying a secret deal struck between Mayor Richard M. Daley and Governor George Ryan—a deal without public input, where nobody has seen the actual plans, and where total costs are still unknown. But this bill is not that secret deal.

The *Chicago Tribune* reported on December 6, 2001, that Mayor Daley and Governor Ryan had reached ''a deal that would build new runways at O'Hare International Airport. . . . The deal also calls for construction of a new airport near Peotone Ryan has wanted. Daley, who has raised concerns that Peotone would compete with O'Hare, agreed to work with the governor to seek federal funds for construction of the third airport.''

In a December 7th AP story, Senator DICK DURBIN said, ''O'Hare and Peotone are not mutually exclusive. It is not an 'either-or' proposition. We need both and we will have both. . . . On Wednesday, Ryan and Daley reached an historic agreement that would modernize O'Hare International Airport, including east-west parallel runways; construct a south suburban airport near Peotone. . . . Durbin said construction of Peotone will provide a huge economic boost to the south suburbs and help provide travel access to fast-growing areas like Will County.''

The *Chicago Tribune*, in a December 11, 2001, editorial, said, ''Thanks to Daley and Ryan, the gridlock may finally be broken. They have a sound plan. The parameters of it have been before the public for five months. It answers the nightmare of flight delays at O'Hare and gives the south suburbs their best chance to build an airport at Peotone.''

Despite these reports, and what may be said here on the floor today, this bill does not codify a key part of the agreement reached by Mayor Daley and Governor Ryan.

Mr. Speaker, this bill does not make construction of a south suburban airport near Peotone a federal priority.

While it's coming to light that corporate chieftains are cooking books, fudging numbers, and misrepresenting the facts to the public, it is critical that this body, the peoples' House, not do the same.

10TH AMENDMENT ARGUMENTS AGAINST H.R. 3479

Even if H.R. 3479 becomes law, a federal court is likely to find it unconstitutional under the 10th Amendment, which gives certain powers exclusively to the States, including the power to build and alter airports.

The U.S. Supreme Court stated in Printz v. United States (1997) that ''dual sovereignty'' is incontestable.

It emphasized that the constitutional structural barrier to Congress intruding on a State's sovereignty could not be avoided by claiming that congressional authority was:

(a) pursuant to the Commerce Power—it will create 195,000 jobs and $19 billion in economic activity;

(b) the ''necessary and proper'' clause of the Constitution—there's an aviation capacity crisis; or

(c) that the federal law ''preempted'' state law under the Supremacy Clause—that Congress can use its power to solve the impasses by overriding the state.

In short, all of the arguments for codifying the Daley/Ryan deal in federal law are unconstitutional.

It sets a dangerous precedent by allowing the federal government to pre-empt state law requiring approval of airport construction and expansion—approval that requires the blessing of the state legislature.

This bill converts the concept of dual sovereignty into tri-sovereignty by going beyond states' rights to city rights. It gives Mayor Daley (and the other local officials in charge of the 68 largest airports in the country) a greater say over national aviation policy than the federal government or the fifty governors.

If this bill passes, it would invite congressional interference on other important aviation issues, leading to a potential rash of demands from various localities for priority standing for airport funding, bypassing reasonable administrative planning, and the environmental review process. Airport expansion issues are bubbling up everywhere—Boston Logan's, New York's LaGuardia, Cleveland's Hopkins, Atlanta's Hartsfield, San Francisco's SFO, and Los Angeles' LAX. Will your state legislature be next to lose its power to decide local airport matters?

Indeed, H.R. 3479 stands federalism on its head. It makes about as much sense as putting your local police department in charge of homeland security.

RONALD D. ROTUNDA, UNIVERSITY OF ILLINOIS COLLEGE OF LAW,
Champaign, IL, March 1, 2002.

Re: Proposed Federal legislation granting new powers to the City of Chicago.

Hon. JESSE L. JACKSON, Jr.,
U.S. House of Representatives,
Washington, DC.

DEAR CONGRESSMAN JACKSON: As you know, I serve as the Albert E. Jenner Professor of Law at the University of Illinois Law School. I have authored a leading course book on Constitutional Law. In addition, I co-author, along with my colleague John Nowak, the widely-used multi-volume Treatise on Constitutional Law, published by West Publishing Company. In addition to my books, I have taught and researched in the area of Constitutional Law since 1974.

I have been asked to give my opinion on the constitutionality of proposed federal legislation entitled ''National Aviation Capacity Expansion Act,'' identical versions of which have been introduced in both the Senate and the House of Representatives by Senator DURBIN and Congressman LIPINSKI (S. 1786, H.R. 3479), hereafter the ''Durbin Lipinski legislation.''

The Durbin-Lipinski legislation seeks to enact Congressional approval of a proposal to construct a major alteration of O'Hare Airport in Chicago. While this legislation focuses on Chicago and the State of Illinois, the issues raised by the legislation have serious constitutional implications for all 50 States.

There are two key components of the legislation that have been the subject of my examination.

First Section 3(a)(3) attempts to give the City of Chicago (a political subdivision and instrumentality of the State of Illinois) the legal power and authority to build a proposed major alteration of O'Hare even though state law does not authorize Chicago to build the alteration without first receiving a permit from the State of Illinois. Chicago, as a legal entity, is entirely a creation of state—not federal law—and Chicago's authority to build airports is essentially an exercise of state law power delegated to Chicago by the Illinois General Assembly.

The requirement that Chicago first obtain a state permit is an integral and essential element of that delegation of state power. The U.S. Constitution prohibits Congress (1) from invading and commandeering the exercise of state power to build airports, and (2) from changing the allocation of state-created power between the State of Illinois and

its political subdivisions. The U.S. Constitution, in short, prohibits Congress from essentially rewriting state law dealing with the delegation of state power by eliminating the conditions, restrictions, and prohibitions imposed by the Illinois General Assembly on that delegation. These constitutional restrictions on Congress' power—which prohibit Congress from requiring states to change their state laws governing cities—are often termed Tenth Amendment restrictions.

Similarly, the provisions of Section 3(f) of the proposed Durbin-Lipinski legislation are necessarily conditioned upon the existence of state law authority of Chicago to enter into agreements for a third party (the FAA) to alter O'Hare without first obtaining a permit from the State of Illinois. But Chicago has no state law authority (under the delegation of state power to build and alter airports) to enter into an agreement to engage in a massive alteration of O'Hare without a state permit. Congress cannot confer powers on a political subdivision of a State where the State has expressly limited its delegation of state power to build airports to require a state permit. Congress has no constitutional authority to create powers in an instrumentality of State law (Chicago) when the very authority and power of Chicago to undertake the actions proposed by Congress depends on compliance with—and is contrary to—the mandates of the Illinois General Assembly

For the reasons discussed below, it is my opinion that the proposed legislation is unconstitutional.

SUMMARY OF ANALYSIS

The following is a summary of my analysis:

1. Under the governing United States Supreme Court decisions of New York v. United States and Printz v. United States, 6 which are discussed below, the proposed legislation is not supported by any enumerated power and thus violates the limitations of the Tenth Amendment of the Constitution. In these decisions, the Supreme Court held that legislation passed by Congress, purportedly relying on its exercise of the Commerce Power (nuclear waste legislation in New York and gun control legislation in Printz) was unconstitutional because the federal laws essentially commandeered state law powers of the States as instrumentalities of federal policy.

2. The same constitutional flaws afflict the proposed Durbin-Lipinski legislation. Central to the Durbin-Lipinski legislation are two provisions [sections 3(a)(3) and 3(f)] that purport to empower or authorize Chicago (a political instrumentality of the State of Illinois, and thus a city that has no authority or even legal existence independent of state law) to undertake actions for which Chicago has not received any delegation of authority from the State of Illinois and that, in fact, are directly prohibited by Illinois law when the conditions and limitations of the State delegation of authority have not been satisfied.

3. Under Illinois law, Chicago (like any other political subdivision of a State) has no authority to undertake any activity (including constructing airports) without a grant of state authority from the State of Illinois. Under Illinois law, actions taken by political subdivisions of the State (e.g., Chicago) without a grant of authority from the State, or actions taken by a political subdivision in violation of the conditions, limitations or prohibitions imposed by the State in delegating the state authority, are plainly ultra vires, illegal, and unenforceable. The City of Chicago is a creature of state law, not federal law.

4. The power exercised by any state political subdivision (e.g., the power to construct airports) is in reality a power of the State—not inherent in the existence of the political subdivision. For the political subdivision to have the legal authority to exercise that state power, there must be a delegation of that state power by the State to the political subdivision. Further, it is axiomatic that any such delegation of state power to a political subdivision must be exercised in accordance with the conditions, limitations, and prohibitions accompanying the State's delegation of that power.

5. In the case of airport construction, the Illinois General Assembly has enacted a statute that delegated to Chicago (and other municipalities) the state law power to construct airports explicitly and specifically subject to certain limits and conditions that the General Assembly imposed. One basic requirement is that Chicago must first comply with all of the requirements of the Illinois Aeronautics Act—including the requirement that Chicago first receive a permit (a certificate of approval) from the State of Illinois. The Illinois General Assembly has expressly provided that municipal construction or alteration of an airport without such a state permit is unlawful and ultra vires.

6. Section 3(a)(3) of the Durbin-Lipinski legislation expressly authorizes Chicago to proceed with the ''runway redesign plan'' (a multi-billion dollar modification of O'Hare) without regard to the clear delegation limitations and prohibitions imposed by the Illinois General Assembly on the state statutory delegation to Chicago of the state law power to construct airports. Illinois law explicitly says Chicago has no state law authority to build or alter airports without first complying with the Illinois Aeronautics Act, including the state permitting requirements of 47 of that Act. Even though Chicago (a political creation and instrumentality of the State of Illinois) has no power to build or modify airports (a state law power) unless Chicago obtains State approval, Section 3(a)(3) purports to infuse Chicago (which has no legal existence independent of state law) with a federal power to build airports and to disregard Chicago's fundamental lack of power under state law to undertake such actions (absent compliance with state law). Like New York v. United States and Printz v. United States the proposed Durbin-Lipinski legislation involves Congress attempting to use a legal instrumentality of a State (i.e., the state power to build airports exercised through its delegated state-created instrumentality, the city of Chicago) as an instrument of federal power. As the Supreme Court held in New York and Printz, the Tenth Amendment—and the structure of ''dual sovereignty'' it represents under our constitutional structure of federalism—prohibits the federal government from using the Commerce power to conscript state instrumentalities as its agents.

7. Similar problems articulated in New York and Printz fatally afflict Section 3(f) of the proposed Durbin-Lipinski legislation. That section provides that, if (for whatever reason) construction of the ''runway design plan'' is not underway by July 1, 2004, then the FAA Administrator (a federal agency) shall construct the ''runway redesign plan'' as a ''Federal Project''. But, Section 3(f)(1) then provides that this ''federal project'' must obtain several agreements and undertakings from Chicago—agreements and undertakings that are controlled by state law, which limits Chicago's authority to enter into such agreements or accept such undertakings. Chicago has no authority under the state law (which confers upon Chicago the state power to construct airports) to enter into agreements with any third party (be it the United States or a private party) to make alterations of an airport without the state permit required by state statute. Thus, Chicago has no authority under state law to enter into an agreement with the FAA Administrator to have the runway redesign plan constructed by the federal government because Chicago has not received approval from the State of Illinois under the Illinois Aeronautics Act—a specific condition and prohibition of the delegation of state power (to build airports) to Chicago by the Illinois General Assembly. Just as Chicago (a creation and instrumentality of the State of Illinois) has no power or authority under state law (absent compliance with the Illinois Aeronautics Act) to enter into an agreement for the FAA to construct the runway redesign plan, Chicago also has no power or authority (absent compliance with the Illinois Aeronautics Act) to enter into the other agreements provided for in Section 3(f)(1)(B) of the Durbin-Lipinski legislation. Again, Section 3(f) is an attempt to have Congress use the Commerce power to conscript state instrumentalities as its agents. Instead of Congress regulating interstate commerce directly (which both New York v. United States and Printz allow), the Durbin-Lipinski legislation seeks to regulate how the State regulates one of its cities (which both New York v. United States and Printz do not allow).

8. The Durbin-Lipinski legislation is not a law of ''general application''. There is a line of Supreme Court decisions which allow Congress to use the Commerce Power to impose obligations on the States when the obligations imposed on the States are part of laws which are ''generally applicable'' i.e., that impose obligations on the States and on private parties alike. See e.g., Reno v. Condon, 528 U.S. 141 (2000) (federal rule protecting privacy of drivers' records upheld because they do not apply solely to the State); South Carolina v. Baker, 485 U.S. 505 (1988) (state bond interest not immune from nondiscriminatory federal income tax); Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528, (1985) (law of general applicability, binding on States and private parties, upheld). But these cases have no application where, as here and in New York and Printz, the Congressional statute is not one of general application but is specifically directed at the States to use state law instrumentalities as tools to implement federal policy. Here the Durbin-Lipinski legislation is doubly unconstitutional, because it does not apply to private parties or even to all States but only to one State (Illinois) and its relationship to one city (Chicago). The Durbin-Lipinski legislation proposes to use Chicago (an instrumentality of state power whose authority to construct airports is an exercise of state power expressly limited and conditioned on the limits and prohibitions imposed on that delegation by the Illinois legislature) as a federal instrumentality to implement federal policy. Congress is commandeering a state instrumentality of a single State (Illinois) against the express statutory will of the Illinois Legislature, which has refused to confer on Chicago (an instrumentality of the State) the state law power and authority to build airports unless Chicago first obtains a permit from the State of Illinois. This is an unconstitutional use of the Commerce Power under the holdings New York and Printz and does not fall within the ''general applicability'' line of cases such as Reno v. Condon, South Carolina v. Baker, and Garcia.

ANALYSIS

Before discussing any further the specific provisions of the Durbin-Lipinski legislation, let us review some important background law.

A. The Basic Legal Principles.

Cities are Creatures of the States and State Law—Not Instrumentalities of Federal

Power. Normally, this controversy surrounding the proposed expansion of O'Hare Airport would be left to the state political process. Under Illinois law, the cities in this state have only the power that the State Constitution or the legislature grants to them, subject to whatever limits the State imposes. This legal principle has long been settled.

Nearly a century ago, the U.S. Supreme Court, in Hunter v. City of Pittsburgh, 207 U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151 (1907) held that, under the U.S. Constitution, cities are merely creatures of the State and have only those powers that the State decides to give them, subject to whatever limits the States choose to impose:

This court has many times had occasion to consider and decide the nature of municipal corporations, their rights and duties, and the rights of their citizens and creditors. [Citations omitted.] It would be unnecessary and unprofitable to analyze these decisions or quote from the opinions rendered. We think the following principles have been established by them and have become settled doctrines of this court, to be acted upon wherever they are applicable. Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be [e]ntrusted to them. . . . The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. . . . The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.

Hunter held that a State that simply takes the property of municipalities without their consent and without just compensation did not violate due process. While Hunter is an old case, it still is the law, and the Seventh Circuit recently quoted with approval the language reprinted here.

The Illinois Aeronautics Act Expressly Limits Chicago's Power to Build and Alter. The State of Illinois has delegated to Chicago the power to build and alter airports. But that power is expressly limited by the requirement that Chicago must comply with the Illinois Aeronautics Act. And the Illinois Aeronautics Act provides that Chicago has no power to make ''any alteration'' to an airport unless it first obtains a permit, a ''certificate of approval,'' from the State of Illinois. Finally, Chicago has not obtained this certificate of approval. That fact is what has led to the proposed federal intervention.

B. The Federalism Problem.

As mentioned above, section 3(a)(3) of the proposed federal law overrides the licensing requirements of §47 of the Illinois Aeronautics Act. This section states:

(3) The State shall not enact or enforce any law respecting aeronautics that interferes with, or has the effect of interfering with, implementation of Federal policy with respect to the runway redesign plan including sections 38.01, 47, and 48 of the Illinois Aeronautics Act.

In addition, section 3(f) authorizes Chicago to enter into an agreement with the federal government to construct the O'Hare Airport expansion. This project is called a ''Federal project,'' but Chicago must agree to construct the ''runway redesign as a Federal Project,'' and Chicago provides the necessary land, easements, etc., ''without cost to the United States.''

What this proposed legislation does is authorize the City of Chicago to implement an airport expansion approved by the Administrator of the Federal Aviation Administration. But, under state law, Chicago cannot expand O'Hare because it does not have the required state permit.

There is no doubt that the O'Hare Airport is a means of interstate commerce, and Congress may certainly impose various rules and regulations on airports, including O'Hare. Congress, for example, may decide to require airport security and require that the security agents be federal employees. Or, Congress could provide that it would build and take over the O'Hare Airport and construct expansion if the State of Illinois refused to do so.

Congress may also use its spending power to take land by eminent domain and then construct or expand an airport, no matter what the state law provides. The limits on the spending clause are few.

But, the proposed law does not take such alternatives. It does not impose regulations on airports in general, nor does it exercise the very broad federal spending power. Nor does the proposed law authorize the federal government take over ownership and control of O'Hare Airport. Instead, it seeks to use an instrumentality of state power (i.e., the state law power to build airports as delegated to a state instrumentality, the city of Chicago) as an exercise of federal power.

The proposed federal law is stating that it is creating a federal authorization or empowerment to the City of Chicago to do that which state law provides that Chicago may not do—expand O'Hare Airport without complying with state laws that create the City of Chicago and delegate to it certain limited powers that can be exercised only if within the limits of the authorizing state legislation.

NEW YORK V. UNITED STATES

The proposed federal law is very similar to the law that the Supreme Court invalidated a decade ago in New York v. United States. The law that New York invalidated singled out states for special legislation and regulated the states' regulation of interstate commerce. The proposed Durbin-Lipinski legislation singles out a State (Illinois) for special legislation and regulates that State's regulation of interstate commerce dealing with O'Hare Airport.

While the law in this area has shifted a bit over the last few decades, it is now clear that Congress can use the Interstate Commerce Clause to impose various burdens on States as long as those laws are ''generally applicable.'' The federal law may not single out the State for special burdens. For example, Congress may impose a minimum wage on state employees in, or affecting, interstate commerce as long as Congress imposes the same minimum wage requirements on non-state workers in, or affecting, interstate commerce. Congress can regulate the States using the Commerce Clause if it imposes requirements on the States that are generally applicable—that is, if it imposes the same burdens on private employers. Congress cannot single out the States for special burdens; it cannot commandeer or take control over the States or order a state legislature to increase the home rule powers of the City of Chicago; it cannot enact federal legislation that adds to or revises Chicago's state created and limited delegated powers.

The leading case, New York v. United States, held that the Commerce Clause does not authorize the Federal Government to conscript state governments as its agents. ''Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not conscript state governments as its agents.'' The proposed Durbin-Lipinski legislation will do exactly what New York prohibits: it will conscript the City of Chicago as its agent and interfere with the relationship between the State of Illinois and the entity it created, the City of Chicago.

New York invalidated a legislative provision that is strikingly similar to the proposed federal Durbin-Lipinski legislation. The Court, in the New York case, considered the Low-Level Radioactive Waste Policy Amendments Act of 1985. Congress was concerned with a shortage of disposal sites for low level radioactive waste. The transfer of waste from one State to another is obviously interstate commerce. Congress, in order to deal with the waste disposal problem, crafted a complex statute with three parts, only one of which was unconstitutional. There were a series of monetary incentives, which the Court unanimously upheld under Congress' broad spending powers. Congress also authorized States that adopted radioactive waste and storage disposal guidelines to bar waste imported from States that had not adopted certain storage and disposal programs. The Court, again unanimously, relied on long-settled precedent that approves of Congress creating such trade barriers in interstate commerce.

Then the Court turned to the ''take title'' provisions and held (six to three) that they were unconstitutional. The ''take title'' provision in effect required a State to enact certain regulations and, if the State did not do so, it must (upon the request of the waste's generator or owner), take title to and possession of the waste and become liable for all damages suffered by the generator or owner as a result of the State's failure to promptly take possession.

The Court explained that Congress could, if it wished, preempt entirely state regulation in this area and take over the radioactive waste problem. But Congress could not order the States to change their regulations in this area. Congress lacks the power, under the Constitution, to regulate the State's regulation of interstate commerce. That is what the proposed federal O–Hare Airport bill will do: it will regulate the State's regulation of interstate commerce by telling the State that it must act as if the City of Chicago has complied with the Illinois Aeronautics Act and other state rules.

In a nutshell, Congress cannot constitutionally commandeer the legislative or executive branches. The Court pointed out that this commandeering is not only unconstitutional (because nothing in our Constitution authorizes it) but also bad policy, because federal commandeering serves to muddy responsibility, undermine political accountability, and increase federal power.

The proposed Durbin-Lipinski legislation prohibits Illinois from applying its laws regulating one of its cities. The proposed federal law also authorizes the federal government to make an agreement with Chicago, pursuant to which Chicago will assume some significant obligations, even though present state law gives Chicago no authority to engage in this activity. As the six to three New York decision made clear:

A State may not decline to administer the federal program. No matter which path the State chooses, it must follow the direction of Congress. . . . No other federal statute has been cited which offers a state government no option other than that of implementing legislation enacted by Congress. Whether one

views the take title provision as lying outside Congress' enumerated powers, or as infringing upon the core of state sovereignty reserved by the Tenth Amendment, the provision is inconsistent with the federal structure of our Government established by the Constitution.

The proposed Durbin-Lipinski legislation is very much like the law that six justices invalidated in New York. The O'Hare bill provides that, no matter what the State chooses, ''it must follow the direction of Congress.'' The State has ''no option other than that of implementing legislation enacted by Congress.''

The Court in New York went on to explain that there are legitimate ways that Congress can impose its will on the states:

This is not to say that Congress lacks the ability to encourage a State to regulate in a particular way, or that Congress may not hold out incentives to the States as a method of influencing a State's policy choices. Our cases have identified a variety of methods, short of outright coercion, by which Congress may urge a State to adopt a legislative program consistent with federal interests. Two of these methods are of particular relevance here.

The Court then discussed those two alternatives. First, there is the spending power, with Congress attaching conditions to the receipt of federal funds. The proposed Durbin-Lipinski legislation rejects the spending power alternative. Second, ''where Congress has the authority to regulate private activity under the Commerce Clause, we have recognized Congress' power to offer States the choice of regulating that activity according to federal standards or having state law preempted by federal regulation.'' The proposed Durbin-Lipinski legislation rejects that alternative as well. It does not propose that Congress directly takeover and expand O'Hare Airport. Instead, it proposes that the City of Chicago be allowed to exercise power that the State does not allow the City to exercise.

New York v. United States did not question ''the authority of Congress to subject state governments to generally applicable laws.'' But Congress cannot discriminate against the States and place on them special burdens. It cannot commandeer or command state legislatures or executive branch officials to enforce federal law. Congress can regulate interstate commerce and States are not immune from such regulation just because they are States. For example, Congress can forbid employers from hiring child labor to work in coal mines, whether a private company or a State owns the coal mine and employs the workers.

Printz v. United States. Following the New York decision, the Court invalidated another federal statute imposing certain administrative duties on local law enforcement officials, in Printz v. United States. The Brady Act, for a temporary period of time, required local law enforcement officials to use ''reasonable efforts'' to determine if certain gun sales were lawful under federal law. The federal law also ''empowered'' these local officers to grant waivers of the federally prescribed 5-day waiting period for handgun purchases Note that the proposed Durbin-Lipinski legislation will also ''empower'' the City of Chicago to do that which Illinois does not authorize the city to do.

To make the analogy even more compelling, the chief law enforcement personal suing in the Printz case said that state law prohibited them from undertaking these federal responsibilities. That, of course, is the exact position in which Chicago finds itself. State law prohibits Chicago from entering into and committing to these federal responsibilities (e.g., the agreements between Chicago and the FAA in §3(f) of the proposed Durbin-Lipinski legislation call for construction as a ''federal project'' but then require Chicago to either construct or allow construction without a permit from the State of Illinois).

We should realize that the proposed Durbin-Lipinski legislation—in commanding and singling out the State of Illinois to, in effect, repeal its legislation governing the powers delegated to the City of Chicago—is quite unusual and not at all in the tradition of federal legislation. For most of our history, Congress would explicitly only ''recommend'' or ''request'' the assistance of the governors and state legislatures in implementing federal policy. It is only in very recent times that Congress has sought explicitly to commandeer or order the legislative and executive branches of the States to implement federal policies. Because such federal legislative activity is recent, the case law in this area is recent, but the case law is clear in prohibiting this type of federal assertion of power.

New York v. United States held that Congress cannot ''command a State government to enact state regulation.'' Congress may regulate interstate commerce directly, but it may not ''regulate state governments'' regulation of interstate commerce.'' The Federal Government may not ''conscript state governments as its agents.'' Congress has the ''power to regulate individuals, not States.''

In short, there are important limits on the power of the federal government to commandeer the state legislature or state executive branch officials for federal purposes. Another way to think about this issue is that, to a certain extent, the Constitution forbids Congress from imposing what recently have been called ''unfunded mandates'' on state officials. Congress cannot simply order the States or state officials or a city to take care of a problem. Congress can use its spending power to persuade the States by using the carrot instead of the stick.

While there are those who have attacked the restrictions that New York v. United States have imposed on the Federal Government, it is worth remembering the line-up of the Court in Maryland v. Wirtz when the justices first considered this issue. That case rejected the applicability of the Tenth Amendment and held that it was constitutional for Congress to set the wages, hours, and working conditions of employees, including state employees in interstate commerce. However, Justice Douglas, who was joined by Justice Stewart, dissented. Douglas found the law to be a ''serious invasion of state sovereignty protected by the Tenth Amendment'' and ''not consistent with our constitutional federalism.'' He objected that Congress, using the broad commerce power, could ''virtually draw up each State's budget to avoid 'disruptive effect[s]' '' on interstate commerce. New York v. United States prevents this result.

The ''generally applicable'' restriction is important, and it explains Reno v. Condon. Congress enacted the Driver's Privacy Protection Act (DPPA), which limited the ability of the States to sell or disclose a driver's personal information to third parties without the driver's consent. Chief Justice Rehnquist, for a unanimous Court, upheld the law as a proper regulation of interstate commerce and not violating any principles of federalism found in New York v. United States or Printz because the law was ''generally applicable.''

Reno grew out of a congressional effort to protect the privacy of drivers' records. As a condition of obtaining a driver's license or registering a car, many States require drivers to provide personal information, such as name, address, social security number, medical information, and a photograph. Some States then sell this personal information to businesses and individuals, generating significant revenue. To limit such sales, Congress enacted the DPPA, which governs any state department of motor vehicles (DMV), or state officer, employee, or contractor thereof, and any resale or re-disclosure of drivers' personal information by private persons who obtained the information from a state DMV. The Court concluded: ''The DPPA's provisions do not apply solely to States. Private parties also could not buy the information for certain prohibited purposes nor could they resell the information to other parties for prohibited purposes, and the States could not sell the information to the private parties for certain purposes if the private parties could not buy it for those purposes.

Unlike the law in New York, the Court concluded that the DPPA does not control or regulate the manner in which States regulate private parties, it does not require the States to regulate their own citizens, and it does not require the state legislatures to enact any laws or regulations. Unlike the law in Printz, the DPPA does not require state officials to assist in enforcing federal statutes regulating private individuals. This DMV information is an article of commerce and its sale or release into the interstate stream of business is sufficient to support federal regulation.

The DPPA is a ''generally applicable'' federal law regulating commerce because it regulates the universe of entities that participate as suppliers to the market for motor vehicle information—the states as initial suppliers and the private resellers or redisclosers of this information. ''South Carolina has not asserted that it does not participate in the interstate market for personal information. Rather, South Carolina asks that the DPPA be invalidated in its entirety, even as applied to the States acting purely as commercial sellers.''

CONCLUSION

The proposed federal law dealing with the O'Hare Airport expansion is most likely unconstitutional because it imposes federal rules on the relationship between a city and the State that created the city. It subjects Illinois to special burdens that are not generally applicable to private parties or even to other States. It authorizes the City of Chicago to do that which Illinois now prohibits.

There is no escape from the conclusion that the proposed federal law does not regulate the behavior of private parties in interstate commerce. It does not subject the State of Illinois to ''generally applicable'' legislation. Instead, Congress is regulating the state's regulation of interstate commerce. Congress may not conscript the instrumentalities of state government and state power as tools of federal power. The case law is clear that Congress does not have this power.

Sincerely,

RONALD D. ROTUNDA,
The Albert E. Jenner, Jr. Professor of Law.

MEMORANDUM

July 13, 2002.

Re Impact of the Lipinski/Oberstar Bill on Illinois Law and Unchecked Condemnation Powers for Chicago to Condemn Land in Other Communities.

To: Senator Peter Fitzgerald; Congressman Henry Hyde; Congressman Jesse Jackson, Jr.

From: Joe Karaganis.

Sandy Murdock asked me to give you some background legal analysis of the impact of the language in the Lipinski/Oberstar bill (see §3 of the bill) to create a federal law

override (preemption) of the Illinois Aeronautics Act—specifically as that impact relates to expanding Chicago's power to engage in widespread condemnation and demolition of residential and business properties in other municipalities outside Chicago's boundaries.

As you know, on July 9, 2002 Judge Hollis Webster of the DuPage County Circuit Court entered a ruling declaring that Chicago had no authority under Illinois law to acquire property in other municipalities without complying first with § 47 of the Illinois Aeronautics Act, 620 ILCS 5/47 which requires any municipality to first obtain a ''certificate of approval'' from the Illinois Department of Transportation before making any alteration or extension of an airport.

Prior to her ruling, Chicago had proposed to acquire and demolish over 500 homes in Bensenville before seeking a certificate of approval. In testimony at the July 9, injunction hearing before Judge Webster, the lead IDOT official in charge of the IDOT approval process (James Bildilli) testified:

1. Without judicial enforcement of the Illinois Aeronautics Act, Chicago could acquire and demolish all the homes and businesses proposed in Bensenville and Elk Grove (over 500 homes and dozens of businesses) and only after such acquisition and demolition, would IDOT some years later hold a hearing in which IDOT would hear evidence and consider whether the harm caused by the acquisition and demolition justified IDOT's approval of the project. Essentially IDOT, in reaching its decision on the certificate of approval, would hear and consider evidence of the harm caused by the acquisition and demolition and consider this harm as a basis of its decision—but only after the harm (and destruction) had been inflicted.

2. Without judicial enforcement of the Illinois Aeronautics Act, Chicago could acquire by condemnation or otherwise all of Bensenville, Wood Dale, Elk Grove Village (thousands of homes and businesses) and any other municipality—without any need for a prior certificate of approval form IDOT under § 47.

Thankfully, Judge Webster rejected Chicago and IDOT's claims and applied and enforced the plain language of the statute—prohibiting Chicago from acquiring and demolishing homes and businesses in another municipality without first obtaining a certificate of approval from IDOT.

It is important for you to understand that the preemption approach of the Lipinski Bill (as well as Durbin's) will not simply federally destroy key provisions of the Illinois Aeronautics Act (namely §§ 47, 48, and 38.01). The Lipinski legislation has the effect of destroying the entire framework that Illinois has created under the Illinois Constitution and Illinois Municipal Code for preventing abuses of the state law condemnation power by municipalities. Here is the Illinois constitutional and Illinois statutory framework as upheld and enforced by Judge Webster:

1. Under the Illinois Constitution, Chicago has only that condemnation authority to condemn lands in other municipalities for airport purposes that is expressly delegated to Chicago by the laws of the State of Illinois. Article VII, Section 7 of the Illinois Constitution. Under long standing Illinois law (''Dillon's rule'' followed in almost all of the 50 states) any powers delegated to a municipality by the General Assembly under this constitutional provision are narrowly construed against assertions of authority by the municipality.

2. The Illinois General Assembly has delegated to Chicago the authority to condemn lands in other municipalities for airport purposes in the Illinois Municipal Code (65 ILCS 5/11–102–4) but as an essential element of that authority to condemn has expressly mandated in the Illinois Municipal Code (65 ILCS 5/11–102–10) that this grant of authority to condemn must be in accordance with the requirements of the Illinois Aeronautics Act.

3. Acquisition of land by Chicago without complying with the Illinois Aeronautics Act is thus not only a violation of the Illinois Aeronautics Act, such failure constitutes an unlawful ultra vires action by Chicago in violation of the Illinois Constitution and the Illinois Municipal Code. Without compliance with the Illinois Aeronautics Act, Chicago has no authority under either Article VII, Section VII of the Illinois Constitution and no authority under the Illinois Municipal Code to acquire land in other municipalities.

The Lipinski (and Durbin) legislation seeks to ''preempt'' and destroy the Illinois Aeronautics Act, but in doing so the Lipinski (and Durbin) legislation attempts to destroy and rewrite the framework created by the Illinois Constitution and the Illinois Municipal Code. Why not just abolish state constitutions and state statutory codes altogether and let Congress rewrite the state constitutions and state statutory codes of all 50 states?

Beyond the enormous legal implications of such action, the practical effect of the Lipinski (and Durbin) legislation is to do exactly what Judge Webster said Illinois law prohibits:

1. The Lipinski (and Durbin) legislation will ''authorize'' Chicago to condemn land in other municipalities even though no such authorization exists for Chicago to do so under the Illinois Constitution or Illinois Municipal Code.

2. The Lipinski (and Durbin) legislation will ''authorize'' Chicago to engage in unfettered condemnation authority with the ability to acquire and destroy thousands of homes and businesses in many other municipalities—all in violation of the limits on Chicago's state constitutional and state Municipal Code authority imposed by the Illinois Constitution and Illinois General Assembly.

As Senator Fitzgerald has pointed out in his remarks in his recent colloquy with Senator Durbin, the Lipinski (and Durbin) legislation would give Chicago unfettered ability to condemn properties outside the City of Chicago. If applied in other states, it would ''authorize'' one municipality (whichever municipality Congress chose) to disregard the limits on that municipality's delegated powers created by that state's constitution and state statutory code) and to condemn land in any other municipality in that state—in total federal preemption of that state's constitution and municipal code.

As we have said before, such radical action is a blatant violation of the federalism/Tenth Amendment Structure of the federal Constitution. But even if Congress did have such power, should Congress be overriding state constitutions and municipal codes to give federal ''authorization'' to one municipality in a state to run roughshod over other municipalities in that state in violation of the state constitution and municipal statutory code?

Postscript: There is another aspect of the Lipinski preemption which may be of interest. The Lipinski bill proposes to preempt § 38.01 of the Illinois Aeronautics Act, 620 ILCS 5/38.01. This section requires Chicago to obtain IDOT approval for any grant of federal funding to be used on airport projects which the Illinois General Assembly has authorized Chicago to construct. This is an important financial oversight tool (created by the Illinois General Assembly as a condition of a grant of authority to build airports) which allows the State of Illinois to engage in financial oversight of airport actions by Chicago. Given the widespread abuses in contract awards that have been documented at O'Hare, the Lipinski (and Durbin) legislation will literally ''open the chicken coop'' to widespread potential for corruption.

GOOD GOVERNMENT VS. CITY HALL CORRUPTION

It's hard to pinpoint Chicago City Hall's position on airports because it changes about as often as the wind in the Windy City.

In 1988, City Hall opposed a new airport or O'Hare expansion, saying they were unnecessary. In 1990, City Halls said a new airport was needed and proposed building one on the South Side near Lake Calumet. In 1994, City Hall abandoned the Lake Calumet Airport proposal and once again claimed no new runways were needed.

Just last year, the Mayor held a press conference to reiterate that O'Hare could handle all regional capacity needs until 2012, and that no runways were needed. Then in 2002, the Mayor changed course again and said six new runways were needed at O'Hare immediately. We don't need it. We need it. We don't need it. We need it. What is it?

Through all the flipflopping, one factor has remained consistent. That is City Hall's desire to protect cronyism and pin-striped patronage at O'Hare. The Chicago Tribune last year won a Pulitzer Prize for writing about what it called in one editorial: ''Daley and the stench at O'Hare.'' Mr. Speaker, I ask for unanimous consent to enter this editorial into the record.

The Tribune's continuing series recounted numerous insider deals that enriched the Mayor's family, friends and contributors. And these aren't penny-annie deals. For example, the City handed out $400 million to 30 engineering firms in no-hid contracts—when the City denied it was working on expansion plans. A longtime mayoral friend was paid $1.8 million to arrange a meeting with a concessionaire. Another friend was paid $480,000 to lobby for O'Hare, even though he wasn't a lobbyist. Meanwhile, airport vendors, concessionaires and businesses tied to O'Hare gave the mayor $360,000 in campaign gifts, according to the Tribune.

More recently, Chicago unveiled plans to spend $1.3 billion for terminal improvements at O'Hare. After viewing the plan, U.S. Transportation Secretary Norman Mineta remarked that the massive project included ''not one dime for new capacity.'' Mineta joked, ''O'Hare will have the finest food court in America.''

Now the City says trust us to build six new runways for billions of dollars.

The bottom line is: City Hall's repeated flip-flopping; its insider deals; and decades of deceit on this important issue have left it with little credibility.

I oppose such a deal. The City has strained its credibility and blocked the doorway to opportunity long enough. The region is paying with lost jobs, high fares, poor service and political corruption.

This airport debate is about good government. A third airport would protect taxpayers interests and improve service, while also resolving our nation's aviation crisis quicker, cheaper, safer and cleaner.

CONSUMER PROTECTION FARES

The O'Hare expansion plan is an anti-consumer measure.

Two airlines—American and United Airlines—control roughly 90 percent of the flights in and out of O'Hare. Combined, they have a monopoly.

Due to a lack of competition, fares at Chicago O'Hare continue climbing higher and faster than the national average. Six years ago, O'Hare fares were 21 percent above the national average. Today, they are 33 percent

above the national average. In real terms, Chicagoans today pay more than $1 billion a year in overcharges to use O'Hare.

The Secretary of Transportation in Illinois often tells a story about his travels from Springfield Illinois to Washington. If he flies from Springfield to O'Hare and then to Washington, it costs him about $400. However, if he drives from Springfield to O'Hare and then flies to Washington—on the exact same plane—it costs him nearly $1,500, or three times more. That's because Springfield has competition. From there, one can choose to fly through Chicago or St. Louis. The poor traveler in Chicago has few options. And he or she pays mightily.

O'Hare's monopoly fares have been the subject of analysis in recent years by the General Accounting Office, the U.S. DOT and the State of Illinois, among others. Each study concluded that O'Hare fares are considerably higher than average simply because of a lack of competition.

A lack of competition has also resulted in airlines reducing service or methodically abandoning service to less-profitable markets, which severely hurts the economy of small and mid-sized cities.

In the past 10 years, O'Hare has terminated service to more than a dozen markets, from South Carolina to North Dakota.

Will adding new runways at O'Hare increase competition or lower fares? It's unlikely.

A few years ago, Congress lifted the restrictions on slots for commuter flights at O'Hare—theoretically in the name of increasing competition. However, the vast majority of the new slots were snapped up by commuters planes owned by or affiliated with United and American. Why, because only United and American provide a network of connecting flights.

Now, the airlines will tell you that no carrier wants to come to Peotone. But that's simply not true. At least two airlines—Spirit and Virgin—have said they would love to fly out of a third airport. Moreover, last summer the CEO of American Airlines, Donald Carty, said American would use Peotone.

This airport debate is about consumer protection. A third airport will increase competition, which will reduce fares, while also resolving our nation's aviation crisis quicker, cheaper, safer and cleaner.

STOP O'HARE EXPANSION

LET 2,000 SOULS REST IN PEACE

DEAR COLLEAGUE: Two historic cemeteries stand in the path of the runways proposed under a plan to expand Chicago O'Hare International Airport. For this and many reasons more, we urge you to oppose H.R. 3479 or any legislation that would essentially force the Federal Aviation Administration to tear down and reconstruct O'Hare. We believe this legislation is constitutionally suspect, deeply divisive, environmentally flawed, wasteful and dangerous.

Many of you might be wondering why this issue should matter to you. Well, the answer is simple. If this atrocity could happen in our backyards, it could happen in yours!

On the reverse side of this page, please read an article that was printed in the Chicago Sun-Times detailing the ''royal mess'' that happened when contractors tried to move thousands of bodies in a nearby cemetery when St. Louis Lambert Airport expanded in the 1990s.

Near O'Hare, there are two cemeteries: St. Johnannes Cemetery (owned and maintained by St. John's United Church of Christ) and Resthaven Cemetery (affiliated with the Methodist Church). Most people have never heard of these cemeteries, but they serve as the final resting place of some of the first Illinois pioneers, as well as many of their modern era descendants. These cemeteries have served this purpose for more than 150 years since their first church members were laid to rest in the 1840s.

These individuals, their descendants and 1,600 other souls lie at rest in St. Johnannes, including some buried within the last year. Hundreds of others lie at rest at Resthaven, including mayors, business owners, farmers, factory workers, soldiers and housewives. Members of the Potowatamie tribe also are buried at Resthaven.

Illinois law states that a cemetery cannot be removed without the owner's consent, but that hasn't stopped the City of Chicago from planning to dig up these souls despite both churches stating publicly that they do not intend to provide consent.

Again, we implore you to vote against H.R. 3479. Let the dead rest in peace.

HENRY HYDE.
JESSE JACKSON, Jr.
PHIL CRANE.

[From the Chicago Sun-Times, July 14, 2002]

MOVING GRAVES CAN BE 'ROYAL MESS'

(By Robert C. Herguth, Transportation Reporter)

In the 1990s, St. Louis' Lambert Airport moved thousands of bodies from the crumbling, mostly black Washington Park Cemetery to make way for a transit line and create a larger, flatter buffer for runways.

Trouble, it turned out, was almost as bountiful as bones. An archaeologist hired to help with disinterment was accused of snatching limbs and yanking out teeth, supposedly for research, and later of hiding corpses to ensure he got paid. A state inspector climbed into a burial vault and held what was described as a ''mock funeral.''

There also were reports of coffins being accidentally pulverized by machinery.

''That was a royal mess,'' a person associated with the project recently remarked.

While an extreme example, the St. Louis work demonstrates how bad an already difficult and delicate process can get.

And it serves as a cautionary tale as the City of Chicago—using one of the same consultants involved in the Washington Park effort—makes plans to bulldoze two historic suburban cemeteries, and 433 acres of homes and businesses, to accommodate a proposed O'Hare Airport runway expansion.

''We've thought about those kinds of things,'' said Bob Sell, referring to Lambert's problems.

The Loop attorney has dozens of relatives buried at St. Johannes Cemetery, which is targeted for relocation, along with tiny Resthaven Cemetery.

''The notion of someone going to the cemetery and putting a shovel to my family member is horrible. That something could go wrong in that process, it makes me sick to my stomach.''

Like many homeowners in the proposed expansion zone, leaders of Resthaven and St. Johannes don't want to sell. One and perhaps both graveyards will fight the city in court, cemetery officials said.

The process, as of last Tuesday, is in a holding pattern because of a DuPage County judge's ruling in a different lawsuit. The judge ordered Chicago to halt land buys until it receives a state permit, something city officials believe is unnecessary and will appeal. Meanwhile, the city won't even be negotiating sales.

In another room Tuesday in another part of DuPage, a different aspect of the same thorny issue played out as two of the city's hired guns met for the first time with leaders of Resthaven to ''open up the dialogue.''

That's how Jeff Boyle—a former top aide to Mayor Daley now being paid $240 an hour as a no-bid consultant—portrayed the meeting at the Bensenville Community Public Library.

Resthaven president Lee Heinrich, vice president Bob Placek and their attorney said they were there to listen to Boyle and another consultant, Robert Merryman of O.R. Colan Associates.

Merryman—after Boyle nearly canceled the meeting because of the presence of a reporter and the lawyer—outlined several options, all of which involved the city buying the cemetery land.

''Let's start with the assumption that you have to go,'' he said softly, speaking in the consoling tones of a funeral director.

''The airport could simply purchase Resthaven and Resthaven is no more,'' he said.

The second possibility, he said, would be to ''functionally replace Resthaven'' by building ''a new Resthaven'' elsewhere.

Third, he said, the cemetery could be moved to another graveyard, where ''a section can be Resthaven.'' Headstones and monuments would go with the remains, the city would cover costs, and if some families wanted relatives reburied elsewhere, that would be fine, too, he said. Relatives could decide who ''disinters and reinters the body,'' and help monitor the process, he said.

Merryman's company was involved in the Washington Park Cemetery relocation. The firm did not select the archaeologist facing the allegations of desecrating the remains and, in fact, was asked ''to come and correct the situation,'' according to Chicago Aviation Department spokeswoman Monique Bond.

The firm also helped handle the ''land acquisition aspects'' of moving graves from Bridgeton Memorial Cemetery in St. Louis, which currently is being excavated to make way for new and longer runways at Lambert, said Lambert spokesman Mike Donatt.

HOW A CEMETERY IS MOVED

Locating and moving remains can be a tough process, but it's one played out quite frequently for road, airport and other public works projects, said Randolph Richardson.

He owns Kentucky-based Richardson Corp., which does the physical part of relocating graves.

For big jobs, Richardson may bring in 15 workers in blue jeans and knee boots, and heavy equipment. After mapping a cemetery, a worker with a ''probe rod'' tries to gauge the depth of graves and directs a backhoe operator on how far to dig. ''If the grave itself is 6 feet deep you dig down around 4½ feet, and the rest of it is hand digging,'' he said.

''Say we've got a row of 50 graves, we'd start at the end with a backhoe, the man with the probe rod is guiding the backhoe to tell him how deep to go, we dig a trench to expose those 50 graves, that allows us to get the men in there to work,'' he said.

Bodies are placed in individual wooden boxes—there are several sizes—unless coffins are intact, he said, adding that his workers may get tetanus shots before a project because of old rusty nails.

Caskets are put on trucks and driven to their new resting place, he said. His company typically charges between $1,000 and $1,500 per body.

Richardson, whose firm relocated some of the bodies from St. Louis' Washington Park, recalls some of the trouble there, but insists things usually are more smooth.

GUARDS QUESTIONING VISITORS

Boyle and Chicago's first deputy aviation commissioner, John Harris, have said they want to handle their cemetery situation with dignity and sensitivity. But the city is having its own public relations headaches.

The cemeteries are outside Chicago's borders, but can only be reached by a city-owned access road monitored by city guards.

Twice this month, a guard approached a St. Johannes visitor at the cemetery, questioned the person and asked that they ''sign in.''

In the first instance, the visitor said, he was interrupted while praying at a grave site, and after refusing to sign in was met by five Chicago police cars on the access road. The visitor in the second case was the pastor of the church that owns St. Johannes.

Just before being confronted—on Wednesday, after the judge's ruling—the minister was surprised to find four O.R. Colan employees nosing around graves at St. Johannes, apparently taking down names from headstones, although they had no permission to be there.

''They said they were doing a study,'' Sell said. ''They're trespassing on private property.''

Merryman did not return phone calls. City officials were at a loss to explain.

But Roderick Drew, a spokesman for Daley, said Friday that there's been a ''change in policy'' that ''nobody will have to sign in any more.''

''Anybody who wants access to that cemetery during those posted hours will not be stopped, will not have to sign in,'' he said, adding that the sign in ''has turned out to be a much greater inconvenience to the people who access it.''

FLOOR STATEMENT OF U.S. REPRESENTATIVE JESSE L. JACKSON, JR., OPPOSING H.R. 3479: THE NATIONAL AVIATION CAPACITY EXPANSION ACT OF 2002—MONDAY, JULY 15, 2002 WASHINGTON, DC

Mr. Speaker, I ask unanimous consent to revise and extend my remarks.

Mr. Speaker, I rise in opposition to H.R. 3479.

Votes on the suspension calendar are supposed to be, by definition, non-controversial. But to argue that H.R. 3479 is non-controversial is like arguing that the elimination of estate taxes, gun control legislation, a patients bill of rights, and prescription drug benefits for seniors should all be on the suspension calendar. H.R. 3479 is one of the most controversial bills to come before the House this year. It has been extremely controversial in Chicago, in the northwest suburbs, in Illinois generally, in the Illinois congressional delegation (our two U.S. Senators are divided over it), in all House and Senate Committees, in the full Senate, and, if a full debate were held on the House floor today, the NATION would see just how controversial this bill is.

This bill has already been delayed in the Senate with one virtual filibuster—and it will be subjected to every parliamentary and tactical maneuver possible to try to stop it when it comes before the Senate again. Hardly non-controversial!

To tear down and rebuild O'Hare will cost taxpayers three times as much money as it will cost to build a third South Suburban airport—$15–20 billion (not the $6.6 billion generally used) versus $5–7 billion. This bill is hardly noncontroversial for taxpayers!

Tearing down and rebuilding O'Hare is estimated to take 15-to-20 years, assuming it proceeds on schedule, without lawsuits—not likely—while building a new South Suburban Airport would take five years, it would expand thereafter as need arises, and would be a more permanent solution to the capacity crisis. When the new O'Hare is completed, we will be in the same position we are today with regard to the air capacity crisis. How is that not controversial?

This bill will double the noise pollution in the suburban communities surrounding O'Hare. It is hardly non-controversial in the polluted northwest suburbs of Chicago.

Doubling the traffic in the air space around O'Hare from 900,000 to 1.6 million operations will make flying into O'Hare less safe for the public—hardly noncontroversial for the flying public.

This bill will increase environmental pollution—O'Hare is already the number one polluter in Illinois—hardly non-controversial for those having to live in the increased pollution.

The Chicago Tribune won a Pulitzer Prize for documenting ''sleaze'' surrounding the City of Chicago and past O'Hare construction, vender, and service contracts. By passing this bill—and removing the Illinois Aeronautics Law and by-passing the Illinois General Assembly—we are virtually sanctioning more ''sleaze'' to be found around O'Hare construction, vender, and service contracts. Since when has such potential ''sleaze'' become non-controversial for Congress.

I don't consider the Federal Government running over any future Governor of Illinois, the Illinois General Assembly, the Illinois Aeronautics Law, and the 10th Amendment of the U.S. Constitution—to build an airport—non-controversial.

Finally, we're already finding out how controversial this bill is as Judge Hollis Webster on July 9, 2002, stopped the City of Chicago from running rough-shod over their northwest suburban neighbors by illegally trying to buy up and tear down their homes and businesses to make room for O'Hare expansion. This is just one of many controversial lawsuits that have been and will be filed in the future if this bill passes and becomes law.

How is tearing down and rebuilding O'Hare—which will be three times as expensive, take three times longer, be less protective of the environment, make the skys less safe, and be a less permanent solution than building a third airport—non-controversial? I say, solve the current air capacity crisis by building Peotone first, faster, cheaper, and safer, then evaluate what needs to be done with O'Hare.

H.R. 3479 falls woefully short of providing an adequate, equitable solution.

Please know that I do not oppose fixing the current air capacity crisis surrounding O'Hare. But I have many, many grave concerns about this specific expansion plan. Concerns about cost. About safety. About environmental impact. About federal precedence—and I associate myself completely with the remarks of my good friend, Mr. HYDE.

Although I oppose this bill for many reasons, I rise today to discuss an important element of this bill—constitutionality.

The attempt to rebuild and expand O'Hare Airport—Congress is inappropriately violating the Tenth Amendment.

In other contexts—specifically with regard to certain human rights—I believe that the Tenth Amendment serves to place limitations on the federal government with which I disagree. Indeed, in the area of human rights, I believe new amendments must be added to the Constitution to overcome the limitations of the Tenth Amendment. However, building airports is not a human right. Therefore, in the present context, I agree that building airports is appropriately within the purview of the states.

I believe attempts by Congress to strip the authority of Governor Ryan and the Illinois Legislature over the delegation and authorization to Chicago of state power to build airports—along with the authority of governors and state legislatures in a host of other states such as Massachusetts (Logan), New York (LaGuardia and JFK), New Jersey (Newark) California (San Francisco airport), and the State of Washington (Seattle)—raise serious constitutional questions.

Under the framework of federalism established by the federal constitution, Congress is without power to dictate to the states how the states delegate power—or limit the delegation of that power—to their political subdivisions. Unless and until Congress decides that the federal government should build airports, airports will continue to be built by states or their delegated agents (state political subdivisions or other agents of state power) as an exercise of state law and state power. Further compliance by the political subdivision of the oversight conditions imposed by the State legislature as a condition of delegating the state law authority to build airports is an essential element of that delegation of state power. If Congress strips away a key element of that state law delegation, it is highly unlikely that the political subdivision would continue to have the power to build airports under state law. The political subdivision's attempts to build runways would likely be ultra vires (without authority) under state law.

Under the Tenth Amendment and the framework of federalism built into the Constitution, Congress cannot command the States to affirmatively undertake an activity. Nor can Congress intrude upon or dictate to the states, the prerogatives of the states as to how to allocate and exercise state power—either directly by the state or by delegation of state authority to its political subdivisions.

As stated by the United States Supreme Court:

''[T]he Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States. . . . We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, *it lacks the power directly to compel the States to require or prohibit those acts*.''—New York v. United States, 505 U.S. 144, at 166 (1992) (emphasis added).

It is incontestable that the Constitution established a system of ''*dual sovereignty*.''—Printz v United States, 521 U. S. 898, 918 (1997) (emphasis added).

Although the States surrendered many of their powers to the new Federal Government, they retained ''a residuary and inviolable sovereignty,'' The Federalist No. 39, at 245 (J. Madison). This is reflected throughout the Constitution's text.

Residual state sovereignty was also implicit, of course, in the Constitution's conferral upon Congress of not all governmental powers, but only discrete, enumerated ones, Art. 1, Sec. 8, which implication was rendered express by the Tenth Amendment's assertion that ''[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.''—ld at 918–919.

This separation of the two spheres is one of the Constitution's structural protections of liberty. ''Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.—Id at 921 quoting Gregory v. Ashcroft, 501 U.S. 452 at 458 (1991).

The Supreme Court in Printz went on to emphasize that this constitutional structural barrier to the Congress intruding on the State's sovereignty could not be avoided by claiming either (a) that the congressional authority was pursuant to the Commerce Power and the ''necessary and proper clause of the Constitution or (b) that the federal law ''preempted'' state law under the Supremacy Clause. 521 U.S. at 923–924.

It is important to note that Congress can regulate—but not affirmatively command—the states when the state decides to engage in interstate commerce. See Reno v. Condon, 528 U.S. 141 (2000). Thus in Reno, the Court upheld an act of Congress that restricted the ability of the state to distribute personal drivers' license information. But Reno did not involve an affirmative command of Congress to a state to affirmatively undertake an activity desired by Congress. Nor did Reno involve (as proposed here) an intrusion by the federal government into the delegation of state power by a state legislature—and the state legislature's express limits on that delegation of state power—to a state political subdivision.

H.R. 3479 would involve a federal law which would prohibit a state from restricting or limiting the delegated exercise of state power by a state's political subdivision. In this case, the proposed federal law would seek to bar the Illinois Legislature from deciding the allocation of the state's power to build an airport or runways—and especially the limits and conditions imposed by the State of Illinois on the delegation of that power to Chicago. The law is clear that Congress has no power to intrude upon or interfere with a state's decision as to how to allocate state power.

A state's authority to create, modify, or even eliminate the structure and powers of the state's political subdivisions—whether that subdivision be Chicago, Bensenville, or Elmhurst—is a matter left by our system of federalism and our federal Constitution to the exclusive authority of the states. As stated by the Seventh Circuit in Commissioners of Highways v. United States, 653 F.2d 292 (7th Cir. 1981) (quoting Hunter v. City of Pittsburgh, 207 U.S. 161, 178 (1907)):

''Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. . . . The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.''—Commissioners of Highways, 653 F.2d at 297.

Chicago has acknowledged that Illinois has delegated its power to build and operate airports to its political subdivisions by express statutory delegation. 65 ILCS 5/11–102–1, 11–102–2 and 11–102–5. These state law delegations of the power to build airports and runways are subject to the Illinois Aeronautics Act requirements—including the requirement that the State approve any alterations of the airport—by their express terms. Any attempt by Congress to remove a condition or limitation imposed by the Illinois Legislature on the terms of that state law delegation of authority would likely destroy the delegation of state authority to build airports by the Illinois Legislature to Chicago—leaving Chicago without delegated state legislative authority to build runways and terminals at O'Hare or Midway. The requirement that Chicago receive a state permit is an express condition of the grant of state authority and an attempt by Congress to remove that condition or limitation would mean that there was no continuing valid state delegation of authority to Chicago to build airports. Chicago's attempts to build new runways would be ultra vires under state law as being without the required state legislative authority.

Clearly this bill sets dangerous precedence by stating that Congress—not the FAA, not Departments of Transportation, not aviation experts—but Congress shall plan and build airports.

Further, it ignores the 10th Amendment to the U.S. Constitution. It guts and/or undermines state laws and environmental protections. And it sidesteps the checks-and-balances and the public hearing process.

My focus today is the same as it's always been. Finding the best fix. And that best fix is the construction of a third Chicago airport near Peotone, Illinois. The plain truth is Peotone could be built in one-third the time at one-third the cost. For taxpayers and travelers, it's a no-brainer.

Unfortunately, this bill mandates expansion of O'Hare yet pays mere lip service to Peotone. It puts the projects on two separate and unequal tracks. That is my opinion. That is also the opinion of the Congressional Research Service, whose analysis I will provide for the record.

What we don't need at this critical juncture is favoritism or interference from politicians and profit-oriented airlines to stack the deck against Peotone. What we don't need is a bill that increases the likelihood of a constitutional challenge that prolongs the debate and delays the fix.

Thus, I urge members to reject this unprecedented, unwise, and unconstitutional bill.

TESTIMONY OF CONGRESSMAN JESSE L. JACKSON, JR. BEFORE THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, UNITED STATES CONGRESS

OVERSIGHT HEARING ON THE STATE OF COMPETITION IN THE AIRLINE INDUSTRY—JUNE 14, 2000

Mr. Chairman, Ranking Member Conyers, members of the Judiciary Committee. Thank you for the opportunity to present my concerns about monopoly abuses in the airline industry—particularly the apparent agreement by the so-called ''Big Seven'' major airlines not to compete in each other's Fortress Hub markets. I know much of the discussion at today's hearing will focus on the recently announced merger between United and US Air and the potential responsive mergers between American and Northwest and between Delta and some other major airline. That these mergers are anti-competitive and should be prohibited is self-evident.

While I will address the issue of these proposed or potential mergers, I believe it important to focus on today's monopoly environment in the airline industry. It is true that the proposed mergers will make the monopoly problem worse. But what needs to be emphasized is that today—even if the proposed or potential mergers never reach fruition or are ultimately rejected—the major airlines have currently created a monopolistic system of Fortress Hubs that represents a blatant violation of federal antitrust laws. Moreover, if government estimates are correct, these current monopoly abuses at Fortress Hubs are costing air travelers—especially business travelers—billions of dollars a year in excess fares.

Therefore my remarks will focus on the antitrust violations of the current Fortress Hub system created and maintained by the major airlines. That the proposed or potential mergers are an unacceptable expansion of monopolization is a given. But this Committee, the entire Congress, and the Administration need to develop and implement specific concrete and comprehensive solutions to the existing Fortress Hub monopoly problem.

Thankfully, we do not address this problem in a vacuum. The Suburban O'Hare Commission—an intergovernmental body of local governments adjacent to O'Hare airport—has recently issued a comprehensive report on the national Fortress Hub problem entitled If You Build It, We Won't Come: The Collective Refusal Of The Major Airlines To Compete In The Chicago Air Travel Market. The Suburban O'Hare Commission report contains a detailed analysis and description of the monopoly problem presented by the Fortress Hub system and I won't repeat all those details here. But I would like to highlight several issues from the report and discuss recommended solutions to the Fortress Hub problem both nationally, and in Chicago.

1. Northwest owns Minneapolis and Detroit; Delta owns Atlanta and Cincinnati; American and United own Chicago; US Air owns Pittsburgh.

Ever since the passage of deregulation legislation in 1978, the major airlines have consolidated their economic power into a series of geographically distinct ''Fortress Hubs''. Thus everyone knows that Northwest Airlines dominates air travel to and from Minneapolis and Detroit; Delta dominates air travel to and from Atlanta and Cincinnati; United and American dominate air travel to and from Chicago; and US Air dominates air travel to and from Pittsburgh.

2. These Fortress Hub markets have economically attractive business travel markets that should—in normal circumstances—attract competition to service those markets.

Virtually all of the major Fortress Hub markets are located in thriving urban business centers. This means that in all major Fortress Hub markets there is a large pool of business travelers who would like to travel from the Fortress Hub to other destinations.

One would assume that this pool of business travelers would be an attractive market for major airlines to compete with one another for this traffic. One would assume therefore that United would—under normal circumstances—wish to compete with Delta for the business traveler based in Atlanta. Similarly, Delta would—under normal circumstances—wish to compete with United and American for the business travel market based in Chicago or with Northwest for the business market in Minneapolis or Detroit.

But we do not have normal circumstances here. We do not see Northwest coming before Congress complaining about their inability to compete with Delta in Atlanta for the lucrative business travel market. We do not see Delta coming before Congress complaining about their inability to compete with Northwest in Detroit for the lucrative business travel market there or their inability to compete with United and American in Chicago for the business travel there. Instead we have a collective decision by the major airlines—the so-called ''Big Seven''—not to compete in each other's major hub markets.

3. This decision by the Big Seven Not To Compete Appears to Be a ''Per Se'' Violation of federal Anti-trust laws.

Given this obvious collective decision by the Big Seven to stay out of each other's Fortress Hub markets and this collective decision not to compete for lucrative business travel in those markets, the obvious question is: Do these geographic allocation of

Fortress Hub markets by the major airlines constitute ''per se'' violations of federal antitrust laws. As set forth in the Suburban O'Hare Commission report, a multitude of Supreme Court decisions uniformly condemn horizontal geographic market allocations—such as is present in the geographic allocation of Fortress Hub markets—as ''per se'' violations of the Sherman antitrust law.

4. The Fortress Hub Monopoly System Costs Travelers—especially business travelers—billions of dollars per year in excess fares.

The concentration of market power in the hands of one or two airlines in a single geographic market inevitably leads to the temptation by the dominant carriers to raise prices to higher levels than would be the case if there was significant competition in that market. The General Accounting Office (GAO) has warned us for years that concentration of market power in one or two airlines has led and will lead to significantly higher prices than would otherwise be the case with aggressive competition.

The State of Illinois has produced two studies which suggest that the monopoly premium paid by travelers at Fortress O'Hare alone is on the order of several hundred million dollars per year—monopoly overcharges taken from the traveler by United and American because of the lack of significant competition in the O'Hare market. Extended nationally, these monopoly overcharges are likely to exceed several billion dollars per year being paid by the nation's air travelers. The segment of the travelling public that bears the brunt of these monopoly overcharges is the business traveler. The anecdotal evidence is overwhelming that the time-sensitive business traveler is being charged exorbitant prices for business travel. It is clear that the Big Seven cartel is maintaining the Fortress Hub system—and reaping huge monopoly induced revenues—on the backs of the business traveler.

5. The Big Seven's refusal to Compete In Chicago—If You Build It We Won't Come.

Metropolitan Chicago makes a good case study of the collective refusal of the other members of the Big Seven to compete with United's and American's dominance of the Chicago air travel market. As discussed in the Suburban O'Hare Commission report, the evidence is clear that United and American—in concert with their fellow members of the Air Transport Association (ATA)—have engaged in a collusive effort to stop construction of major new capacity in metropolitan Chicago.

Here we have explicit evidence of the other major airlines telling the State of Illinois that—even if a new airport is constructed in metro Chicago—they will not use that airport to compete head-to-head with United and American. When read carefully, the ATA sponsored letter necessarily implies even more. It suggests that these other major airlines simply do not wish to compete with United and American in the Chicago market on any terms or at any location.

Nowhere do these major airlines (e.g. Delta, Northwest, Continental) offer to compete with United and American in the metro Chicago area if favorable terms are made available to them at the new airport (e.g. low landing fees; high speed rail access to central Chicago, etc.). Nor do they alternatively demand major hub-and-spoke capacity be made available to them at O'Hare so that they can compete head-to-head at O'Hare. Instead, they simply declare their refusal to use the new airport and by necessary conclusion, declare their refusal to compete in the metro Chicago market.

6. The Currently Proposed O'Hare Expansion Will Only Make the Monopoly Problem Worse.

United and American are currently working with the City of Chicago on a massive expansion of O'Hare called the ''World Gateway'' program. This proposal calls for spending several billion dollars in federal taxpayer money to fund the expansion of United and American's hub-and-spoke monopoly at O'Hare. Nowhere in the design of the World Gateway project is there any attempt to include or encourage new hub-and-spoke competition from another major airline. Indeed, the entire terminal design is premised on continued growth of United and American's hub-and-spoke systems to the exclusion of any new hub-and-spoke competitor.

7. The Campaign to Maintain the Fortress Hub System—and to Defeat the Development of New Capacity for New Competition—has Other Serious Consequences.

As discussed above the principal economic victims of the Fortress Hub monopoly system is the business traveler and our national economy. American businesses are paying a penalty of billions of dollars per year in monopoly overcharges to the major airlines Fortress Hub system. Further, the prohibitively high prices of business travel created and maintained by this Fortress Hub system are actually stifling business travel for those entrepreneurial businesses who cannot afford those prices.

But the business traveler is not the only victim of this Fortress Hub system. As shown by the Suburban O'Hare Commission report and from my own experience, the major airlines attempts to defeat the construction of new competitive capacity in the South Suburban Chicago Airport illustrates the widespread adverse consequences of this illegal conduct.

By seeking to expand United and American's dominance of the regional Chicago market through a major expansion of O'Hare—while refusing to compete in metropolitan Chicago—the major airlines (led by United and American) have created severe environmental and economic problems and distortions throughout the Chicago metro region. My point is that the major airlines' passion for protection and expansion of the Fortress Hub monopoly system has consequences far beyond the business traveler. These include:

Severe environmental impacts on communities around the Fortress Hub airport. The O'Hare area communities will be subjected to more noise, more air pollution, and more safety hazards because United and American want the expansion to take place under their control at O'Hare—where by design they are keeping out new hub-and- spoke competition—rather than at a new regional airport where a major new competitor could enter the region.

Serious economic decline in the communities in my district. By seeking to force traffic growth into their already overloaded Fortress Hub at O'Hare, United and American (along with their colleagues at the ATA) are causing serious economic injury to the communities in my district. As you know, Chairman Hyde and I each represent a part of Chicago and its suburbs. What you might not know is that the hub of business activity in Chicago is no longer downtown; it is O'Hare Airport. There are roughly equal numbers of people living in the south suburbs, which I represent, and the northwest suburbs, which Chairman Hyde represents. However, during the past ten years, eighty percent of the new jobs created in the Chicago region were in Mr. Hyde's district while my district lost jobs.

8. The Federal Government Has Assisted In the Growth and Expansion of the Fortress Hub Monopoly System.

It is obvious that the Department of Justice has broad law enforcement powers to correct many of the abuses of the Fortress Hub system. But there is another aspect of federal power that has actually been used to nurture and expand the Fortress Hub monopoly problem—the current federal programs for financial assistance to airports.

The federal government—through either the Airport Improvement Program (AIP) or the Passenger Facility Charge Program (PFC)—awards or authorizes the expenditure of billions of dollars for airport development. Yet it is clear that little effort has been made by the Department of Transportation to ensure that these billions of federal taxpayer dollars are used to enhance competition and to deter monopoly. Indeed, there is strong evidence that the Department of Transportation has acted in collusion with the Fortress Hub major airlines to expand the Fortress Hub monopolies and to discourage new competition.

This neglect of the antitrust implications of federal airport funding policy is vividly illustrated in the Administration's bizarre use of federal funding power in Chicago:

First, the Administration has repeatedly denied planning and development funds for a new regional airport which could support major new competition for United and American. The Administration has done so on the bizarre extra-legal claim that before a new airport can proceed, there must be ''regional consensus''—a code phrase for Mayor Daley's approval. No such requirement exists in federal law.

Second, the Administration is proceeding forward with Chicago's (and United and American's) design for a so-called ''World Gateway'' program at O'Hare which is designed to expand and solidify the current hub-and-spoke dominance of United and American in the region. As currently proposed, the DOT is being asked to approve or authorize billions of federal taxpayer dollars to build a Fortress Hub expansion designed by United and American to keep out new hub-and-spoke competition.

Both of these actions by DOT are interrelated. Starving the new regional airport will ensure that no significant new competition comes into the region while funneling billions in taxpayer dollars into United's and American's expanded Fortress O'Hare will only increase the monopoly problem in Chicago.

9. Mega-Mergers Will Only Make The Problem Worse.

My discussion above makes it clear that we already—independent of the proposed and potential mega-mergers—have enormous problems with anti-trust violations in the airline industry's Fortress Hub system, problems that cost the traveling public billions of dollars, in overcharges each year. These current problems stem from a concentration of market power in the hands of a few. It is obvious that the mega-mergers will only make an already terrible situation even worse.

CONCLUSION AND RECOMMENDATIONS

Based on my own analysis and that of the Suburban O'Hare Commission, I conclude that the evidence is overwhelming that the major airlines have developed a Fortress Hub system that enables individual airlines to dominate geographic markets and charge exorbitant monopoly supported air fares. I further conclude that as part of their program to maintain and expand this illegal system, the major airlines have acted in concert not to compete in each other's Fortress Hub markets for lucrative business travel markets—with the result that business travelers are overcharged billions of dollars per year. Finally, I conclude that this Fortress Hub system constitutes a per se violation of federal antitrust laws. Given these conclusions,

I make the following recommendations to this Committee:

It is obvious that the proposed and potential ''mega-mergers'' should be stopped.

I respectfully ask that the Committee join with me in asking the Department of Justice to initiate an investigation into the collective refusal of the Big Seven airlines to compete against each other in each other's Fortress Hub markets.

I respectfully ask that the Committee join with me in asking the Department of Justice to initiate a civil action in federal court to break up the Fortress Hub geographic market allocation by the major airlines and to prohibit the collective refusal of the major airlines to compete in each other's Fortress Hub markets.

I respectfully ask that the Committee join with me in asking the state Attorneys General to bring civil damage actions to recover treble damages for the billions of dollars per year in overcharges imposed on travelers as a result of Fortress Hub system.

I respectfully ask this Committee to join with me in a request to the Department of Justice and the Department of Transportation that no further federal funds (either Airport Improvement Program funds or Passenger Facilities Charges) be authorized or approved at O'Hare until there have been full public hearings and public consideration of the antitrust implications of the proposed alterations to O'Hare.

I respectfully ask that the Committee join with me in seeking major reform of the federal aid process to airports to insure that the federal funds are used to promote competitions and to discourage maintenance and growth of Fortress Hub monopoly power.

I respectfully ask that the Committee join with me in the following recommendation to the Department of Transportation: Until completion of construction of a new Chicago regional airport, the existing capacity of O'Hare should be reallocated from its current dominance by United and American into a shared capacity allocation program that reserves a significant share of OHare's capacity (e.g. 40 percent) for new 1 competitive entrants. And by new competitive entrants, I do not mean affiliates of United and American.

STATEMENT OF U.S. REPRESENTATIVE JESSE L. JACKSON, JR. BEFORE THE U.S. HOUSE AVIATION SUBCOMMITTEE—WEDNESDAY, AUGUST 1ST, 2001 WASHINGTON DC

I want to thank Members of the House Aviation Subcommittee for this opportunity to discuss Chicago's aviation future. As you may know, I ran on this issue in 1995, and have supported expanding aviation capacity by building a third regional airport in Peotone, Illinois.

Let me begin with a personal anecdote that, from my perspective, illustrates why we're here. I won my first term in a special election and on December 14th, 1995 took the Oath of Office. Congressman Lipinski, my good friend and fellow Chicagoan whose district borders mine, was present and his was the seventh or eighth hand I shook as a new Member. He told me then: ''Young man, I want you to know that I can be very helpful to you during your stay in Congress, but you're never going to get that new airport you spoke about during your campaign.''

Since then, Congressman Lipinski has been helpful and we've worked together on many important issues. But, he's also made good on his word to block a third airport.

It is this rigid stance by many Chicago officials that's allowed a local problem to escalate into a national crisis. Once the nation's best and busiest crossroads, O'Hare is now its worst choke point—overpriced, overburdened and overwhelmed.

And to think it was avoidable. This debate dates back to 1984 when the Federal Aviation Administration determined that Chicago was quickly running out of capacity. The FAA directed Illinois, Indiana and Wisconsin to conduct a feasibility study for a new airport. The exhaustive study of numerous sites concluded almost 10 years ago that gridlock could be best avoided by building a south suburban airport. The State of Illinois then drafted detailed plans for an airport near Peotone.

Unfortunately, despite the FAA's dire warning and the State's best efforts, I watched in amazement as the City of Chicago went to extremes to thwart and delay any new capacity.

In the late 1980s, Mayor Daley mocked the idea of a third airport. By 1990, the City did an about-face and proposed building a third airport within the City. The City even initiated federal legislation creating the Passenger Facility Charge (PFC) to pay for it. But two years later the City reversed itself again and abandoned the plan, yet continued to collect $90 million a year in PFCS. This summer, the City told the Illinois Legislature that O'Hare needed no new capacity until the year 2012, then, in yet another reversal, three weeks ago declared O'Hare needed six new runways.

As the City was spending hundreds of millions of dollars on consultants to tell us that the City didn't, did, didn't, did need new capacity, it continued to be consistent on one thing—fighting to kill the third airport.

Sadly, that opposition was never based on substantive issues—regional capacity, public safety or air travel efficiency. Instead it was rooted in protecting patronage, inside deals and the status quo. In fact, earlier this year the Chicago Tribune won a Pulitzer Prize for documenting the ''stench at O'Hare.''

Still, for eight years, City Hall leveraged the Clinton FAA to stall Peotone. The FAA, ignoring its own warnings of approaching gridlock, conspired with the city to:

(1) Mandate ''regional consensus,'' thus requiring Chicago mayoral approval for any new regional airport; (2) Remove Peotone from the NPIAS list in 1997, after it emerged as the frontrunner. Peotone had been on the NPIAS for 12 years; (3) Hold up the Peotone environmental review from 1997 to 2000.

In short, the same parties who created this aviation mess are now saying ''trust us to clean it up'' with H.R. 2107. But their hands are too dirty and their interests are too narrow. Proponents of this legislation claim to be taking the high road. But this is a dead end.

Fortunately, there is a better alternative. Compared to O'Hare expansion, Peotone could be built in one-third the time at one-third the cost—both important facts given that the crisis is imminent and that the public will ultimately pay for any fix.

Site selection aside, however, there is yet another, even bigger problem with H.R. 2107. It is the United States Constitution.

H.R. 2107 strips Illinois Governor George Ryan of legitimate state power in an apparent violation of the ''reserved powers'' clause of the 10th Amendment.

Under the 10th Amendment, Congress cannot command Illinois to affirmatively undertake an activity, nor can it intrude upon Illinois' prerogative to exercise or delegate its power. As stated by the United States Supreme Court: ''[T]he Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States . . . . We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts.'' [New York v. United States, 1992] [2]

Supporters have cited the Commerce Clause in defending his legislation. But the Supreme Court in Printz v. United States specifically emphasized the 10th Amendment barrier to Congress intruding on a state's sovereignty by saying that it could not be avoided by claiming either, one, that congressional authority was pursuant to the Commerce Power, or, two, that federal law ''preempted'' state law under the Supremacy Clause.

Chicago has acknowledged Illinois' authority to build and operate airports by express statutory delegation through the Illinois Aeronautics Act, including the requirement that the State approve any airport alterations. Under the 10th Amendment, if Congress strips away a key element of the Illinois law, Chicago's attempt to build runways would likely be ultra vires (without authority) under Illinois law.

Moreover, H.R. 2107 converts the concept of dual sovereignty into tri-sovereignty, by going beyond states' rights to city rights. It gives Mayor Daley (and the other local officials in charge of the 68 largest airports in the country) a greater say over national aviation policy than the federal government or the fifty governors.

Indeed, H.R. 2107 sets federalism on its head. It makes about as much sense as putting the local police department in charge of national defense.

Such legislation won't improve aviation services. In fact, it increases the likelihood for a constitutional challenge that will further prolong this crisis.

So, from a practical standpoint, I urge the subcommittee to reject this measure, to reject cramming more planes into one of the nation's most overcrowded airport, to reject turning O'Hare into the world's largest construction site for the next 20 years, and to reject sticking the taxpayers with an outrageous bill.

I strongly urge the committee to reject this unprecedented, unwise and unconstitutional attack against our fifty states and our Founding Fathers. Thank you.

HOUSE OF REPRESENTATIVES,
Washington, DC.

STATEMENT OF U.S. REPRESENTATIVE JESSE L. JACKSON, JR. BEFORE THE U.S. SENATE COMMERCE COMMITTEE THURSDAY, MARCH 21, 2002.

I want to commend and thank Members of the Committee on Commerce, Science and Transportation for this opportunity to again discuss the future of Chicago's airports. As you know, I sent a letter to each of you stating my opposition to this bill. Many Members responded favorably, and for that I thank them. Today, my position has not changed.

As you know, my commitment to resolving Chicago's aviation capacity crisis predates my days in Congress. I ran on this issue in my first campaign. I won on this issue. It remains my first priority. It was the subject of my first speech in Congress. And it was the topic of my first debate in Washington.

I am elated that this issue—my issue—is now before the Congress. And while I thank Members of the Senate for their interest in trying to resolving this regional and national crisis, I must say that HR 3479 as amended falls woefully short of providing an adequate, equitable solution.

Please know that I do not oppose fixing O'Hare's problems. But I have many, many grave concerns about this specific expansion plan. Concerns about cost. About safety. About environment impact. About federal precedence. And about constitutionality.

Clearly this bills sets dangerous precedence by stating that Congress—not the

FAA, not Departments of Transportation, not aviation experts—but Congress shall plan and built airports. Further, it ignores the 10th Amendment to the U.S. Constitution. It guts and/or undermines state laws and environmental protections. And it sidesteps the checks-and-balances and the public hearing process.

My focus today is the same as it's always been. Finding the best fix. And that best fix is the construction of a third Chicago airport near Peotone, Illinois. The plain truth is Peotone could be built in one-third the time at one-third the cost. For taxpayers and travelers, it's a no-brainer.

Unfortunately, this bill mandates expansion of O'Hare yet pays mere lip service to Peotone. It puts the projects on two separate and unequal tracks. That is my opinion. That is also the opinion of the Congressional Research Service, whose analysis I will provide to you.

What we don't need at this critical juncture is favoritism or interference from politicians and profit-oriented airlines to stack the deck against Peotone. What we don't need is a bill that increases the likelihood of a constitutional challenge that prolongs the debate and delays the fix.

Thus, I urge you to reject this unprecedented, unwise, and unconstitutional bill. Instead, I urge you to treat O'Hare and Peotone on equal terms and to avoid stacking the deck for or against either project. Finally, I urge you to consider substantive improvements to this bill that would allow—not impair—Peotone to proceed on its own merits, free of political interference.

If you do, I am confident that Peotone will prove to be the cheaper, quicker, safer, cleaner, more practical and more permanent solution to the region's and nation's aviation capacity needs. Thank you.

HOUSE OF REPRESENTATIVES,
Washington, DC., Wednesday, February 6, 2002.

FEDERAL STUDY CONFIRMS AIRPORT DEAL SHORTCHANGES PEOTONE

An analysis released today by the independent, non-partisan research arm of Congress confirmed what Peotone proponents have said all along: The Ryan-Daley airport agreement puts O'Hare on the fast track and just pays lip service to Peotone.

An analysis released today by the Congressional Research Service concludes that the proposed National Aviation Capacity Expansion Act puts the two projects on separate and unequal tracks.

The CRS analysis states that the Federal Government ''shall construct the runway redesign plan'' at O'Hare but would merely ''review'' and give ''consideration'' to the Peotone Airport project.

In reaction to the release of today's report, Congressman Jackson reiterated his opposition to the measure. ''This study unmasks the bare truth about the agreement between the Mayor and the Governor. For those claiming that the deal is good for the Third Airport, it's not. The masquerade ball is over,'' Jackson said.

''Peotone has been stuck in the paralysis of analysis for 15 years. We don't need any more reviews. We need a Third Airport, '' Jackson said. ''Peotone can be built faster, cheaper, safer, and cleaner than expanding O'Hare, and presents a more secure and more permanent solution to Illinois' aviation crisis. This is shortsighted legislation and a bad deal for the public.''

The CRS report states that the Lipinski-Durbin bill ''specifically states that the (FAA) Administrator 'shall construct' the runway redesign plan; however, there is no parallel language regarding the construction of the south suburban airport.''

CRS concludes that the bill ''provides for the Administrator's review of the Peotone Airport project (and) provides for the expansion of O'Hare. The provisions appear to operate independently of each other and are not drafted in parallel language, and provide different directions to the Administrator.''

CONGRESSIONAL RESEARCH SERVICE,
February 6, 2002.

MEMORANDUM

Subject Examination of Certain Provisions of H.R. 3479: National Aviation Capacity Expansion Act.

To: Hon. Jesse L. Jackson, Jr., Attention: George Seymour

From: Douglas Reid Weimer, Legislative Attorney, American Law Division.

BACKGROUND

This memorandum summarizes various telephone discussions between George Seymour and Rick Bryant of your staff, and Douglas Weimer of the American Law Division. Your staff has expressed interest in certain provisions of H.R. 3470, the proposed National Aviation Capacity Expansion Act (''bill''). These provisions are examined and analyzed in the following memorandum.

The bill contains various provisions relating to the expansion of aviation capacity in the Chicago area. Among the provisions contained in the bill are provisions relating to O'Hare International Airport (''O'Hare''), Meigs Field, a proposed new carrier airport located near Peotone, Illinois (''Peotone''), and other projects. Your office has expressed repeated concern that the news media and various commentators have reported that the bill would apparently implement the various projects in a similar manner and that similar legislative language is used to implement the various projects. The news articles that you have cited to concerning the bill tend to report the various elements of the bill without distinguishing the bill language and the differences as to the means in which the various projects may be implemented.

ANALYSIS

The chief purpose of the bill is to expand aviation capacity in the Chicago area, through a variety of means. Section 3 of the bill deals with airport redesign and other issues. Your staff has focused upon the interpretation and the bill language of two particular subsections—(e) and (f)—of Section 3, which are considered below.

(e) SOUTH SUBURBAN AIRPORT FEDERAL FUNDING.—The Administrator shall give priority consideration to a letter of intent application submitted by the State of Illinois or a political Subdivision thereof for the construction of the south suburban airport. The Administrator shall consider the letter not later than 90 days after the Administrator issues final approval of the airport layout plan for the south suburban airport .

If enacted, this bill language would relate to the federal funding for the proposed airport to be constructed at Peotone. The ''Administrator'' refers to the Administrator of the Federal Aviation Administration. The Administrator is directed to give priority consideration to a letter of intent application (''application'') submitted by Illinois, or a political subdivision for the construction of the ''south suburban airport,'' the proposed airport at Peotone.

The Administrator is given specific directions concerning the application and for the time consideration of the application. Concern has been expressed that the Administrator is given certain duties and directions, but that there is no specific language to ensure and/or to compel that the Administrator will comply with the Congressional mandate, if the Administrator does not choose to follow the Congressional direction. Congress possesses inherent authority to oversee the project, as well as the Administrator's compliance with the statutory requirements, by way of its oversight and appropriations functions. Congress and congressional committees have virtually plenary authority to elicit information which is necessary to carry out their legislative functions from executive agencies, private persons, and organizations. Various decisions of the Supreme Court have established that the oversight and investigatory power of Congress is an inherent part of the legislative function and is implied from the general vesting of the legislative power in Congress. Thus, courts have held that Congress' constitutional authority to enact legislation and appropriate money inherently vests it with power to engage in continuous oversight. The Supreme Court has described the scope of this power of inquiry as to be ''as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.''

Specific interest is focused on the language ''shall consider'' used in the second sentence of the subsection. In the context of this subsection, it should not necessarily be considered to mean the implementation of an accelerated approval/construction process for the airport. While these events may occur, such a course of action is not specifically provided by the legislation.

Your staff has also focused on subsection (f), dealing with the proposed federal construction at O'Hare. The bill provides:

(f) FEDERAL CONSTRUCTION.—

(1) On July 1, 2004, or as soon as practicable thereafter, the Administrator shall construct the runway redesign plan as a Federal project, if—

(A) the Administrator finds, after notice and opportunity for public comment, that a continuous course of construction of the runway design plan has not commenced and is not reasonably expected to commence by December 1, 2004;

(B) Chicago agrees in writing to construction of the runway redesign plan as a Federal project without cost to the United States, except such funds as may be authorized under chapter 471 of title 49, United States Code, under authority of paragraph (4);

(C) Chicago enters into an agreement, acceptable to the Administrator, to protect the interests of the United States Government with respect to the construction, operation, and maintenance of the runway redesign plan;

(D) the agreement with Chicago, at a minimum provides for Chicago to take over ownership and operations control of each element of the runway redesign plan upon completion of construction of such element by the Administrator;

(E) Chicago provides, without cost to the United States Government (except such funds as may be authorized under chapter 471 of title 49, United States Code, under the authority of paragraph (4)), land easements, rights-of-way, rights of entry, and other interests in land or property necessary to permit construction of the runway redesign plan as a Federal project and to protect the interests of the United States Government in its construction, operation, maintenance, and use; and

(F) the Administrator is satisfied that the costs of the runway redesign plan will be paid from sources normally used for airport development projects of similar kind and scope.

(2) The Administrator may make an agreement with the City of Chicago under which Chicago will provide the work described in paragraph (1), for the benefit of the Administrator.

(3) The Administrator is authorized and directed to acquire in the name of the United States all land, easements, rights-of-way, rights of entry, or other interests in land or property necessary for the runway redesign plan under this section, subject to such terms and conditions as the Administrator deems necessary to protect the interests of the United States.

(4) Chicago shall be deemed the owner and operator of each element of the runway reconfiguration plan under section 40117 and chapter 471 of title 49, United States Code, notwithstanding any other provision of this section or any of the provisions in such title referred to in this subsection.

The Administrator is directed to construct the O'Hare runway plan as a Federal project if certain conditions are met: (1) construction of the runway design plan has not begun and is not expected to begin by December 1, 2004; (2) Chicago agrees to the runway plan as a Federal project without cost to the United States, with certain exceptions; (3) Chicago enters into an agreement to protect Federal Government interests concerning construction, operation, and maintenance of the runway project; (4) the agreement provides that Chicago take over the ownership and operation control of each element of the runway design plan upon its completion; (5) Chicago provides, without cost, the land, easements, right-of-way, rights of entry, and other interests in land/property as are required to allow the construction of the runway plan as a Federal project and to protect the interests of the Federal Government in its construction, operation, maintenance, and use; and (6) the Administrator is satisfied that the redesign plan costs will be paid from the usual sources used for airport development projects of similar kind and scope.

Paragraph 2 provides that the Administrator ''may'' make an agreement with Chicago, whereby Chicago will provide the work described above in paragraph (1) for the benefit of the Administrator. It should be noted that the use of the word ''may'' would appear to make this language optional, and would not necessarily require the Administrator to enter into such agreement with Chicago.

Paragraph 3 authorizes and directs the Administrator to acquire in the name of the Federal Government those property interests needed for the redesign plan, subject to the terms and conditions that the Administrator feels are necessary to protect the interests of the United States.

Paragraph 4 provides that Chicago will be deemed to be the owner and operator of each element of the runway reconfiguration plan, notwithstanding any other provision of this section.

Discussion has focused on the different legislative language used in subsection (e) and (f). Subsection (f) specifically states that the Administrator ''shall construct'' the runway redesign plan; however, there is no parallel language regarding the construction of the south suburban airport in subsection (e). The provisions of the subsections appear to be independent of each other and provide very different directions to the Administrator. Hence, it may be interpreted that subsection (f) would authorize runway construction (if certain conditions are met), and subsection (e) is concerned primarily with the review and the consideration of an airport construction plan.

It is possible that the Administrator's actions concerning the implementation of this legislation, if enacted, may be subject to judicial review. Judicial review of agency activity or inactivity provides control over administrative behavior. Judicial review of agency action/inaction may provide appropriate relief for a party who is injured by the agency's action/inaction. The Administrative Procedure Act (''APA'') provides general guidelines for determining the proper court in which to seek relief. Some statutes provide specific review proceedings for agency actions. Subsection (h) of the bill provides for judicial review of an order issued by the Administrator. The bill provides that the bill may be reviewed pursuant to the provisions contained at 49 U.S.C. § 46110.

If the Administrator does not issue an order and judicial review is not possible under this provision, then it is possible that ''nonstatutory review'' may occur. When Congress has not created a special statutory procedure for judicial review, an injured party may seek ''nonstatutory review.'' This review is based upon some statutory grant of subject matter jurisdiction. Therefore, a party who wants to invoke nonstatutory review will look to the general grants of original jurisdiction that apply to the federal courts. It is possible that an available basis for jurisdiction in this case—if the Administrator does not carry out his/her Congressional mandate—may be under the general federal question jurisdiction statute which authorizes the federal district courts to entertain any case ''arising under'' the Constitution or the laws of the United States. An action for relief under this provision is usually the most direct way to obtain nonstatutory review of an agency action. Hence, it is possible that an action could be brought under this statute to compel the Administrator to comply with the provisions contained in the bill.

CONCLUSION

This memo has summarized staff discussion concerning certain provisions contained in the proposed National Aviation Capacity Expansion Act. Subsection (e) provides for the Administrator's review of the Peotone Airport project. Subsection (f) provides for the expansion of O'Hare. The provisions appear to operate independently of each other, are not drafted in parallel language, and provide different directions to the Administrator. The Administrator is given certain responsibilities under both subsections. Congress possesses plenary oversight authority over federally funded projects. This would provide oversight Administrator is given certain responsibilities under both subsections. Congress possesses plenary oversight authority over federally funded projects. This would provide oversight over the Administrator and his/her actions. A judicial proceeding may be possible against the Administrator to compel the Administrator to fulfill the statutory responsibilities provided by the bill.

July 22, 2002.

Hon. MAXINE WATERS,
House of Representatives, Washington, DC.

DEAR REPRESENTATIVE WATERS, I would like to personally thank you for opposing H.R. 3479, The National Capacity Expansion Act. This is an extremely controversial bill, and it was totally inappropriate for it to be included on the suspension calendar.

There is no dispute that there is an air capacity crisis at the Chicago O'Hare International Airport. There is a dispute over how to resolve it. We believe that building Peotone is a quicker, cheaper, safer, cleaner, more permanent, and more just way to resolve the aviation capacity crisis,

As you know, this bill also sets a dangerous precedent by allowing the federal government to preempt an Illinois state law that requires state legislative approval of airport construction and expansion. Will your state legislature be next to lose its power to decide local airport matters?

With your assistance, the misguided efforts of H.R. 3479 were defeated. I appreciate your vote and urge your continued opposition to H.R. 3479!

Sincerely,

JESSE L. JACKSON, Jr.
Member of Congress.

HOUSE OF REPRESENTATIVES,
Washington, DC., December 13, 2001.

Hon. EDWARD M. KENNEDY,
United States Senate, Washington, DC.

DEAR SENATOR KENNEDY: In the next few days and months, you may be asked to cosponsor S. 1786, a bill to massively expand O'Hare International Airport in Chicago. I strongly oppose this legislation, which in my view, is severely flawed, deeply divisive, constitutionally suspect, environmentally unsound, unnecessarily wasteful and dangerous.

For the past six years, I have been working on an alternative proposal to increase aviation capacity in the Chicago area—building a third regional airport. Rather than ripping up and reconstructing runways at O'Hare, a new airport near Peotone, Illinois provides a cheaper, quicker, and cleaner solution.

Able to be built in one-third the time and at one-third the cost of the proposed O'Hare expansion, a third airport would be a more secure and more permanent solution to the region's aviation crisis. It also would create 236,000 jobs, generate $10 Billion in new economic activity, revitalize depressed communities, foster balanced economic growth, enhance airline competition, and drive down ticket prices. Simply put, a new airport makes good dollars and good sense for the City of Chicago, the State of Illinois and the entire nation.

Thus, I ask that you oppose S. 1786. However, if you are considering supporting the bill, I respectfully request that you allow me an opportunity to share my views with you. I can be reached at 225–0773. Thank you in advance for your consideration and I look forward to speaking with you.

Sincerely,

JESSE L. JACKSON, Jr.,
Member of Congress.

HOUSE OF REPRESENTATIVES,
Washington, DC., July 24, 2001.

Hon. DON YOUNG,
Chairman, Transportation and Infrastructure Committee, Washington, DC.

DEAR CONGRESSMAN YOUNG: I am writing to you about the grave concerns I have with H.R. 2107, The End Gridlock at Our Nation's Critical Airports Act of 2001. I share the concerns of Congressmen Henry Hyde, Jerry Weller and Philip Crane, who have sent a virtually identical letter to you under separate cover. I agree that in H.R. 2107—the attempt to rebuild and expand O'Hare Airport—Congress is inappropriately violating the Tenth Amendment.

In other contexts—specifically with regard to certain human rights—I believe that the Tenth Amendment serves to place limitations on the federal government with which I disagree. Indeed, in the area of human rights, I believe new amendments must be added to the Constitution to overcome the limitations of the Tenth Amendment. However, building airports is not a human right. Therefore, in the present context, I agree that building airports is appropriately within the purview of the states.

I believe attempts by Congress to strip the authority of Governor Ryan and the Illinois Legislature over the delegation and authorization to Chicago of state power to build airports—along with the authority of governors and state legislatures in a host of other states such as Massachusetts (Logan), New York (LaGuardia and JFK), New Jersey (Newark) California (San Francisco airport), and the State of Washington (Seattle)—raise serious constitutional questions.

Under the framework of federalism established by the federal constitution, Congress is without power to dictate to the states how the states delegate power—or limit the delegation of that power—to their political subdivisions. Unless and until Congress decides that the federal government should build airports, airports will continue to be built by states or their delegated agents (state political subdivisions or other agents of state power) as an exercise of state law and state power. Further compliance by the political subdivision of the oversight conditions imposed by the State legislature as a condition of delegating the state law authority to build airports is an essential element of that delegation of state power. If Congress strips away a key element of that state law delegation, it is highly unlikely that the political subdivision would continue to have the power to build airports under state law. The political subdivision's attempts to build runways would likely be ultra vires (without authority) under state law.

Under the Tenth Amendment and the framework of federalism built into the Constitution, Congress cannot command the States to affirmatively undertake an activity. Nor can Congress intrude upon or dictate to the states, the prerogatives of the states as to how to allocate and exercise state power—either directly by the state or by delegation of state authority to its political subdivisions.

As stated by the United States Supreme Court:

[T]he Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States....We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts.

New York v. United States, 505 U.S. 144, at 166 (1992) (emphasis added).

It is incontestable that the Constitution established a system of ''dual sovereignty.''

Printz v United States, 521 U. S. 898, 918 (1997) (emphasis added).

Although the States surrendered many of their powers to the new Federal Government, they retained ''a residuary and inviolable sovereignty,'' The Federalist No. 39, at 245 (J. Madison). This is reflected throughout the Constitution's text.

Residual state sovereignty was also implicit, of course, in the Constitution's conferral upon Congress of not ail governmental powers, but only discrete, enumerated ones, Art. 1, Sec. 8, which implication was rendered express by the Tenth Amendment's assertion that ''[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.''

Id at 918–919.

This separation of the two spheres is one of the Constitution's structural protections of liberty. ''Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.

ld at 921 quoting Gregory v. Ashcroft, 501 U.S. 452 at 458 (1991).

The Supreme Court in Printz went on to emphasize that this constitutional structural barrier to the Congress intruding on the State's sovereignty could not be avoided by claiming either a) that the congressional authority was pursuant to the Commerce Power and the ''necessary and proper clause of the Constitution or b) that the federal law ''preempted'' state law under the Supremacy Clause. 521 U.S. at 923–924.

It is important to note that Congress can regulate—but not affirmatively command—the states when the state decides to engage in interstate commerce. See Reno v. Condon, 528 U.S. 141 (2000). Thus in Reno, the Court upheld an act of Congress that restricted the ability of the state to distribute personal drivers' license information. But Reno did not involve an affirmative command of Congress to a state to affirmatively undertake an activity desired by Congress. Nor did Reno involve (as proposed here) an intrusion by the federal government into the delegation of state power by a state legislature—and the state legislature's express limits on that delegation of state power—to a state political subdivision.

H.R. 2107 would involve a federal law which would prohibit a state from restricting or limiting the delegated exercise of state power by a state's political subdivision. In this case, the proposed federal law would seek to bar the Illinois Legislature from deciding the allocation of the state's power to build an airport or runways—and especially the limits and conditions imposed by the State of Illinois on the delegation of that power to Chicago. The law is clear that Congress has no power to intrude upon or interfere with a state's decision as to how to allocate state power.

A state's authority to create, modify, or even eliminate the structure and powers of the state's political subdivisions—whether that subdivision be Chicago, Bensenville, or Elmhurst—is a matter left by our system of federalism and our federal Constitution to the exclusive authority of the states. As stated by the Seventh Circuit in Commissioners of Highways v. United States, 653 F.2d 292 (7th Cir. 1981) (quoting Hunter v. City of Pittsburgh, 207 U.S. 161, 178 (1907)):

Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State.... The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.

COMMISSIONERS OF HIGHWAYS, 653 F.2D AT 297

Chicago has acknowledged that Illinois has delegated its power to build and operate airports to its political subdivisions by express statutory delegation. 65 ILCS 5/11–102–1, 11–102–2 and 11–102–5. These state law delegations of the power to build airports and runways are subject to the Illinois Aeronautics Act requirements—including the requirement that the State approve any alterations of the airport—by their express terms. Any attempt by Congress to remove a condition or limitation imposed by the Illinois Legislature on the terms of that state law delegation of authority would likely destroy the delegation of state authority to build airports by the Illinois Legislature to Chicago leaving Chicago without delegated state legislative authority to build runways and terminals at O'Hare or Midway. The requirement that Chicago receive a state permit is an express condition of the grant of state authority and an attempt by Congress to remove that condition or limitation would mean that there was no continuing valid state delegation of authority to Chicago to build airports. Chicago's attempts to build new runways would be ultra vires under state law as being without the required state legislative authority.

Very truly yours,

JESSE L. JACKSON, JR.,
Member of Congress.

HOUSE OF REPRESENTATIVES,
Washington, DC., January 31, 2001.

Re Key Points Why The Chicago Region Needs A New Airport—And Why New O'Hare Runways Are Contrary To The Region and Nation's Best Interests

Hon. ANDREW H. CARD,
Chief of Staff to the President,
The West Wing, 1st Floor,
The White House,
Washington, DC.

DEAR ANDY: A matter of great importance to us is the need for safe airport capacity expansion in the metro Chicago region. At your earliest convenience, we would like to schedule a meeting with you and Secretary Mineta to discuss the situation. Enclosed is a detailed memorandum summarizing our views. We are convinced that we must build a new regional airport now and, for the same reasons, we believe that construction of one or more new runways at O'Hare would be harmful to the public health, economy and environment of the region.

As set forth in that memorandum:

Most responsible observers agree that the Chicago region needs major new runway capacity now.

The question is where to build that new runway capacity—(1) at a new regional airport, (2) at O'Hare, (3) at Midway, or (4) a combination of all of the above. An assessment of these alternatives reaches the following conclusions:

1. The new runways can be built faster at a new airport as opposed to O'Hare or Midway.
2. More new runway capacity can be built at a new site than at O'Hare or Midway.
3. The new runways can be built at far less cost at a new airport than at O'Hare or Midway.
4. Construction of the new capacity at a new airport will have far less impact on the environment and public health than would expansion of either Midway or O'Hare.
5. Construction of the new capacity at a new airport offers the best opportunity to bring major new competition into the region.
6. The selected alternative cannot be expansion at O'Hare and construction of a new airport. New runways at O'Hare would doom the economic feasibility of the new airport, guarantee its characterization as a ''white elephant'' and insure the expansion of the monopoly dominance of United and American Airlines in the Chicago market.

The memorandum contains a series of related questions and a detailed list of suggestions that would ensure the rapid development of major new runway capacity in the Chicago region, open the region to major new competition, and accomplish these objectives in a low-cost, environmentally sound manner.

Again, we would appreciate the opportunity to discuss these matters with you and Secretary Mineta at your earliest convenience.

Very truly yours,

HENRY HYDE.
JESSE JACKSON, Jr.

Re Key Points Why Chicago Region Needs A New Airport—And Why New O'Hare Runways Are Contrary To The Region and Nation's Aviation Best Interests

To: White House Chief of Staff Andrew Card

From: Congressman Henry Hyde, Congressman Jesse Jackson, Jr.

January 31, 2001

This memorandum summarizes our views in the debate over the need for airport capacity expansion in the metro Chicago region. For the reasons set forth herein, we are convinced that we must build a new regional airport now and, for the same reasons, believe that construction of one or more new runways at O'Hare would be harmful to the public health, economy and environment of the region.

The debate can best be summarized in a simple question and answer format.

Does the Region need new runway capacity now? Unlike The City of Chicago—which has for more than a decade privately known that the region needs new runway capacity while publicly proclaiming that new runway capacity is not needed—bipartisan leaders like Jesse Jackson, Jr. and myself have openly acknowledged the need for, and urged the construction of, new runway capacity in the region.

The need for new runway capacity is not a distant phenomenon; we should have had new runway capacity built several years ago. While 20 year growth projections of air travel demand show that the harm caused by this failure to build capacity will only get worse, the available information suggests that the region has already suffered serious economic harm for several years because of our past failure to build the new runway capacity.

If the answer to the runway question is yes—and we believe it is—the next question is where to build the new runway capacity? Though the issue has been discussed, the media, Chicago and the airlines have failed to openly discuss the alternatives as to where to build the new runway capacity—and especially, the issues, facts and impacts to the pros and cons of each alternative.

The alternatives for new runway capacity in the region are straightforward: (1) build new runways at a new airport, (2) build new runways at O'Hare, (3) build new runways at Midway, or (4) a combination of all of the above. Given these alternatives, the following facts are clear:

1. The new runways can be built faster at a new airport as opposed to O'Hare or Midway. Simply from the standpoint of physical construction (as well as paper and regulatory planning) the new runways can be built faster at a ''greenfield'' site than they can at either O'Hare or Midway.

2. More new runway capacity can be built at a new site than at O'Hare or Midway. Given the space limitations of O'Hare and Midway, it is obvious that more new runways (and therefore more new runway capacity) can be built at a new larger greenfield site than at either O'Hare and Midway. We acknowledge that additional space can be acquired at Midway or O'Hare by destroying densely populated surrounding residential communities—but only at tremendous economic and environmental cost.

3. The new runways can be built at far less cost at a new airport than at O'Hare or Midway. Again, it is obvious that the new runways—and their associated capacity—can be built at far less cost at a ''greenfield'' site than they can at either O'Hare or Midway. Given the enormous public taxpayer resources that must be used for any of the alternatives—and the relative scarcity of public funds—the Bush Administration should compare the overall costs of building the new runway capacity (and associated terminal and access capacity) at a new airport vs. building the new capacity at O'Hare or Midway.

4. Construction of the new capacity at a new airport will have far less impact on the environment and public health than would expansion of either Midway or O'Hare. Midway, and later O'Hare, were sited and built at a time when concerns over environment and public health were far less than they are today. As a result, both existing airports have virtually no ''environmental buffer'' between the airports and the densely populated communities surrounding these airports. In contrast, the site of the new South Suburban Airport has, by design, a large environmental buffer which will ameliorate most, if not all, of the environmental harm and public health risk from the site. Indeed, prudence would suggest an even larger environmental buffer around the South Suburban site than is now contemplated. We can create the same or similar environmental buffer around O'Hare or Midway—but only at a cost of tens of billions of dollars and enormous social and economic disruption.

5. Construction of the new capacity at a new airport offers the best opportunity for bringing major new competition into the region. When comparing costs and benefits of alternatives, the Bush Administration must address the existing problem of monopoly (or duopoly) fares at ''Fortress O'Hare'' and the economic penalty such high fares are inflicting on the economic and business community in our region. Does the lack of significant competition allow American and United to charge our region's business travelers higher fares than they could if there was significant additional competition in the region? What is the economic cost to the region—in both higher fares and lost business opportunities—of the existing ''Fortress O'Hare'' business fare dominance of United and American?

The State of Illinois has stated that existing ''Fortress O'Hare'' business fare dominance of United and American costs the region many hundreds of millions of dollars per year. Bringing in one or more significant competitors to the region would bring enormous economic benefits in increased competition and reduced fares.

And the only alternative that has the room to bring in significant new competition is the new airport. Certainly the design of Chicago's proposed World Gateway program—designed in concert with United and American to preserve and expand their dominance at O'Hare—does not offer opportunities for major competitors to come in and compete head-to-head with United and American.

6. The selected alternative cannot be expansion at O'Hare and construction of a new airport. The dominant O'Hare airlines are pushing their suggestion: add another runway at O'Hare and allow a ''point-to-point'' small airport to be built at the South Suburban Site.

That is not an acceptable alternative for several reasons:

First, it presumes massive growth at O'Hare, as it is based on the assumption that all transfer traffic growth—along with the origin-destination traffic to sustain the transfer growth—stays at O'Hare. If that assumption is accepted, the airlines already know that demand growth for the traffic assumed to stay at O'Hare will necessitate not one, but two or more additional runways. This increase in traffic at O'Hare will have serious environmental and public health impacts on surrounding communities.

Second, this alternative destroys the economic justification for the new airport. With massive new capacity at O'Hare, there would be no economic need for the new airport.

Third, assuming the new airport is built anyway, as a ''compromise'', this alternative guarantees that the new airport will be a ''white elephant''—much as the Mid-America airport near St. Louis is today because of the Fortress Hub practices of the major airlines and as was Dulles International as long as Washington National was allowed to grow. With limits on the growth of National finally recognized, Dulles is now the thriving East Coast Hub for United.

RELATED QUESTIONS

If the Region needs new runways, what is the sense of spending over several billion dollars—much of it public money—to build the World Gateway Program at O'Hare if we decide that new runway capacity should be built elsewhere? If the decision is to build the new runways at O'Hare, then much of the 5–6 billion dollar terminal and roadway expansion proposed for O'Hare may be justified.

But if the decision is that the new runway capacity should be built elsewhere, then the proposed multi-billion dollar O'Hare expansion makes no sense. We will be spending billions of dollars in taxpayer funds for a massive project that standing alone—without new runways—will not add any new capacity to our region.

The airlines know this fact and that is why they—and their surrogates at the Civic Committee and the Chicagoland Chamber—are pushing for new runways.

If the Region needs new runways and we wish to explore the alternative of putting the new runways in at O'Hare, what is the full cost of expanding O'Hare as opposed to constructing a new airport? If others wish to explore the alternative of an expanded O'Hare as the place to build the new runways capacity for the region, let's have an honest exploration and discussion of the full costs of expanding O'Hare with new runways and compare it to the cost of building the new airport. Chicago and the airlines already know what the components of an expanded O'Hare would be. These components are laid out in Chicago's ''Integrated Airport Plan and include a new ''quad runway'' system for O'Hare and additional ground access through western access''.

Based on information available, we believe that the cost of the O'Hare expansion would exceed ten billion dollars. These costs should be compared with the costs of a new airport.

Are the delay and congestion problems experienced at O'Hare self-inflicted? Sadly, when Chicago and the major O'Hare airlines advocated lifting of the ''slot'' restrictions at O'Hare and other major ''slot'' controlled airports, the Clinton Administration and others ignored the warnings of Congressman Jackson, and myself that the airport could not accommodate the additional flights without a chaotic increase in delays and congestion. Indeed, the chaos we predicted has come true and we now have a ''Camp O'Hare'' where air traffic is managed by cancellation rather than by adequate service.

Like Cassandra, our prophecy was ignored. The Clinton Administration endorsed lifting the slot controls and chaos ensued.

But just because our warnings were ignored doesn't mean that practical solutions should continue to be ignored. The delays and congestion were predictable and certain—predicted based on delay/capacity analysis conducted by the FAA. Just as certain are the short term remedies.

Just as the congestion was brought on by overstuffing O'Hare with more aircraft operations than it can handle, the congestion and delay can immediately be reduced to acceptable levels by reducing the scheduled air traffic to the level that can be easily accommodated by O'Hare without the risk of unacceptable delays. The delay chaos was self-inflicted by ignoring the flashing warnings put

out by the FAA and other experts. The solution can be easily administered by the FAA recognizing—as it has at LaGuardia—that limits must be placed on uncontrolled airline desire to overscheduled flights.

Should the short-term ''fix'' to the delays and congestion include ''capacity enhancement'' through air traffic control devices? Absent new runways, the FAA has encouraged and permitted a variety of operational devices designed to allow increased levels of departures and arrivals in a set period of time. These procedures—known as ''incremental capacity enhancement''—focus on putting moving aircraft closer together in time and space—to squeeze more operations into a finite amount of runways. Typically, this squeezing is done in low visibility, bad weather conditions because these are the conditions where FAA wants to increase capacity.

While the air traffic controllers remain mute on the safety concerns raised by these procedures, the pilots surely have not:

We have seen the volume of traffic at O'Hare pick up and exceed anyone's expectations, so much so, that on occasion mid-airs were only seconds apart. O'Hare is at maximum capacity, if not over capacity. It is my opinion that it is only a matter of time until two airliners collide making disastrous headlines.

Captain John Teerling, Senior AA Airline Captain with 31 years experience flying out of O'Hare January 1999 letter to Governor Ryan (emphasis added)

Paul McCarthy, ALPA's [Airline Pilots Association] executive air safety chairman, condemned the incremental capacity enhancements as threats to safety. Each one puts a small additional burden on pilots and controllers, he said. Taken together, they reduce safety margins, particularly at multiple runway airports, to the point that they invite a midair collision, a runway incursion or a controlled flight into terrain.

Aviation Week, September 18, 2000 at p. 51 (emphasis added)

It is clear that FAA's constant attempts to squeeze more and more capacity out of the existing overloaded runways—through such ''enhancement'' procedures as the recently announced ''Compressed Arrival Procedures'' and other ATC changes—is incrementally reducing the safety margin so cherished by the pilots and the passengers who have entrusted their safety to them.

The answer to growth is new runways at a new airport—not jamming more aircraft closer and closer together at O'Hare. The answer to delays and congestion with existing overscheduled levels of traffic is to reduce traffic levels to the capacity of the runways without the need to jam aircraft closer and closer together.

Does the current level of operations at O'Hare (and Midway) generate levels of toxic air pollutants that expose downwind residential communities to levels of these pollutants in their communities at levels above USEPA cancer risk guidelines? Though our residents have complained for years about toxic air pollution from O'Hare, none of the state and federal agencies would pay attention. Recently however, Park Ridge funded a study by two nationally known expert firms in the fields of air pollution and public health to conduct a preliminary study of the toxic air pollution risk posed by O'Hare. That study, Preliminary Study and Analysis of Toxic Air Pollution Emissions From O'Hare International Airport and the Resultant Health Risks Caused By Those Emissions in Surrounding Residential Communities (August 2000), found that current operations at O'Hare—based on emission data supplied by Chicago created levels of toxic air pollution in excess of federal cancer risk guidelines in 98 downwind communities. The highest levels of risk were found in those residential communities that O'Hare uses as its ''environmental buffer'' namely Park Ridge and Des Plaines.

Is the Park Ridge study valid? Park Ridge has challenged Chicago, the airlines, and federal and state agencies to come forward with any alternative findings as to the toxic air pollution impact of O'Hare's emissions on downwind residential communities. And that does not mean simply listing what comes out of O'Hare. The downwind communities are entitled to know how much toxic pollution comes out of O'Hare, where the toxic pollution from O'Hare goes, what are the concentrations of O'Hare toxic pollution when it reaches downwind residential communities, and what are the health risks posed by those O'Hare pollutants at the concentrations in those downwind communities.

Should not something be done to control and reduce the already unacceptable levels of toxic air pollution coming into downwind residential communities from O'Hare's current operations?

Should not the relative toxic pollution risks to surrounding residential communities created by the alternatives of a new airport, expanding O'Hare, or expanding Midway be added to the analysis and comparison of alternatives?

What about the monopoly problem at Fortress O'Hare and what should be done about it? We have already alluded to the factor of high monopoly fares as a consideration in choosing alternatives for new runway capacity. But the monopoly problem of Fortress O'Hare will be relevant even if no new airport is built. The entire design of the proposed World Gateway Program is premised on a terminal concept that solidifies and expands the current market dominance of United and American at O'Hare and in the Chicago air travel market.

What can the Bush Administration do if indeed there is a monopoly air fare problem at O'Hare or monopoly dominance is costing Chicago area business travelers hundreds of millions of dollars per year?

When these questions were raised in the Suburban O'Hare Commission report, If You Build It We Won't Come: The Collective Refusal Of The Major Airlines To Compete In The Chicago Air Travel Market, Chicago and the airlines responded with smoke and mirrors. First they produced glossy charts showing that more than 70 airlines serve O'Hare. What they neglected to show was that United and American control over 80% of those flights with the remaining 60 plus airlines operating only a small percentage.

Similarly, the airlines and Chicago talked about the competitive low fares charged to passengers. What they emphasized, however, were low fares for reservations far in advance. The major business travel organizations representing business travel managers report that business travelers predominantly use unrestricted coach fares since they have to respond on short notice to business needs. An examination of fares for unrestricted business travel from Chicago to major business markets shows that these routes are dominated by United and American and that they charge extremely high ''lock-step'' fares to business travelers to these business markets.

Finally, the airlines and Chicago argued that O'Hare is ''competitive'' with fares charged to business travelers in other Fortress Hub Markets. That statement ignores the fact that all the major airlines are gouging captive business travelers in all their own Fortress Hub markets. Indeed, a repeated anecdote is the fact that a passenger from a ''spoke'' city—e.g., Springfield, Illinois—pays a lower fare for a trip to O'Hare and then to Washington D.C. than a Chicago based traveler who gets on the same plane to Washington. Why? Because the Springfield traveler has the choice of hubbing either through O'Hare or St. Louis while the Chicago based business traveler is locked into Chicago.

Where are the antitrust enforcers to break up these geographic cartels? Equally important, in addition to antitrust enforcement powers, the federal government has enormous leverage to break up the cartels through the funding approval process of the Airport Improvement Program (AIP) and Passenger Facility Charge (PFC) programs. Yet billions of federal taxpayer funds go to United and American without so much as a raised eyebrow.

What about Noise? Shouldn't we be happy to exchange some soundproofing for new runways at O'Hare? The City of Chicago has a residential soundproofing program which was created on the advice of its public relations consultants to create a spirit of ''compromise'' that would lead to acceptance of new runways at O'Hare.

But here are some facts that are little publicized:

1. Most of our residents feel that soundproofing—while improving their interior quality of life—essentially assumes that we will give up living-out-of-doors or with our windows open in nice weather.

2. Whereas many major airport cities with residential soundproofing programs are soundproofing all homes experiencing 65 DNIL (decibels day-night 24–hr. average) or greater, Chicago and the airlines are only committing funds to the 70 DNL level. Result: Chicago is only soundproofing less than 10 percent of the homes that Chicago itself acknowledges to be severely impacted.

3. Chicago came into our communities asking to put in noise monitors to collect ''real world'' data as to the levels of noise. Yet, despite promises to share the data, Chicago refuses to share the data with our communities.

4. Instead of an atmosphere of trust, these tactics by Chicago have created additional animosity as neighbors on one side of an alley or street get soundproofing while their neighbors across that alley or street get no soundproofing. Indeed, Chicago's residential soundproofing program—because it is so limited in scope and ignores thousands of adversely impacted homes—has caused even more animosity in our communities.

In short, residential soundproofing is not the panacea that Chicago and many in the downtown media perceive it to be. Moreover, it does nothing to address the toxic air pollution and other safety related concerns of our residents.

Can we have more than one ''hub'' airport operating in the same city? Faced with the potential inevitability of a new airport, the airlines for the last two years have been arguing for an expansion of O'Hare (instead of a major new airport) with the argument that a metropolitan area cannot have more than one hub airport. Based on that premise, United and American say that the sole hub airport in metro Chicago should be O'Hare. That simply is not correct:

1. There are several domestic and international cities with more than one hubbing airport. Competing airlines create hubbing operations wherever airport space is available. Thus, there are multiple hubbing airports in metro New York (JFK and Newark), Washington D. C., London, and Paris.

2. The Lake Calumet Airport proposed by Mayor Daley would have been a second hub airport.

3. There is simply no reason—given the size of the business and other travel origin-destination market in metro Chicago—that a

new hub competitor could not establish a major presence at a new south suburban airport.

How do we fund new airport construction? The answer is simple and the same answer Mayor Daley had for the proposed Calumet Airport. Daley proposed using a mix of PFC and AIP funds to induce carriers to use the new airport. Indeed, the entire justification for his urging the passage of PFC legislation was to collect PFCs at O'Hare and use them for the new airport.

But United and American claim that the PFC revenues are ''their'' money. On the contrary, the PFC funds are federal taxpayer funds no different in their nature as taxpayer dollars than the similar ''AIP'' tax charged to air travelers. These funds don't belong to the airlines. They are federal funds collected and disbursed through a joint program administered by the FAA and the airport operator.

Nor are these federal taxpayer funds ''Chicago's'' money. Chicago is simply a tax collection agent for the federal government.

But how do we get the funds from O'Hare to the new airport? We do it the same way Mayor Daley is transferring funds from O'Hare to Gary and the same way he proposed getting federal funds collected at O'Hare to the Lake Calumet project: a regional airport authority.

SUGGESTIONS

We have respectfully posed some questions and posited some answers for the President's and your consideration. We believe that a thorough and candid examination and discussion of these questions leads to only one conclusion: we should build a new airport and we should not expand O'Hare.

But more than raising questions, we also have several concrete suggestions for addressing the region's air transportation needs:

1. Let's stop the paper shuffling and build the new airport. The program we outline in this letter is virtually identical to the proposal drafted by Mayor Daley for construction of the Lake Calumet Airport. We believe that a cooperative fasttrack planning and construction program for a new airport could see the new airport open for service in 3–5 years.

2. The money, resources and legal authority to build the new airport can be assembled by passage of a regional airport authority bill similar to the regional airport authority bill drafted in 1992 by Mayor Daley for the Lake Calumet project. So the Illinois General Assembly is a necessary partner in any effort. But equally important is the dominant role of the federal Administration in controlling the use of AIP and PFC funds and in assertive enforcement of federal antitrust laws. Let's put together a federal-state partnership to get the job done.

3. Give the O'Hare suburbs guaranteed protection against further expansion of O'Hare. Such guarantees are needed not only for our protection but for the viability of the new regional airport.

4. Provide soundproofing for all of the noise impacted residences around O'Hare and Midway. The new airport addresses future needs; it does not correct existing problems caused by existing levels of traffic.

5. Initiate a regulatory program to control and reduce air toxic emissions from O'Hare.

6. Fix the short-term delay and congestion at O'Hare by returning to a recognition of the existing capacity limits of the airport. The delay and congestion, now experienced at O'Hare is a self-inflicted wound brought about by airline attempts to stuff too many planes into that airport. The delays and congestion will be dramatically reduced immediately by reducing scheduled traffic to a level consistent with the exiting capacity of the airport.

7. Demand a break-up and reform of the Fortress Hub anti-competitive phenomenon—both at O'Hare and at other Fortress Hubs around the nation. This can be done with either aggressive antitrust enforcement or with proper oversight of the disbursal of massive federal subsidies.

8. The entire World Gateway Program should be examined in light of the questions raised here and should be modified or abandoned depending on the answers provided to these questions.

We would appreciate the opportunity to discuss these matters with you and Secretary Mineta at your convenience.

CHICAGO URBAN LEAGUE,
Chicago, Illinois, June 27, 2002.

Rep. WILLIAM O. LIPINSKI,
Rayburn House Office Building,
Washington, DC.

DEAR REPRESENTATIVE LIPINSKI: I am writing to express my concern about your omission of any special provision for a south suburban airport near Peotone from the O'Hare expansion legislation that you are introducing for consideration in the House of Representatives.

The expansion agreement reached last December by Illinois Governor George Ryan and Chicago Mayor Richard Daley was the product of a long and difficult process of political negotiation. To reach this historic and comprehensive aviation agreement, it was deemed essential to include a special measure giving priority consideration to federal funding of airport development in Peotone.

Along with Governor Ryan, Mayor Daley, and a host of state legislators, aldermen, and other civic and business leaders from the Chicago area, I met last February with you and Senator Dick Durbin to plot a strategy to secure federal funding to make O'Hare the airport hub of the nation. Our Chicago delegation of The Campaign to Expand National Aviation Capacity left Washington, DC. with the understanding that you agreed that this goal would be best achieved through a bill that provides for a modernized and expanded O'Hare and funding for a new airport in Peotone. As our delegation indicated in February, both are needed, and both play important roles in the Chicago region's strongly linked aviation and economic futures.

I know that you agree with the Campaign's belief that Chicago's airports are key to the future of every citizen in Illinois. They are the economic engines that create jobs, provide new business opportunities, and make Chicago one of the world's truly great cities.

In the interest of maintaining a strong Chicago and Illinois coalition in support of airport expansion in the Chicago area, I urge you to revisit the discussions we had last winter and to reconsider your omission of the Peotone provision.

If you or your staff have any questions or comments regarding the Chicago Urban League's position on this key issue, please do not hesitate to call me at 773–451–3500.

Sincerely,

JAMES W. COMPTON,
President and CEO.

cc: Representative Jesse L. Jackson, Jr.

ROSEMARY MULLIGAN,
STATE REPRESENTATIVE, 55TH DISTRICT,
ILLINOIS,
July 5, 2002.

SUBJECT: Vote ''No'' on H.R. 3479

Hon. JESSE L. JACKSON, JR.,
House of Representatives, Washington, DC.

DEAR REPRESENTATIVE JACKSON, JR.: As an Illinois state legislator, I would like to use this opportunity to express my concern and opposition to the National Aviation Capacity Act. The issue of expansion of Chicago O'Hare Airport is extremely important but has been so misrepresented that I believe it is imperative to make a personal plea on behalf of my local residents to each member of the House of Representatives. This plan in the form it has been presented to you contains gross misrepresentations of fact and will inflict harm on the over 100,000 constituents I have taken an oath to protect.

You may not realize that ''Chicago'' O'Hare Airport is virtually an outcropping of land annexed by the City of Chicago that is over 90 percent surrounded by suburban municipalities. It is the only major city airport where the people directly impacted by airport activity do not elect the mayor or city officials that make decisions about the airport. Therefore, we have had little control or recourse over what happens at the airport. This plan represents a ''deal'' between two men and has never been debated or voted on by the Illinois General Assembly!

My family moved to Park Ridge in 1955, long before anyone had an idea of what an overpowering presence O'Hare would become. Unfortunately, the amount of land dedicated to the airport set its fate long before the current crisis. Plainly speaking, there isn't enough room to expand.

For the past several years, I and other legislators have introduced nearly a dozen measures in the Illinois General Assembly to conduct environmental studies, provide tax relief for soundproofing, defend suburban neighborhoods from unfair ''land grabs'', require state legislative approval of any airport expansion and to generally protect the people we represent whose residences abut airport property. Because of the political make-up of our body and the great influence of Chicago's mayor, we have been unsuccessful. Our efforts and the health and safety of our constituents are ignored because of politics.

NATIONAL AIR TRAFFIC
CONTROLLERS ASSOCIATION
Chicago, IL, November 30, 2001.

Hon. PETER FITZGERALD,
U.S. Senate, Washington, DC.

SENATOR FITZGERALD, As requested from your staff, I have summarized the most obvious concerns that air traffic controllers at O'Hare have with the new runway plans being considered by Mayor Daley and Governor Ryan. They are listed below along with some other comments.

1. The Daley and Ryan plans both have a set of east/west parallel runways directly north of the terminal and in close proximity to one another. Because of their proximity to each other (1200′) they cannot be used simultaneously for arrivals. They can only be used simultaneously if one is used for departures and the other is used for arrivals, but only during VFR (visual flight rules), or good weather conditions. During IFR (instrument flight rules, ceiling below 1000′ and visibility less than 3 miles) these runways cannot be used simultaneously at all. They basically must be operated as one runway for safety reasons. The same is true for the set of parallels directly south of the terminal; they too are only 1200′ apart.

2. Both sets of parallel runways closest to the terminal (the ones referred to above) are all a minimum of 10,000′ long. This creates a runway incursion problem, which is a very serious safety issue. Because of their length and position, all aircraft that land or depart O'Hare would be required to taxi across either one, or in some cases two runways to get to and from the terminal. This design flaw exists in both the Daley and the Ryan plan. A runway incursion is when an aircraft accidentally crosses a runway when another

aircraft is landing or departing. They are caused by either a mistake or mis-understanding by the pilot or controller. Runway incursions have skyrocketed over the past few years and are on the NTSB's most wanted list of safety issues that need to be addressed. Parallel runway layouts create the potential for runway incursions; in fact the FAA publishes a pamphlet for airport designers and planners that urge them to avoid parallel runway layouts that force taxiing aircraft to cross active runways. Los Angeles International airport has lead the nation in runway incursions for several years. A large part of their incursion problem is the parallel runway layout; aircraft must taxi across runways to get to and from the terminals.

3. The major difference in Governor Ryan's counter proposal is the elimination of the southern most runway. If this runway were eliminated, the capacity of the new airport would be less than we have now during certain conditions (estimated at about 40% of the time). If you look at Mayor Daley's plan, it calls for six parallel east-west runways and two parallel northeast-southwest runways. The northeast-southwest parallels are left over from the current O'Hare layout. These two runways simply won't be usable in day-to-day operations because of the location of them (they are wedged in between, or pointed at the other parallels). We would not use these runways except when the wind was very strong (35 knots or above) which we estimate would be less than 1% of the time. That leaves the six east/west parallels for use in normal day-to-day operations. This is the same number of runways available and used at O'Hare today. If you remove the southern runway (Governor Ryan's counter proposal), you are leaving us five runways which is one less than we have now. That means less capacity than today's O'Hare during certain weather conditions. With good weather, you may get about the same capacity we have now. If this is the case, then why build it?

4. The Daley-Ryan plans call for the removal of the NW/SE parallels (Runways 32L and 32R). This is a concern because during the winter it is common to have strong winds out of the northwest with snow, cold temperatures and icy conditions. During these times, it is critical to have runways that point as close as possible into the wind. Headwinds mean slower landing speeds for aircraft, and they allow for the airplane to decelerate quicker after landing which is important when landing on an icy runway. Landing into headwinds makes it much easier for the pilot to control the aircraft as well. Without these runways, pilots would have to land on icy conditions during strong cross-wind conditions. This is a possible safety issue.

These are the four major concerns we have with the Daley-Ryan runway plans. There are many more minor issues that must be addressed. Amongst them are taxiway layouts clear zones (areas off the ends of each runway required to be clear of obstructions), ILS critical areas (similar to clear zones, but for navigation purposes), airspace issues (how arrivals and departures will be funneled into those now runways) and all sorts of other procedural type issues. These kinds of things all have to go through various parts of the FAA (flight standards, airport certification etc.) eventually. These groups should have been involved with the planning portion from day one. Air traffic controllers at the tower are well versed on what works well with the current airport and what does not. We can provide the best advice on what needs to be accomplished to increase capacity while maintaining safety. It is truly amazing that these groups were not consulted in the planning of a new O'Hare. The current Daley-Ryan runway plans, if built as publicized, will do little for capacity and/or will create serious safety issues. This simply cannot happen. The fear is that the airport will be built, without our input, and then handed to us with expectations that we find a way to make it work. When it doesn't the federal government (the FAA and the controllers) will be blamed for safety and delay problems.

Sincerely,

CRAIG BURZYCH,
Facility Representative
NATCA—O'Hare Tower

[From the Chicago Sun-Times, July 21, 2002]

BUILDING 3RD AIRPORT IS TOP PRIORITY NOW

(By Rep. Jesse L. Jackson)

Unfortunately, the House defeat of the O'Hare expansion bill last week has shifted the debate from ''substance'' to ''power.'' The focus now is on machismo: ''Does [Rep. William] Lipinski have the power to ram a bill through Congress?'' It is not on the real issue: ''Who has the best solution to the air capacity crisis?''

All four sides in this dispute agree on the analysis: There is an air capacity crisis at O'Hare. The disagreement comes over how to resolve it.

Many suburbs around O'Hare, for a wide variety of valid reasons, are absolutely against O'Hare expansion. They also believe expanding O'Hare will make Peotone unnecessary.

Mayor Daley and the downtown business and media community, who maniacally support O'Hare expansion and are attempting to ram it down the throats of everyone else—regard less of who is opposed or why—also believe it will kill Peotone. This interconnected and elite group of business leaders and politicians has an interest in maintaining American's and United Airlines' duopoly at O'Hare, where ticket prices are one-third higher than the national average, costing consumers an extra $1 billion. The mayor also has an interest in maintaining his campaign contributors, who, in many instances, are the same businesses connected at O'Hare's hip.

Others want to expand O'Hare and build Peotone simultaneously. However, Lipinski's bill removes Peotone as a priority—leaving its proponents with little more than baseless hope and a prayer.

A final group, of which I'm a part, wants to build Peotone first, then revisit O'Hare expansion later, because: (a) Peotone offers a faster, cheaper, cleaner, safer, more permanent and just solution; and (b) an evolving Peotone airport, accommodating 1.6 million new flights, would surely make O'Hare expansion unnecessary.

So why spend more money, take longer, increase environmental problems, put the flying public in greater danger, support a temporary solution—once O'Hare expansion is complete, we will be in the same capacity crisis as today—and increase the economic and racial divide in Chicago, when there is a better way of resolving the current aviation capacity crisis?

I'm not ignorantly against 195,000 new jobs and billions of dollars of investment on the North Side and northwest suburbs around O'Hare. I simply note that Elk Grove Village already has three jobs for every one person.

By contrast, some communities in the 2nd Congressional District have 60 people for every one job. Thus, I'm intelligently for the 236,000 new jobs and billions of dollars of economic activity; that Peotone will bring in and around my district, where the need is greatest. The Southland needs economically stable communities, and families who have a future and can send their children to college, too. Peotone also benefits the entire region, state and nation.

Even if H.R. 3479 becomes law, a federal court is likely to find it unconstitutional under the 10th Amendment, which gives certain powers exclusively to the states, including the power to build and alter airports. The U.S. Supreme Court stated in Printz vs. United States (1997) that ''dual sovereignty'' is incontestable. It emphasized that the constitutional structural barrier to Congress' intruding on a state's sovereignty could not be avoided by claiming that congressional authority was: (a) pursuant to the commerce power—it will create 195,000 jobs and $19 billion in economic activity; (b) the ''necessary and proper'' clause of the Constitution—there's an aviation capacity crisis, or (c) that the federal law ''preempted'' state law under the Supremacy Clause—that Congress can use its power to solve the impasses by overriding the state. In short, all the arguments the Daley and Ryan forces have been making are unconstitutional.

Both Mayor Daleys saw the aviation capacity crisis coming. Both proposed a third airport: one literally on Lake Michigan, the other in Lake Calumet. Both sites were in Cook County, controlled by the Daleys. However, when the most credible long-term study recommended Peotone in Will County, Daley did an about face.

Without the years of obstructionist tactics by Mayor Richard M. Daley, protecting his narrow and parochial interests, the south suburban airport would already be built and today's aviation crisis averted.

A new airport in Peotone can still be built in one-third of the time, at one-third of the cost of O'Hare expansion, with less disruption and environmental damage, greater public safety and more economic justice through balanced growth in the Chicago metropolitan area. Why force through an irrational bill when a more rational, effective and efficient solution to the aviation capacity crisis is available now?

[From the Chicago Sun-Times, Aug. 30, 2001]

GRAVE CONCERNS NEAR O'HARE

(By Robert C. Herguth)

American Indian remains that were exhumed 50 years ago to make way for O'Hare Airport might have to be moved again to accommodate Mayor Daley's runway expansion plans.

That's disturbing to some Native Americans, who say they want their ancestors and relics treated with greater respect.

And it's prompting local opponents of the proposed closure of two O'Hare cemeteries—one of which has Indians—to explore whether federal laws that offer limited protection to Native American burial sites and artifacts could help them resist the city's efforts.

''Maybe the federal law might come to our aid,'' said Bob Placek, a member of Resthaven Cemetery's board who estimates 40 of his relatives, all German and German-American, are buried there. ''The dead folks out there aren't obstructionists, they're trying to rest in peace. . . . I feel it's a desecration to move a cemetery. It's a disregard for our family's history.''

Resthaven is a resting place for European settlers, their descendants and, possibly, Potawatomi.

It seems unlikely federal law, specifically the Native American Grave Protection and Repatriation Act, would lend much muscle to those opposed to Daley's plan, which calls for knocking out three runways, building four new ones and adding a western entrance and terminal.

''Primarily, the legislation applies to federal lands and tribal lands,'' said Claricy

Smith, deputy regional director for the Bureau of Indian Affairs.

Even if someone made the argument that O'Hare is effectively federal land because it uses federal money, the most Resthaven proponents could probably hope for is a short delay, a say in how any disinterment takes place and, If they are Indian, the opportunity to claim the bodies of Native Americans.

''They've got a hard road,'' Smith said of those who might try to halt a Resthaven closure on the basis of Indian remains.

When O'Hare was being built five decades back, an old Indian burial ground that had become a cemetery for the area's white settlers was bulldozed. Some bodies were moved to a west suburban cemetery and some, including an unknown number of Indians, were believed to be transferred to Resthaven, according to published accounts and those families with local history.

''Ma used to talk about Indians being buried at Resthaven,'' said the 44-year-old Placek, who believes the Indians share a mass grave. His mother, who died in 1996, also is buried at Resthaven. ''I used to hear as a little kid Potawatomi'' were there.

Regardless of the tribe to which the dead belonged, the Forest County Potawatomi Community of Wisconsin, one of several Potawatomi bands relatively close to Chicago, plans to get involved.

''It's concerning,'' said Clarice Ritchie, a researcher for the community of about 1,000 who hadn't heard about the issue until contacted by a reporter.

''At this stage of the game, who can determine who they were specifically? But we run into this sort of circumstance In many instances throughout the state of Wisconsin, and some in Illinois, and we take care of them as if they were relatives,'' she said. ''We're all related, we're all created from God, so we do the right thing, we take care of anybody and try to see that they're either not disturbed or properly taken care of''

''I guess we'd have to keep our mind broad as to what would be done,'' Ritchie said. ''Naturally we don't like to see graves disturbed, but somebody has already disturbed them once. . . . I guess what I'd probably do is talk to the tribal elders and spiritual people and other tribes who could be in the area and come to a conclusion of what should be done.''

Bill Daniels, one of the Potawatomi band's spiritual leaders, said spirits may not look kindly on those who move remains.

''It's not good to do that—move a cemetery or just plow over it,'' he said.

Daley's plan, which still must be approved by state and federal officials, also may displace nearby St. Johannes Cemetery, which is not believed to have any Native American bodies.

John Harris, the deputy Chicago aviation commissioner overseeing the mayor's $6 billion project, said this is the first he's heard that there might be Indian remains at Resthaven, and city officials are trying to verify it.

''I have no reason to doubt them at this time, but I have no independent knowledge,'' he said. But ''whether they're Indians or not, we would exercise in extreme level of sensitivity In the interest of their survivors.''

Resthaven, which is loosely affiliated with the United Methodist Church, has about 200 graves, some of which date to the 19th century. It's located on about 2 acres on the West side of O'Hare, in Addison Township just south of the larger St. Johannes.

Self-described ''advocate for the dead'' Helen Sclair has heard there might be Indians buried at Resthaven, but she suspects not all Native American remains were retrieved when Wilmer's Old Settlers Cemetery was closed in the early 1950s to make room for O'Hare access roads.

She said the Chicago region, which used to be home to Potawatomi, Chippewa and other Indians, doesn't have enough cemetery space, and the dead should be treated with more respect.

''We don't have much of a positive attitude toward cemeteries in Chicago,'' Sclair said. ''Do you know why? Because the dead don't pay taxes or vote. . . . Well, technically they don't vote.''

SUBURBAN O'HARE COMMISSION,
Bensenville, IL, February 13, 2002.

A BETTER PLAN FOR CURING THE O'HARE AIRPORT BOTTLENECK

CHICAGO.—A plan for relieving the Chicago aviation bottleneck was unveiled today that costs less, is more efficient, less destructive and can be realized quicker than a ''compromise'' plan that Chicago Mayor Richard M. Daley and Illinois Gov. George Ryan are trying to rush through Congress.

The plan was crafted by the Suburban O'Hare Commission, a council of governments representing a million residents living around O'Hare Airport.

The plan includes runway, terminal and other improvements at O'Hare International Airport, to make it more efficient, competitive and convenient. The plan also includes alternatives to the costly and destructive ''western access'' proposed in the Daley-Ryan plan. The centerpiece of the plan remains, as it has for well over a decade, a major hub airport in the south suburbs that had been urged by experts and government officials from three states, and would be operational now if not for obstruction from Chicago Mayor Richard M. Daley. The plan provides for many more flights to the region, and, consequently, many more jobs.

''We always have been in favor of a strong O'Hare Airport because of its importance to our communities and to the regional economy,'' said John Geils, SOC Chairman and president of the Village of Bensenville. ''This will come as a surprise only to those who have been taken in by the rhetoric of our opponents, who maliciously tried to portray us as anti-O'Hare zealots, willing to damage or even destroy O'Hare. Our plan will expand the region's aviation and economic growth; the Daley-Ryan plan will stifle that growth.

''The claimed benefits—including delay reductions, job increases, improved safety, greater competition and less noise—of the Daley-Ryan O'Hare expansion plan are untrue. We have a plan that is better for the entire region, and not just for Chicago City Hall and its big business friends,'' Geils said.

Among the improvements are a realistically modernized O'Hare, instead of the impossible attempt by Daley and Ryan to stuff ten pounds of potatoes into a five-pound sack. Terminals would be updated, with an eye to matching them with capacity and making them more user friendly. Selected runways would be widened to accommodate the large new jets, such as the A380X, thus increasing the number of passengers the airport can serve, without increasing air traffic. Western access and a bypass route would be built on airport property, skirting O'Hare to the south—as originally planned, thus avoiding the destruction of uncounted homes and businesses, as under the Daley-Ryan plan.

The SOC Solution also would increase competition at O'Hare, through terminal and other facilities improvements so that air travelers using the competition are not treated as second-class customers. Funding of O'Hare improvements would be disconnected from a complicated bonding scheme that allows United and American airlines to become more entrenched and to continue to charge anti-competitive fares. In addition, some of the lucrative gambling revenues, now going to enrich political insiders, would be used for a competitive makeover of O'Hare.

SOC's plan also would provide better safety and environmental protections. Every home impacted by noise at O'Hare and Midway would be soundproofed, instead of a select few as provided under the current, flawed standards adopted by Chicago. O'Hare neighbors would be spared the concentration of air pollution brought by a doubling of flights at what is already the state's largest single air polluter. Under the Daley-Ryan plan, O'Hare neighbors would find themselves in federally required crash zones at the end of runways, forcing them to either give up their homes or live in devalued property in great risk. Because most of the region's air traffic growth would use the South Suburban airport where pollution and safety buffers are required under current federal standards, fewer total people in the region would be subjected to health and safety risks.

Key to the SOC Solution is the construction of a truly regional hub airport in the South Suburbs, rather than an inadequate ''reliever'' airport as envisioned under the Daley-Ryan plan. Just as New York City and Washington D.C. have more than one hub airport, a true regional airport in the South Suburbs would give Chicago the kind of potential it needs with three hub airports (O'Hare, Midway and Peotone) to maintain its aviation dominance for decades. Despite the long-made assertions by entrenched interests, such as United and American airlines, that the Chicago area didn't need a second hub airport, Midway already is developing into a hub simply because of market forces. With Midway reaching capacity in just a few years, and O'Hare already at capacity, the sounds of ''no one will come to Peotone'' no longer are heard.

Finally, the SOC Solution will protect taxpayers by creating an oversight board of improvements at all airports, including the south suburban airport and Midway.

''The SOC Solution is not a fragmented plan that simply focuses on O'Hare, which under the Daley-Ryan proposal is merely an instrument for extending the political and economic might of a select few,'' said Geils. ''Ours is a plan for a regional airport system—one that is based on common sense and what is fair and good for the entire public.''

SUBURBAN O'HARE COMMISSION,
Bensenville, IL, February 26, 2002.

Hon. DANIEL K. AKAKA,
U.S. Senate,
Washington, DC.

DEAR SENATOR AKAKA: The Suburban O'Hare Commission (SOC) urges you to oppose H.R. 3479 and S. 1786, which have been erroneously titled the National Aviation Capacity Expansion Act. If enacted, this legislation would have unprecedented and deleterious consequences for the national air transportation system as well as for the Chicago-area aviation system.

SOC is a strong advocate of expanding airport capacity for the Chicago area and has presented a plan that will meet the area's aviation needs for the 21st century through the development of a needed third airport in the South Suburban area, as well as modernization of O'Hare International Airport. SOC's plan supports and would accomplish O'Hare modernization, because we recognize that it is a very important aviation facility for the country and our region.

If enacted, the proposed legislation would accord unique and special status to O'Hare Airport, unlike any other airport in the nation, by legislatively mandating a multi-billion dollar airport development project, calling for the total reconstruction of O'Hare to

create six new parallel runways and new terminal facilities. Its promoters hope to achieve nothing less than the circumvention of the existing legal framework for review of airport development by the FAA and the elimination of the environmental review process for one of the largest airport expansions in aviation history, the size, scope and cost of which has not yet been publicly disclosed.

The legislation:

Makes it ''federal policy'' to construct the O'Hare portion of the plan (projected to cost as much as 16 billion dollars) and, if construction has not commenced by 2004, *requires the federal government to complete the project ''as a federal project'';*

Preempts the State of Illinois from exercising its lawful rights under its own laws;

Mandates changes to the Clean Air Act implementation plan for the Chicago region should it interfere with the O'Hare expansion plans; and

Short-circuits the environmental review process under NEPA, a requirement applicable to all airport construction projects.

Each of these issues is particularly troubling from a national aviation and environmental perspective. For example, the curtailing of the NEPA process calls into question the need for other airport projects to undergo the same rigorous screening process to determine their public benefit and environmental compliance. Further, the legislation would in effect commit the Federal Government to spend billions of dollars for a flawed airport development project, and diverts needed financial and federal government resources from other critically needed airport projects throughout the nation.

The legislation is unnecessary. If the project is compelling, it should be able to meet the usual and regular evaluative process that is applicable to every other airport in the country. The FAA possesses the special competence and expertise to evaluate airport development projects. It is the agency entrusted by Congress to determine whether this or any other project makes sense for the national air transportation system. The legislation would substantially erode the FAA's independent and deliberative role in reviewing the O'Hare project. Moreover, the bill short-circuits the required review under the National Environmental Policy Act (NEPA), a 30 year old statute with a well defined process to review major federal action of this type.

The O'Hare project raises many public questions, which requires full debate and public disclosure through the FAA's review procedures. These questions include:

Will the air traffic control airspace resources around O'Hare allow the substantial increase in operations (project to increase from 900,000 per year to 1.4 million per year)?

Is the O'Hare expansion plan the best choice to meet the future needs of the Chicago region?

How much will the O'Hare expansion project cost?

Will six, closely aligned parallel runways (only 1400 feet apart) be cost effective to maximize the region's capacity?

What will be the impact on surrounding neighborhoods of the proposed project?

Is it possible to tear up two major runways and build four additional runways at the same time O'Hare is attempting to operate at full capacity? What specific, detailed operational plan has been prepared and how does it propose to make these massive alterations while O'Hare continues to function as a key US hub?

Will the funds that must be expended at O'Hare preclude the development of Peotone? Will such mandated funding impact future developments at Midway or Milwaukee or other airports in the Great Lakes region?

What impact would the expenditure of billions of dollars for, and according special congressional priority to, the O'Hare project have on critically needed airport development and aviation security projects for other airports throughout the nation.

It appears that one of the unstated goals of the legislation is to curtail the normal NEPA process and, to avoid the NEPA-mandated right of all interested persons to have an opportunity to review and comment on the environmental impacts of the proposal. The legislation seeks to have Congress make the decisions now vested by law with the FAA, even though details of the project has yet to be fully disclosed, the purpose and need has yet to be documented, the environmental impacts have yet to be evaluated, the alternatives and cost-benefits have yet to be studied.

This is not streamlining; it is redlining for a single airport! It is unprecedented in the history of civil aviation. A legislative mandate giving O'Hare special priority for approvals and funding for billions of taxpayers dollars will adversely impact the availability of grants-in-aid dollars for other major airport development projects around the country. If the legislation is enacted, proposed enhancements at airports such as San Francisco, Washington Dulles, Los Angeles, Denver, Seattle, Atlanta, and Dallas-Ft. Worth may experience delays in order to accommodate the preference granted to Chicago.

The proponents of HR 3479/S 1786 unsuccessfully attempted to enact this legislation without a hearing late last year but that plan of action was soundly rejected by members of the U.S. Senate, who objected to it being added to an appropriations bill without the benefit of a hearing. The speed with which its supporters want this bill to move suggests that they really do not want full and open consideration by Congress regarding the substantial questions that surround this bill. Recent history with aviation legislation should suggest that the industry's complex economic, policy, financial and environment issues require thoughtful review, not superficial treatment.

The bill is also unprecedented because it curtails the ability of a state to enforce its own laws and is thereby inconsistent with the Tenth Amendment. Every State should be very concerned about this proposed precedent, which may adversely affect its ability to make similar decisions in the future. Moreover, the attempt to foreclose the next Governor's ability to review this project makes bad public policy. The Chief Executive of a state should evidence the broader support of his or her government before such projects are adopted by the federal government. HR 3479/S 1786 seek to abrogate that historical protection.

The Senate Commerce, Science and Transportation Committee is likely to hold a hearing on S 1786 in the near future. We encourage you to urge Chairman Hollings and Ranking Member McCain to conduct a careful and thorough investigation of the legislation.

SOC is an advocate for the expansion of Chicago's aviation capacity. SOC has issued its own fully documented report which sets forth a Plan to increase capacity in the Chicago region. See enclosures. We urge you to oppose this legislation which would reverse 30 years of precedent and policy under NEPA and aviation law.

Sincerely,

JOHN C. GEILS,
Chairman.

TESTIMONY OF THE SUBURBAN O'HARE COMMISSION BEFORE THE HOUSE AVIATION SUBCOMMITTEE OF THE HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE—HEARING ON H.R. 3479 MARCH 6, 2002

TESTIMONY OF THE SUBURBAN O'HARE COMMISSION

Mr. Chairman, and members of the House Aviation Subcommittee, the Suburban O'Hare Commission (SOC), a consortium of 14 local governments adjacent to O'Hare International Airport, representing the interests of over 1.5 million citizens, is grateful for the opportunity to present its views concerning the important national aviation policy and legal issues raised by H.R. 3479.

This legislation is intended to fast-track a massive new runway redevelopment plan for the Chicago O'Hare International Airport. Its principal purpose and effect would be to circumvent established requirements for review of airport development projects by the Federal Aviation Administration (FAA) and environmental agencies. The effect of the bill would be to silence, though an act of Congress, further public debate concerning the future and direction of Chicago's airport needs. It would effectively curtail the role of the FAA in evaluating and approving airport development projects; it would also have the effect of substantially reducing the protections of NEPA that safeguard the environment and the public health and welfare. H.R. 3479 represents an unprecedented abandonment of the federal laws established by Congress to provide for the reasoned and orderly construction of airports in a manner consistent with the public interest.

At the outset, it is important for you to understand what SOC stands for, and what it does not. SOC is not opposed to airport development, nor the need to improve the capacity and efficiency of Chicago's airport system. To the contrary, there is broad regional consensus—including SOC—that the Chicago metropolitan area needs significant new airport capacity. What SOC does oppose, however, is the single-minded focus on expansion at O'Hare—when there is a better, faster, safer, less expensive, and more environmentally-sound alternative: the construction of a South Suburban Airport at Peotone.

SOC believes that these regional airport development issues are matters to be determined by the Federal Aviation Administration, exercising authority charged to it by law. We do not think that the Congress should decide, through political fiat, what does, or does not make sense for the citizens most directly affected by the Chicago region's airport development needs. Congress has neither the specialized aviation and airport environmental expertise of the FAA, nor the local knowledge necessary to make these judgments. Indeed, for Congress to impose its will in the manner proposed by H.R. 3479, would strip away the vested oversight authority of the State of Illinois with respect to airport construction within its borders, and directly violate the 10th amendment.

SOC opposes this bill because it seeks to avoid the careful framework established for review of airport development by the FAA in cooperation with state airport sponsors. And, the bill would result in a major curtailment of the critical environmental review process. The O'Hare redevelopment plan is one of the largest airport expansions in aviation history. A project of this size, scope, and cost certainly deserves more than a perfunctory review, which is all the bill would allow. Before turning to a more thorough evaluation of the legislation, I would like to highlight a few of our key concerns.

H.R. 3479 is unprecedented in the history of civil aviation. It would:

Declare it to be ''federal policy'' to construct the O'Hare expansion project (expected to cost 15 billion dollars or more). If the City has not commenced construction by 2004, the FAA is required to ''construct the [six] runway design plan as a federal project'';

Accord the O'Hare runway project special statutory priority over every other airport project in the nation;

Violate the 10th amendment by preempting the State of Illinois from exercising its lawful oversight authority under its own law;

Interfere with FAA's statutory responsibility to evaluate the air safety, efficiency and public benefits/costs of airport development projects.

Short-circuit the environmental review process under NEPA, which is applicable to all other airport construction projects;

Mandate changes to the Clean Air Act State Implementation Plan (SIP) for the Chicago area by giving O'Hare a blank check to define its own pollution emissions at the expense of other industries.

For these reasons, SOC strongly urges the Aviation Subcommittee to reject H.R. 3479, and its goal of establishing a unique set of rules, applicable to no other airport in the nation, to ensure construction at O'Hare.

1. H.R. 3479 CONSTITUTES UNPRECEDENTED INTERFERENCE WITH FAA'S STATUTORY RESPONSIBILITY TO EVALUATE THE AIR SAFETY, EFFICIENCY AND COST/BENEFITS OF AIRPORT DEVELOPMENT PROJECTS.

SOC is extremely concerned about the shift in decision-making responsibilities over airport development that would be brought about by H.R. 3479. The bill would drastically impinge—indeed, nullify—the FAA Administrator's and the Secretary of Transportation's authority to review and approve airport development projects. The exercise by the FAA of independent, objective and expert judgment with respect to airport projects is essential to ensuring that public resources are well-spent to optimize the safety and efficiency of the air transportation system and to protect against harmful environmental consequences—particularly on a highly controverted and extremely costly project such as this. SOC believes that the critical future planning decisions about what Chicago-area airports and which particular runways should be built are best made on the technical merits, rather than through the federal political process.

Under current law, the FAA and DOT have the responsibility to determine whether any proposed airport development project is consistent with promoting the public interest and the safe and efficient management of the national air transportation system. The proposed legislation would substitute a political judgment by Congress for the expert judgment of the agencies that are charged with that responsibility under the Transportation Code (Title 49 U.S.C. Subtitle VII).

The legislation would erode the FAA's independent and deliberative role in reviewing the O'Hare project. It would have Congress make the decisions now vested in the FAA, even though details of the development plan have yet to be disclosed, the need for the plan has yet to be documented, the environmental impacts have yet to be determined, and the alternatives and cost-benefits have yet to be evaluated.

The legislation is unprecedented in the history of aviation. It accords unique and special priority for O'Hare not applicable to any other airport in the country. This is not streamlining; it is redlining for the benefit of a single airport!

By directing the FAA to give the O'Hare project priority for approvals and expenditure of Federal government resources, other vitally important airport development projects around the country would be adversely impacted. If this legislation is enacted, airport projects at airports such as San Francisco, Dallas/Ft. Worth, Los Angeles, Atlanta, San Jose and Seattle may experience FAA review delays or reduced funding in order to accommodate the preference accorded to O'Hare by Congress.

DOT and FAA currently have discretion to approve airport development funding for those projects that will ''preserve and enhance capacity, safety and security'' at airports throughout the country. 49 U.S.C. § 47115(c)(1). The Secretary is required to take into account ''the effect the proposed project will have on the overall national air transportation system and capacity.'' 49 U.S.C. 47115(d)(1). In addition, the DOT and the FAA now have the authority to approve changes in an airport's configuration (the airport layout plan) and to review the impacts of such changes.

The important issues the FAA is required to consider, but which the legislation short-circuits include the following:

Will the air traffic control airspace resources around O'Hare allow the substantial increase in operations (projected to increase from 900,000 per year to 1.6 million per year)?

Is the O'Hare expansion plan the best choice to meet the future needs of Chicago region?

How much will the O'Hare expansion project cost?

Will six, closely-aligned parallel runways (several of which are only 1400 feet apart) be cost effective to maximize the region's capacity?

What will be the impact on surrounding neighborhoods of the proposed project?

Is it possible to tear up two major runways and build four additional runways at the same time O'Hare is attempting to operate at full capacity? What specific, detailed operational plan has been prepared and how does it propose to make these massive alterations while O'Hare continues to function as a key U.S. hub?

Will the preferences accorded to O'Hare in the legislation effectively preclude the development of Peotone? Will such preference impact future developments at Midway or Milwaukee or other airports in the Great Lakes region?

What impact would the expenditure of billions of dollars for, and according special Congressional preference to the O'Hare project have on critically needed airport development and aviation security projects for other major airports throughout the nation?

The legislation would rob the Secretary and the FAA Administrator of their important statutory obligations. It is critical for the expert federal agencies entrusted with responsibility in this area to evaluate and make a determination on whether the crowded skies over O'Hare—with the closely abutting busy airspace used by Midway, Meigs and other very active general aviation airports in the area—are the safest, and most efficient conduit for additional air traffic moving to and from Chicago and through the national air transportation system, as opposed to the development of a new airport in the South Suburban area.

The legislation would substantially erode the FAA's independent and objective role in reviewing major airport expansion projects. Under the legislation, Congress will make that determination, not the FAA, since Congress would declare that: ''it is critical the Federal Government does all it can to facilitate the redesign of O'Hare'' (Sec. 2(3)), and directs that the FAA ''shall . . . construct the [six] runway design plan as a Federal project'' (Sec. 3(f)).

Thus, under the legislation, Congress would nullify the FAA's role in determining whether this airport development project is consistent with applicable requirements and reflects the sound expenditure of limited resources and airport development funds. Enactment of this legislation will dictate the construction of additional runways at O'Hare without regard to whether they will actually add capacity to the Chicago region or the national air transportation system.

THE O'HARE REDEVELOPMENT PLAN WOULD BE A NATIONAL AIR TRANSPORTATION MISTAKE OF EPIC PROPORTIONS

The O'Hare ''runway design plan'', which the legislation will mandate, calls for a massive expansion of O'Hare by creating a total of six parallel runways. However, in terms of well-established FAA safety and efficiency standards, several of the runways are too closely spaced (separated by only 1,400 feet) to allow for simultaneous arrivals or departures. The runways can only be used simultaneously if one runway is used for arrivals and the other is used for departures—and even then only if the weather is good. Whenever cloud cover and visibility conditions require the use of instrument landing procedures (a chronic situation at O'Hare), these closely spaced parallel runways could not be used simultaneously at all. By mandating the construction of the proposed configuration, Congress would abrogate the FAA's existing statutory power to determine whether the proposed runway system is safe and whether it would in fact add capacity to the region.

The proposed legislation would have Congress make findings that the national air transportation is ''dependent'' on O'Hare and that ''the reliability and efficiency of interstate air transportation for the residents and businesses in many States depend on the efficient processing of air traffic operations at O'Hare.'' (Sec. 2). While the bill's promoters, most notably the City of Chicago, would no doubt prefer that interstate air traffic have no alternative but to flow through O'Hare, in reality, this is far from the truth and there is a better, more efficient alternative.

Passengers traveling via O'Hare have their option of any number of viable connecting hubs. Rather than trying to cram more flights through O'Hare, SOC believes that the best way to enhance Chicago's role as a pivotal hub in the national air transportation system is through the development of a modern alternate third airport at Peotone. Chicago's large population and economic base makes it an attractive hub, and a new South Suburban airport will attract more air carrier service and more connecting passengers.

The legislation accords significant preference to O'Hare over the Peotone airport. If, despite the efficiency and safety concerns of the O'Hare project and the superiority of the proposed airport at Peotone, O'Hare is massively expanded, the economic viability of a new airport would be undermined. An expanded O'Hare could make it more difficult to justify a new South Suburban Airport at Peotone, as contemplated in the legislation.

Thus, the proposed legislation pays lip service to the development of a new airport at Peotone, but in practical effect would thwart the development of a South Suburban Airport. The legislation requires that the FAA ''shall construct the [six] runway design plan a federal project'' if it is not begun by July 1, 2004. No such directive is applicable to Peotone. As a result, the legislation guarantees the expansion of O'Hare but leaves Peotone to whither as an unfunded appendage. Such determinations should be made by the FAA through the exercise of its

expertise, not by Congress. Absent the legislative directive, the FAA might well determine to give Peotone a higher priority than O'Hare, based on very real safety, efficiency, public interest and environmental considerations. Under the legislation that would not be possible.

Worse yet, by prejudging the issue and requiring the mandatory federal construction of the ill-conceived O'Hare six-runway design plan, Congress would be condemning the Chicago region and the national air transportation system to a future of interminable delays. Because of air traffic constraints that will be exacerbated by the O'Hare project, a six-runway O'Hare super-hub would produce the biggest and most delay-prone airport in the country.

The Achilles heel of the O'Hare redevelopment plan is that the system is guaranteed to collapse in bad weather. Safety standards mandate that the closely-spaced parallel runways could not be used for simultaneous operations when the weather requires pilots to use instrument procedures. This means that half the expensive new concrete poured at O'Hare would effectively be taken out of service exactly when they need it most—to alleviate bad weather backups, which are a leading cause of delays.

Far from enhancing capacity and efficiency, if Congress were to adopt this legislation it would saddle the national air transportation system with an enormously expensive and delay-prone hub that is, in reality, the worst tool for the job. That is why SOC believes this is a matter best left to the FAA's expert judgment, instead of the legislative process.

LAYING NEW CONCRETE ON TOP OF FUNCTIONAL EXISTING RUNWAYS FLUNKS THE COST-BENEFIT TEST, AND DEFEATS THE FEDERAL POLICY TO DEVELOP RELIEVER AIRPORTS

There is compelling evidence demonstrating that the development of a third Chicago airport at Peotone would provide more effective capacity expansion for the region, and could be brought on line more quickly, at less cost, with less disruption to existing operations, and with less environmental impacts, than the proposed mandatory development project at O'Hare. Cost estimates released by the State of Illinois indicate that a new six runway airport at Peotone would cost in the vicinity of 5 billion dollars. Cost estimates for new runways at O'Hare are between 1 to 2 billion dollars per runway. Chicago itself estimates that terminal expansion at O'Hare would cost another 6 billion dollars, bringing the total tab for the O'Hare expansion extravaganza to a whopping 15 billion dollars. Even this massive figure does not include the additional cost of access roads, parking facilities, and mitigation measures for the immediately impacted communities.

Given that Peotone would provide substantially more new incremental capacity at substantially less cost, the O'Hare construction plan is a spendthrift nightmare. Under existing law, the FAA is responsible for weighing the ''project benefit and cost''. 49 U.S.C. §47115(d)(2). Congress added that responsibility to avoid situations in which taxpayer dollars are expended on projects that do not represent the best use of limited airport development funds. Under the required cost-benefit analysis, Chicago would be required to examine various alternatives and consider issues such as whether the addition of new runways at an existing airport is a better or worse investment than building a new airport. SOC submits that the O'Hare construction plan flunks this test.

The proposed legislation provides a ''quick fix'' to the otherwise fatal cost-benefit problems affecting a large scale redevelopment of O'Hare, by eliminating the FAA's essential ''purpose and need'' evaluation. The FAA is otherwise required to investigate cost-benefit of airport funding projects, and SOC believes that under any such analysis it should find this one unsatisfactory.

The legislation also contravenes the established federal policy to ''give special emphasis to developing reliever airports.'' 49 U.S.C. §47101(a)(3). By concentrating an ever-increasing number of airplanes in the finite volume of airspace over O'Hare, Congress would be frustrating the very reliever program it mandated the FAA to promote.

Another important consideration for airport development funding requires the Secretary to be satisfied that ''the project will be completed without unreasonable delay''. 49 U.S.C. §47106(a)(4). Attempting a massive redevelopment project at one of the busiest airports in the country is a recipe for project delays and massive disruption to the existing air carrier activities at O'Hare.

II. H.R. 3479 SHORTCUTS NEPA AND A HOST OF OTHER STATUTES THAT ARE ESSENTIAL TO THE PROTECTION OF THE ENVIRONMENT AND THE PUBLIC HEALTH AND WELFARE

This is result-driven legislation which has the singular purpose and effect of curtailing meaningful evaluation of the environmental consequences in order to lay runways and pavement at O'Hare. The legislation would shunt aside vital considerations that under current law would otherwise require careful scrutiny by the FAA and other agencies, including such issues as: the tremendous noise impacts over surrounding communities, the massive amounts of ozone and other airborne pollutants that would be emitted into the Chicago-area airmass, the millions of additional gallons in toxic deicing fluid and other chemical runoff that will flow into water-ways, and the impact of the project on wetlands, endangered species and other natural resources.

Even in its current pre-expansion condition, O'Hare is the largest source of toxic emissions and hazardous air pollutants in the State of Illinois. Moreover, monitoring data shows that O'Hare impacts large numbers of Chicago area residents with significant and undesirable noise exposure. Adding hundreds of thousands of new flights will make matters much worse. SOC is extremely concerned that the proposed legislation will effectively preclude further consideration of these important issues, cut off public comment, and curtail thorough evaluation of the public health and environmental considerations NEPA was enacted to protect.

While the legislation pays lip service to compliance with NEPA, there is simply no way that a project of this scope and scale could be subject to meaningful NEPA review in the scant period of time the legislation allows before the FAA is compelled to begin runway construction ''as a federal project.'' Airport development projects of this magnitude ordinarily take several years to complete the NEPA process, under current law and procedures.

Thus, while the bill states that implementation of the O'Hare construction plan ''shall be subject to application of Federal laws with respect to environmental protection and environmental analysis including [NEPA]'' (Sec. 3(a)(2)(B)), as a practical matter the construction deadline would make it impossible for FAA to conduct the necessary NEPA review. Courts have held that when Congress imposes a mandatory action under an impossible deadline, NEPA has, in effect, been legislatively overruled. See, Flint Ridge Development Co. v. Scenic Rivers, 426 U.S. 776 (1976). That is exactly what Congress would be doing here, despite token language to the contrary.

The FAA is the lead agency responsible for coordinating NEPA review of airport construction projects, along with the involvement of other Federal Agencies and the public. In discharging these obligations, the Transportation Code and NEPA charge the FAA with the duty to objectively and independently analyze the proposed airport expansion, and its impact on the environment, without prejudging the outcome.

Section 3(f) of the bill—which compels the Administrator to begin building the runway development plan at O'Hare by 2004 if the City has not begun construction—effectively eliminates that independence. FAA would do all it could to avoid having to assume construction of O'Hare as a federal project. A statutorily-imposed construction ultimatum by Congress would have the effect of forcing the environmental review process to be so truncated as to effectively preclude meaningful evaluation by the FAA of the environmental consequences.

The massive six-runway redevelopment and expansion plan at O'Hare raises serious and significant adverse environmental questions bearing on air quality, other pollutants, and noise. If an application has significant adverse environmental effects, under the Transportation Code, the FAA Administrator may grant approval ''only after a finding that no possible prudent alternative to the project exists and that every reasonable step has been taken to minimize the adverse effect.'' 49 U.S.C. §47106(c). The proposed legislation would foreclose consideration of the otherwise legally-required alternatives.

Indeed, the alternative endorsed by SOC—that of a new South Suburban Airport—can readily be shown to produce far fewer negative environmental impacts. A new airport at Peotone would have an extensive non-residential environmental land buffer to mitigate the noise and air pollution created by the facility. In contrast, the environmental ''buffer'' for O'Hare currently consists of Bensenville, Wood Dale, Elk Grove and a host of other DuPage County communities—a residential ''buffer'' that would be severely negatively impacted if hundreds of thousands of more flights are added at O'Hare.

It is highly significant that two Chicago area Congressmen from different districts, different political parties, and with different political philosophies—Congressmen Hyde and Congressman Jackson—have come out united against further O'Hare expansion, based, in large part, on the disastrous environmental impacts to the region. Allow me to quote here from their open letter to State and Regional Leaders——

''Rather than build an environmentally sound new airport, Chicago wants to add new runways at O'Hare.

Adding runways at O'Hare would compound what is already an environmental disaster. Even Chicago in its Master Plan acknowledged that adding runways would allow a level of air traffic that would be environmentally unacceptable. Despite this environmental unacceptability, Chicago is aggressively fighting a new airport and is actively pushing the option of new runways at O'Hare. (Hyde/Jackson Open Letter, October, 1997 at 9.)

These are precisely the type of critical environmental issues that NEPA requires to be thoroughly examined prior to a major federal action like the O'Hare redevelopment project. However, NEPA and its companion environmental statutes would be effectively gutted by the proposed legislation. Viable, prudent, and indeed more desirable environmental alternatives exist than re-developing an inherently delay-prone airport in close proximity to the City. This legislation eliminates the FAA's independence and forces the FAA, as the lead agency on this project, to short-circuit its environmental review.

A. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) (42 U.S.C. § 4321 ET SEQ.) AND ITS COMPANION ENVIRONMENTAL STATUTES WOULD BE IGNORED BY THE PROPOSED LEGISLATION

NEPA would either be eliminated or so truncated by the legislation as to preclude meaningful review by the FAA Administrator, coordinating federal agencies and the public. NEPA is the nation's core environmental statute that requires Federal agencies to give careful consideration to the potential environmental impacts of the project, to consider practical alternatives to the project, and to give the public adequate opportunity to participate in the review process.

The Department of Transportation—in its May 21, 2001 Report To Congress on Environmental Review of Airport Projects—recognizes the important role of NEPA and public participation as critical to the airport development process:

''[NEPA] requires federal agencies to prepare [Environmental Impact Studies] for projects significantly affecting the environment. Since most new commercial service runways and major runway expansions produce significant environmental impacts, an EIS is usually required. (Page iii)

''Public involvement is an essential part of the environmental review process. . . . There is usually a high degree of public interest in airport projects, including a certain amount of public opposition.'' (Page v).

''[P]ublic opposition to airport projects continues to rise. The NIMBY effect should not be dismissed as an environmental fringe element. It is based on real environmental concerns and has an increasingly broad-based constituency.'' (Page iii).

H.R. 3479 is diametrically opposed to the objectives of NEPA and the important public policies recognized by the Department of Transportation in its Report. For starters, the airport environmental review process for a runway expansion project of this magnitude requires the preparation of an EIS, as well as the opportunity for substantial public involvement. That cannot and will not happen under the timetable contemplated by the proposed legislation, and the public's right to participate in the NEPA process would be rendered meaningless,

In addition to the FAA's express NEPA obligations, the Clean Air Act further authorizes the EPA Administrator to conduct a NEPA review on federal projects for construction and major federal actions that are subject to NEPA. If the EPA Administrator determines that the proposed action is unsatisfactory from the standpoint of public health and welfare, or environmental quality, she must make public that determination and refer the matter to the Council on Environmental Quality for mediation. The mandatory 2004 Federal construction deadline under the legislation for the O'Hare project forecloses meaningful review.

B. STATE IMPLEMENTATION PLAN (SIP) CONFORMITY DETERMINATION (CLEAN AIR ACT)

The Chicago O'Hare area is classified as a severe nonattainment area for ozone, and parts of the Chicago region are designated as moderate nonattainment for particulate matter. Without amendment of the Clean Air Act, the O'Hare expansion program would face difficult or insurmountable burdens under that statute.

O'Hare is a huge polluter, and will be far worse if expanded to nearly double the level of flight operations. Air pollution from O'Hare consists of burned and unburned jet fuel aerosols containing dozens of carcinogenic organic compounds—including Benzene and Formaldehyde. If flights are expanded from 900,000 to 1.6 million annually, O'Hare and its immediately surrounding communities will experience an inevitable and unacceptably high concentration of Ozone and a host of toxic pollutants hanging in toxic cloud over O'Hare. (By contrast, a South Suburban Airport would have a significant land buffer to assist in the dispersal of these toxic pollutants and to keep them away from residential areas. No such buffer exists at O'Hare.)

As required by Section 176 of the Clean Air Act, the State of Illinois has, after extensive public consultation and comment, developed a State Implementation Plan (SIP), which is the State's plan to come into compliance with the national air quality standards under the Clean Air Act. The SIP reflects a careful balance between the protection of the public health and welfare from air pollution, on the one hand, and the need for commerce and other activities, on the other hand. Each Federal agency involved in an airport expansion project must make a determination that the proposed action conforms to the SIP.

Because of the huge increase in air pollution, there is a major inherent conflict between the existing SIP and O'Hare expansion. Under normal SIP processes, the City of Chicago, the airlines, the State of Illinois and its various agencies, the U.S. EPA, the FAA, other Federal agencies, and the public would work together to amend the SIP to accommodate O'Hare's needs while balancing competing interests. H.R. 3479 completely avoids that consultative and deliberative process.

If this legislation is enacted, the City is empowered to define O'Hare's SIP allocation, without the normal public participation process and without the participation of the State and Federal agencies. Moreover, the legislation directs the Administrator of the EPA to amend the SIP to accommodate the O'Hare's expansion (Section 3 (a)(5): ''. . . the Environmental Protection Agency shall forthwith use its powers under the Clean Air Act respecting approval and promulgation of implementation plans to cause or promulgate a revision of such implementation plan sufficient for the runway redesign plan to satisfy the requirements of section 176(c) of the Clean Air Act.'') This is unprecedented legislation. There is no public process, no balancing, only O'Hare claiming for itself whatever level of emissions it wants.

Under the proposed statute, O'Hare's needs (as determined by the City) are accepted as given, and the EPA would force other institutions to reduce their emissions pursuant to the EPA's judgment on how to reach SIP goals. This fails to allow other businesses and the public any opportunity to contribute to or participate in the process. Power companies, railroads, truckers, buses, heavy industry, and the Peotone Airport will, in all likelihood, have their target emissions cut by the EPA to satisfy O'Hare's runway plan. And, because this is a legislative mandate, none of those other vitally interested parties will be allowed to challenge O'Hare's claims or the EPA Administrator's solutions.

The proposed legislation would radically alter the SIP and would drastically impact other industries. The statute before Congress would do tremendous damage to the existing processes and the other businesses impacted by this unique power granted the City.

C. OTHER IMPACTED ''CROSS-CUTTING'' ENVIRONMENTAL LAWS

NEPA is the primary statutory tool for analyzing the impact of airport expansion on the environment. In addition, Congress has passed a number of environmental laws addressing federal responsibility for recognizing and protecting special national resources. These laws, referred to as ''cross-cutting'' laws, require Federal agencies to consider the impact that their programs and some private actions might have on such national resources. This consideration must be documented as part of the agencies' decision-making process. Many of these laws require the lead Federal agencies to consult with other federal and state agencies having legal authority over the proposed action or special expertise relevant to the proposed action.

Significantly, Congress has determined that standards and processes embodied in each of these Federal laws should be applied to every airport expansion. Some of the most obvious environmental criteria that would be eviscerated by the proposed O'Hare expansion legislation are set forth below.

1. ENDANGERED SPECIES ACT, 16 U.S.C. 1531 ET SEQ.

Airport expansion projects frequently raise Endangered Species Act concerns because airports are favored habitats for certain endangered and threatened birds of prey. If review of the proposed action reveals the potential for an adverse impact, the FAA must obtain an opinion from the Fish and Wildlife Service regarding the impact of the project on the endangered species or its habitat. The Endangered Species Act prohibits the project from proceeding unless the agencies agree on alternatives to the project to eliminate the adverse impact.

It will be difficult or impossible, in the time allowed, for the FAA and the Fish and Wildlife Service to perform the analysis of the potential impacts that O'Hare expansion would have on endangered species.

2. CLEAN WATER ACT, 33 U.S.C. 1251 ET SEQ.

The Clean Water Act prohibits the discharge of dredged or fill material into wetlands except in compliance with a permit issued by the Army Corps of Engineers. Federal agencies are required to identify any wetlands or other navigable waters of the United States that might be affected by a project.

In the normal course of any other airport project, relevant Federal and State agencies would contribute their comments and judgment as to whether a proposed project would put wet-lands at risk. If enacted, this legislation would result in the approval of the O'Hare project without consideration of these potential impacts in accordance with established statutory standards.

3. FLOODPLAINS (EXECUTIVE ORDER 11988)

Executive Order 11988 requires Federal agencies to avoid, to the extent possible, the adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative.

For all airport development projects, the FAA is required to: (1) determine if the proposed project is located in a floodplain; (2) identify and evaluate practicable alternatives to the proposed project; (3) develop mitigation measures if alternatives are not practicable; and (4) encourage public participation in the review process.

If enacted, this legislation would mandate implementation of the six-runway O'Hare project without even passing consideration of whether floodplains would be affected and measures that could be taken to reduce the impact of the project.

III. H.R. 3479 WOULD VIOLATE THE TENTH AMENDMENT OF THE U.S. CONSTITUTION

SOC believes that it is inappropriate and unlawful for the Federal Congress to dictate to the State of Illinois which airports and what runways to construct within its borders. Decisions involving airport and infrastructure development have historically been delegated to the states. H.R. 3479 would strip the State of Illinois of its vested authority to delegate and authorize the City of

Chicago to construct airports in the State. Doing so would be a clear-cut violation of the tenth amendment,

Under the framework of federalism established by the Constitution, Congress is without power to dictate to the States how the States delegate power, or to limit the delegation of that power, to their political subdivisions. Unless and until Congress takes over complete responsibility to build airports, airports will continue to be developed by States, or their delegated agents, as an exercise of State power and law. Compliance by the political subdivision to which the State delegates authority to construct airports with the oversight conditions imposed by the State is an essential element of State authority and power.

The proposed legislation would strip away such oversight authority, fundamentally intruding upon the State's sovereign authority to take action under its own laws. The legislation would prohibit the State from restricting or limiting the delegated exercise of State power by the State's political subdivision. It would nullify the decision of the State of Illinois legislature allocating authority with respect to construction of airports located within the State, particularly the limitations and conditions imposed by the State on the delegation of that power to the City. The law is clear that Congress does not have the power to intrude or interfere with a State's decision as to how to allocate State power.

Under the U.S. Constitution, the State's authority to create, modify, condition, and impose limitations on the structure and powers of the State's political subdivisions is a matter left the exclusive control of the States.

''Municipal corporations are political subdivisions of the State, and created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. . . . The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. . . . The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respect the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.'' Commissioners of Highways v. United States, 653 F.2d 292, 297 (7th Cir. 1981) (quoting Hunter v. City of Pittsburgh, 207 U.S. 161, 178 (1907) (emphasis added).

The Illinois State law delegating powers to construct or alter airports and runways are subject to the requirements of the Illinois Aeronautics Act. This Act requires that the State approve any alterations of the airport. The proposed legislation is an attempt to remove this State oversight in violation of the Tenth Amendment. The law would commandeer the City of Chicago, which is an instrumentality of the State of Illinois, to do what the State has prohibited it from doing: i.e. expanding the airport without receiving a permit from the State. Under State law, any airport construction without the required State permit is unlawful.

Congress does not have the authority to interfere with the State of Illinois's determination as to how to allocate State power to the City of Chicago. By impairing the State's delegation, the legislation would have the effect of undermining the delegation of the authority from the State to the City and thereby extinguish that delegation. As a result, any effort by the City to build new runways would be without the required State delegation and ultra vires under State law.

The national implications of this legislation are profound and go well beyond Illinois and implicate States throughout the nation. Most States have laws providing for some level of oversight over airport expansions, including State environmental laws and permitting requirements. Twenty-six states have laws requiring local airport authorities to submit applications for federal funds through the state, rather than directly to the FAA. This legislation would set a dangerous precedent nullifying State oversight laws.

IV. CONCLUSION

In conclusion, SOC strongly urges the Subcommittee to reject H.R. 3479. This legislation would dismantle the careful federal framework established to govern the review and approval of airport development projects. The FAA must have the unfettered ability to exercise its expert independent and objective expert oversight functions over airport development projects, and to carry out its environmental review responsibilities under NEPA, to make sure that whatever airport development is undertaken will be the best possible solution for the Chicago region and the national air transportation system.

The proposed legislation ties the FAA's hands by removing the agency's neutrality and discretion by forcing it to rush headlong toward a mandatory construction of O'Hare by 2004. SOC believes that a rational and reasoned evaluation will establish that the development of a new South Suburban Airport is superior to O'Hare in every respect—that a new airport at Peotone would offer more capacity, can be built at less cost, more quickly, and with fewer adverse environmental consequences. These are extremely important considerations which need to be resolved though the established federal review process. Congress not attempt to resolve them here by political fiat.

SOUTH SUBURBAN AIRPORT FACT SHEET

Reasons for building of a regional airport in Chicago's south suburbs:

JOBS

The South Suburban Airport would create an estimated 236,000 permanent jobs in the next 20 years. Most of these would be good-paying jobs with family health insurance and retirement benefits—jobs that stabilize communities and rebuild local economies.

REGIONAL AIR TRAVEL NEEDS

Air travel is expected to double in the next 20 years. Chicago's existing airports cannot handle that growth. O'Hare has reached operational capacity and Midway will reach capacity by 2005. Without additional capacity, airlines will be forced to move their hubs—and jobs—elsewhere.

ECONOMIC EQUITY

The third airport is an urbanist's dream—solving multiple problems with one investment. While the 1990s has been good to many, Chicago's old South Side/south suburban industrial hub has lost jobs and experienced negative growth—resulting in the downward spiral of lost investment, soaring property taxes, declining schools and rising crime. The airport would provide economic opportunities for hundreds of thousands of people, mostly minorities, who have been left behind.

LOWER FARES

A third airport would reduce fares. Fares to Chicago today average 34 percent higher than most major U.S. cities because of a lack of competition at O'Hare. American and United Airlines practically monopolize the airport, controlling 89 percent of all flights. A new airport would increase competition among carriers, which often leads to lower fares.

NO NEW TAXES

Airport construction would be paid by private investors and/or the airlines using the facility—not by taxpayers. Indeed, airports are cash cows that generate millions of tax dollars, spur investment, stabilize communities, shrink welfare rolls and improve quality of life.

WON'T HURT MIDWAY OR O'HARE

This airport would relieve, not compete with, existing airports. It would handle ovetflow traffic from O'Hare and Midway. The third airport would expand, as needed, to accommodate future demands that O'Hare and Midway cannot meet.

WHY YOU SHOULD VOTE 'NO' ON H.R. 3479

Don't be fooled into thinking this legislation will benefit your constituents

H.R. 3479 never should have been brought up under suspension. It is too controversial, What are proponents trying to hide by limiting debate?

2. H.R. 3479 Violates state's rights. The governor and mayor never consulted the Illinois General Assembly nor did they even try to obtain a permit from the Illinois Department of Transportation to expand O'Hare. Why? See #3 and #4. Also, think this legislation won't set a precedent that could rob your state legislature of its power to decide local airport matters? Think again.

3. H.R. 3479 Will Cost $15 to $20 billion, Not the 6.6 billion that the Mayor and governor are claiming. Do you really think there will be money left over to expand your local airport once O'Hare is expanded? Think again. A third suburban airport can be built CHEAPER and FASTER than O'Hare. Let's think ahead and spend the nation's money wisely.

4. H.R. 3479 will destroy up to 1,500 homes and an untold number of businesses once all of the safety buffers, ring roads etc. are in place. Don't believe the claims that ONLY 533 homes will be destroyed. These homes are occupied by senior citizens, young families and Hispanic families—all of whom won't be able to find quality, affordable housing in DuPage County if their homes are bulldozed. Quality of life for 1 million residents surrounding O'Hare will also be destroyed.

5. H.R. 3479 IS a public health treat. O'Hare expansion = increased air and noise pollution, increased cancer rates . . . the list goes on.

HENRY HYDE.
JESSE JACKSON, Jr.

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

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

Mr. HYDE. Well, at least we have worked it out of my friend the gentleman from Illinois (Mr. LIPINSKI) why this city will not get a certificate of approval from the State. He said because the governor only has a year left, and they just do not know what another governor might want to do. They want to deprive the succeeding Governor of having any say on this massive expansion.

Well, I would like to know who is going to pay for this. We still did not get an answer on that. If United and American are going to buy these bonds that will be issued, why would they not demand their present monopoly, or duopoly? These are questions we do not have any answers to.

The Illinois Municipal Code is what empowers the city. They have no more nor any less rights to do anything unless conveyed upon them through the legislature. This bill seeks to sidestep the legislature and have Washington decide a local issue.

Every Republican I have ever known campaigns on the theory that we are going to cut the Federal Government down to size. Well, I would say to Members, do not ever say that, if you vote for this bill. This is a massive transfer of power to Congress and debilitates, weakens, ignores local government.

Mr. JACKSON of Illinois. Mr. Speaker, I yield back the balance of our time.

Mr. MICA. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from Illinois (Mr. KIRK), who is one of the prime sponsors of this legislation.

Mr. KIRK. Mr. Speaker, I thank my chairman for yielding me time, and I rise in strong support of this legislation.

Mr. Speaker, we have been delayed in the passage of this very important bill, largely due to the respect and admiration we have for one Member of this House, the gentleman from Illinois (Mr. HYDE). He is a hero to me, and our communities and our country owe him a great deal of gratitude for the service he has given to the Nation.

The Chicago Tribune called the gentleman from Illinois (Mr. HYDE) a ''Lion in Winter,'' but the last week has proved that he is still a tiger.

But this legislation is still required, for Chicago and for the Nation. America's busiest airport is broken. Passengers using the airfield have only a 60 percent chance of leaving on time, and experts say that when O'Hare gets a cold, most airports get the flu. Tie-ups strand Americans everywhere, caused by an outdated design set in place by political gridlock.

That gridlock has been broken. Illinois is one of two States that requires a governor's signature before modernizing an airfield. We have that signature.

In an historic agreement, our Republican Governor and Chicago's Democratic Mayor agreed to the first modernization of the airfield since 1972. This bill simply ratifies an agreement made by local leaders who showed leadership.

In these uncertain times, the modernization of this airfield unlocks over $6 billion in new work, overwhelmingly paid for by private funds. Over 100,000 new jobs will be created, in an unprecedented shot in the arm for Illinois' economy.

The new design builds a safer O'Hare, eliminating intersecting runways. The removal of north-south runways dramatically reduces the sound of aircraft over Arlington Heights, Palatine and Mt. Prospect.

The bill also highlights the importance of NASA's Quiet Aircraft Technology Program. Leaders in this House and NASA helped eliminate the noisy Stage II 727 aircraft from O'Hare. We set an aggressive Stage III noise reduction standard now in the air and will soon require even quieter Stage IV aircraft.

Mr. Speaker, I want to compliment the leaders of the O'Hare Noise Compatibility Commission and their leaders, Mayor Arlene Mulder and Mayor Rita Mullins, for their ongoing work and commitment to the quality of life issues in our communities.

Mr. Speaker, this is bipartisan legislation, strongly supported by the gentleman from Illinois (Speaker HASTERT), the minority leader, the gentleman from Missouri (Mr. GEPHARDT), the Chamber of Commerce and the AFL–CIO. Even the Sierra Club has no objection to its passage.

Given this unique political alignment, it is clear that this plan's time has come. I urge adoption of the legislation.

Mr. COSTELLO. Mr. Speaker, I rise today in support of H.R. 3479, the National Aviation Capacity Act. This legislation was introduced by my good friend, Mr. LIPINSKI, and I would like to thank him for his hard work. I am pleased to join him as a cosponsor of this legislation.

O'Hare is a tremendously important airport in not only to Chicago and the Midwest, but also our entire national aviation system. It recently reclaimed the title of the world's busiest airport and is the only airport to serve as a hub for two major airlines. O'Hare serves 190,000 travelers and operates 2,700 flights daily, employs 50,000 people and generates $37 billion ion annual economic activity.

However, O'Hare needs to be redesigned to meet today's demands. It is laid out with seven runways, six of which interest at least one other runway. The modernization plan would add one new runway. The seven existing runways will be reconfigured to include a southern runway for a total of eight runways, of which six would be parallel. These improvements would have a significant impact on reducing delays and cancellations: bad weather delays would decrease by 95 percent and overall delays would decrease by 79 percent.

On December 5, 2001, Mayor Daley and Governor Ryan reached a historic agreement to expand and improve O'Hare airport. The agreement would modernize O'Hare, create western access to the airport, provide additional funds for soundproofing home and schools near O'Hare, move forward with the construction of a third Chicago airport at the Peotone site and keep Meigs Field open until at least 2006, and likely until 2026.

H.R. 3479 would simply codify the deal so that a future governor does not rescind the agreement. Illinois is in a unique situation because the governor does have veto power. If this legislation is not enacted, it is possible that a future governor could undo all the hard work that the current governor and mayor of Chicago have done to reach this agreement.

There is some concern that this legislation sets a precedent by involving the federal government or creating a short-cut around environmental laws. Again, O'Hare is an exceptional situation which requires this limited federal action. Other cities and airport authorities do not have a governor with veto authority over this issue. The city of Chicago does not want the federal government to take over the modernization of O'Hare but the language is included in case the State delays the State Implementation Plan (SIP) of the Clean Air Act to slow down the project. The language granting priority consideration for a Letter of Intent from the FAA for Peotone is no different than language that can be found in any Transportation Appropriations bill.

Regarding environmental concerns, the bill says that implementation shall be subject to federal laws with respect to environmental protection and analysis, and that the environmental reviews will go forward in an expedited way. There is no attempt to go around existing state or federal environmental laws, and this legislation has the support of many environmental groups.

Mr. Speaker, this legislation will allow the much-needed expansion of O'Hare to move forward. I urge my colleagues to join me in supporting this bill.

Mr. MICA. Mr. Speaker, I yield back the balance of our time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. MICA) that the House suspend the rules and pass the bill, H.R. 3479, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. JACKSON of Illinois. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. MICA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 3479, as amended.

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

There was no objection.

COMMENDING THE HONORABLE HENRY HYDE AND HONORABLE JESSE JACKSON, JR., MEMBERS OF CONGRESS

(Mr. LIPINSKI asked and was given permission to address the House for 1 minute.)

Mr. LIPINSKI. Mr. Speaker, I just want to conclude by saying that I compliment the gentleman from Illinois (Mr. JACKSON) and the gentleman from Illinois (Mr. HYDE) on the very spirited, articulate presentation of their cause. They are both my friends. I have the greatest respect for them. Unfortunately, we disagree on this.

COMMENDING THE HONORABLE JESSE JACKSON, JR., HONORABLE WILLIAM LIPINSKI, HONORABLE JOHN MICA AND HONORABLE MARK KIRK, MEMBERS OF CONGRESS

(Mr. HYDE asked and was given permission to address the House for 1 minute.)

Mr. HYDE. Mr. Speaker, I want to say what a genuine pleasure it is to work with fiery, intelligent, energetic, honorable Congressmen like the gentleman from Illinois (Mr. JACKSON), the gentleman from Illinois (Mr. LIPINSKI), the gentleman from Florida (Mr. MICA), and the gentleman from Illinois (Mr. KIRK). They are the salt of the Earth. This was a debate on the merits, and, even though they stacked the deck on us, it still was a pleasure.

COMMENDING THE HONORABLE HENRY HYDE AND HONORABLE WILLIAM LIPINSKI, MEMBERS OF CONGRESS

(Mr. JACKSON of Illinois asked and was given permission to address the House for 1 minute.)

Mr. JACKSON of Illinois. Mr. Speaker, I want to say that I have enjoyed the time that the gentleman from Illinois (Mr. HYDE) and I have worked closely to expand aviation capacity at Northeastern Illinois.

I must add that from the very first moment I entered this institution, the gentleman from Illinois (Mr. LIPINSKI) has been a kind of mentor on all aviation issues, basically assuring me that they would be expanded where he wants them to be expanded. I consider him and rank him among one of my highest friends in the Congress of the United States. I thank the gentleman from Illinois for his kindness.

N O T I C E

Incomplete record of House proceedings. Except for concluding business which follows, today's House proceedings will be continued in the next issue of the Record.

ADJOURNMENT

Mr. HAYES. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 13 minutes a.m.), the House adjourned until today, Wednesday, July 24, 2002, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

8152. A letter from the Chairman, Board of Governors of the Federal Reserve System, transmitting the twelfth annual report on the Profitability of Credit Card Operations of Depository Institutions, pursuant to 15 U.S.C. 1637 note. Public Law 100—583, section 8 (102 Stat. 2969); to the Committee on Financial Services.

8153. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a copy of the determination and memorandum of justification pursuant to Section 2(b)(6) of the Export-Import Bank Act of 1945, as amended; to the Committee on Financial Services.

8154. A letter from the Director, Office of Thrift Supervision, transmitting the 2001 Annual Report to Congress on the Preservation of Minority Savings Institutions, pursuant to 12 U.S.C. 1462a(g); to the Committee on Financial Services.

8155. A letter from the Director, Office of Management and Budget, transmitting a report on the Cost Estimate For Pay-As-You-Go Calculations; to the Committee on the Budget.

8156. A letter from the Director, Office of Management and Budget, transmitting a report on the Cost Estimate For Pay-As-You-Go Calculations; to the Committee on the Budget.

8157. A letter from the Secretary, Department of Health and Human Services, transmitting the annual report on the Loan Repayment Program on Health Disparities Research (HDR-LRP) for FY 2001, pursuant to 42 U.S.C. 2541—1(i); to the Committee on Energy and Commerce.

8158. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to Pakistan [Transmittal No. DTC 107-02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8159. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to India [Transmittal No. DTC 101-02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8160. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to Pakistan [Transmittal No. DTC 83-02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8161. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to Pakistan [Transmittal No. DTC 73-02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8162. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to Pakistan [Transmittal No. DTC 64-02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8163. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to Pakistan [Transmittal No. DTC 106-02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8164. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to India [Transmittal No. DTC 99-02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8165. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to Pakistan [Transmittal No. DTC 65-02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8166. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b(a); to the Committee on International Relations.

8167. A communication from the President of the United States, transmitting a supplemental report, consistent with the War Powers Resolution, to help ensure that the Congress is kept fully informed on continued U.S. contributions in support of peacekeeping efforts in the former Yugoslavia; (H. Doc. No. 107—250); to the Committee on International Relations and ordered to be printed.

8168. A letter from the Assistant Secretary, Policy, Management and Budget and Chief Financial Officer, Department of the Interior, transmitting the Department's Annual Accountability Report for Fiscal Year 2001; to the Committee on Government Reform.

8169. A letter from the Secretary, Department of Commerce, transmitting the Department's FY 2001 Annual Program Performance Report and FY 2003 Annual Performance Plan; to the Committee on Government Reform.

8170. A letter from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

8171. A letter from the Secretary, Department of Housing and Urban Development, transmitting the Department's FY 2001 Annual Report on Performance and Accountability; to the Committee on Government Reform.

8172. A letter from the Chairman, Federal Maritime Commission, transmitting semiannual report on the activities of the Office of Inspector General for the period October 1, 2001 through March 31, 2002, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 8G(h)(2); to the Committee on Government Reform.

8173. A letter from the Chief Judge, Superior Court of the District of Columbia, transmitting the Court's report entitled ''A Supplement to the Family Court Transition Plan'' submitted in response to a request; to the Committee on Government Reform.

8174. A letter from the Chief Judge, Superior Court of the District of Columbia, transmitting the Court's report entitled ''Supplement to the Family Court Transition Plan''; to the Committee on Government Reform.

8175. A letter from the Secretary, Department of the Interior, transmitting the 2001 Annual Report for the Office of Surface Mining (OSM), pursuant to 30 U.S.C. 1211(f), 1267(g), and 1295; to the Committee on Resources.

8176. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Regulated Navigation Area and Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone [CGD01-01-181] (RIN: 2115-AE84 and 2115-AA97) received July 16, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8177. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Drawbridge Operation Regulations; Sanibel Causeway Bridge, Okeechobee Waterway, Punta Rassa, Florida [CGD7-01-144] (RIN: 2115-AE47) received July 16, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8178. A letter from the Chief, Regulation and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Drawbridge Operation Regulations: Commercial Boulevard bridge (SR 870), Atlantic Intracoastal Waterway, mile 1059.0, Lauderdale-by-the-Sea, Broward County, FL [CGD07-02-009] received July 16, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8179. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels [USCG-2000-8589] (RIN: 2115-AG04) received July 16, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8180. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels [USCG-2000-8589] (RIN: 2115-AG04] received July 16, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8181. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Safety Zone; Annual fireworks events in the Captain of the Port Milwaukee Zone [CGD09-02-003] (RIN: 2115-AA97) received July 16, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8182. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Security Zones; Captain of the Port Detroit Zone, Selfridge Air National Guard Base, Lake St Clair [CGD09-02-004] (RIN: 2115-AA97) received July 16, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8183. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Safety and Security Zones; High Interest Vessel Transits, Narragansett Bay, Providence River, and Taunton River, Rhode Island [CGD01-01-188] (RIN: 2115-AA97) received July 16, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8184. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Security Zone; Seabrook Nuclear Power Plant, Seabrook, New Hampshire [CGD01-01-207] (RIN: 2115-AA97) received July 16, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8185. A letter from the General Counsel, Department of the Treasury, transmitting the Department's draft bill entitled, ''To amend the Customs user fee statute, and for other purposes''; to the Committee on Ways and Means.

8186. A letter from the Under Secretary, Department of Defense, transmitting contingent liabilities of the United States under the vessel war risk insurance program under title XII of the Merchant Marine Act, 1936, pursuant to Public Law 104—201, section 1079(a) (110 Stat. 2670); jointly to the Committees on Armed Services and Transportation and Infrastructure.

8187. A letter from the Deputy Secretary, Department of Defense, transmitting a Report on Proposed Obligations for Weapons Destruction and Non-Proliferation in the Former Soviet Union, pursuant to Public Law 104—106, section 1206(a) (110 Stat. 471); jointly to the Committees on Armed Services and International Relations.

8188. A letter from the President, Federal Bar Association, transmitting the Association's Resolution entitled, ''A Resolution urging that certain employees of the Securities and Exchange Commission be removed from the general pay schedule established by Title 5, United States Code''; jointly to the Committees on Financial Services and Government Reform.

8189. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report entitled, ''Suspension of Limitations Under the Jerusalem Embassy Act'' (Presidential Determination No. 2002-23), pursuant to Public Law 104—45, section 6 (109 Stat. 400); jointly to the Committees on International Relations and Appropriations.

8190. A letter from the Administrator, Agency for International Development, transmitting a report required by Section 653(a) of the Foreign Assistance Act of 1961, as amended, entitled ''Development Assistance and Child Survival/Diseases Program Allocations-FY 2002''; jointly to the Committees on International Relations and Appropriations.

8191. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification that shrimp harvested with technology that may adversely affect certain sea turtles may not be imported into the United States unless the President makes specific certifications to the Congress by May 1, pursuant to Public Law 101—162, section 609(b)(2) (103 Sat. 1038); jointly to the Committees on Resources and Appropriations.

8192. A letter from the Secretary, Department of Health and Human Services, transmitting the Department's report entitled, ''National Coverage Determinations''; jointly to the Committees on Ways and Means and Energy and Commerce.

8193. A letter from the Secretary, Department of Health and Human Services, transmitting a report on the level of coverage and expenditures for Religious Nonmedical Health Care Institutions (RNHCIs) under both Medicare and Medicaid for the previous fiscal year (FY); estimated levels of expenditure for the current FY; and, trends in those expenditure levels including an explanation of any significant changes in expenditure levels from previous years; jointly to the Committees on Ways and Means and Energy and Commerce.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. STUMP: Committee on Armed Services. H.R. 4547. A bill to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense and to prescribe military personnel strengths for fiscal year 2003; with an amendment (Rept. 107–603). Referred to the Committee of the Whole House on the State of the Union.

Mr. SENSENBRENNER: Committee on the Judiciary. H.R. 4965. A bill to prohibit the procedure commonly known as partial-birth abortion (Rept. 107–604). Referred to the Committee of the Whole House on the State of the Union.

Mr. YOUNG of Alaska: Committee on Transportation and Infrastructure. H.R. 3609. A bill to amend title 49, United States Code, to enhance the security and safety of pipelines; with an amendment (Rept. 107–605 Pt. 1). Ordered to be printed.

Mr. TAUZIN: Committee on Energy and Commerce. H.R. 3609. A bill to amend title 49, United States Code, to enhance the security and safety of pipelines; with an amendment (Rept. 107–605 Pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. SENSENBRENNER: Committee on the Judiciary. (House Resolution 437. Resolution requesting that the President focus appropriate attention on neighborhood crime prevention and community policing, and coordinate certain Federal efforts to participate in ''National Night Out'', including by supporting local efforts and neighborhood watches and by supporting local officials to provide homeland security, and for other purposes (Rept. 107–606). Referred to the House Calendar.

Mr. GOSS: Committee on Rules. House Resolution 497. Resolution providing for the consideration of the bill (H.R. 4628) to authorize appropriations for fiscal year 2003 for intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes (Rept. 107–607). Referred to the House Calendar.

Mrs. MYRICK: Committee on Rules. House Resolution 498. Resolution providing for consideration of the bill (H.R. 4965) to prohibit the procedure commonly known as partial-birth abortion (Rept. 107–608). Referred to the House Calendar.

[Pursuant to the order of the House on July 23, 2002 the following report was filed on July 24, 2002]

Mr. ARMEY: Select Committee on Homeland Security. H.R. 5005. A bill to establish the Department of Homeland Security, and for other purposes; with an amendment (Rept. 107–609 Pt. 1). Referred to the Committee of the Whole House on the State of the Union.

DISCHARGE OF COMMITTEE

Pursuant to clause 2 of rule XII the Committee on Energy and Commerce discharged from further consideration. H.R. 3609 referred to the Committee of the Whole House on the State of the Union.

TIME LIMITATION OF REFERRED BILL

Pursuant to clause 2 of rule XII the following action was taken by the Speaker:

H.R. 3609. Referral to the Committee on Energy and Commerce extended for a period ending not later than July 23, 2002.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. MANZULLO:

H.R. 5179. A bill to amend the provisions of titles 5 and 28, United States Code, relating to equal access to justice, award of reasonable costs and fees, and administrative settlement offers, and for other purposes; to the Committee on the Judiciary, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. HANSEN:

H.R. 5180. A bill to direct the Secretary of Agriculture to convey certain real property in the Dixie National Forest in the State of Utah; to the Committee on Resources.

By Mr. BACA:

H.R. 5181. A bill to expand the Officer Next Door and Teacher Next Door initiatives of the Department of Housing and Urban Development to include fire fighters and rescue personnel, and for other purposes; to the Committee on Financial Services.

By Ms. BALDWIN (for herself, Mr. FRANK, Ms. NORTON, and Ms. ROS-LEHTINEN):

H.R. 5182. A bill to amend the Internal Revenue Code of 1986 to increase the age limit for the child tax credit; to the Committee on Ways and Means.

By Mr. BARCIA (for himself, Mr. LATOURETTE, Mr. PASCRELL, Mr. MURTHA, Mr. DINGELL, Mr. CAMP, Mr. ALLEN, Mr. BASS, Mr. QUINN, Mr. EHLERS, Mr. COYNE, Mr. MARKEY, Mr. KILDEE, Mr. STUPAK, Mr. HOLDEN, and Ms. KILPATRICK):

H.R. 5183. A bill to amend the Federal Water Pollution Control Act to authorize appropriations for sewer overflow control grants; to the Committee on Transportation and Infrastructure.

By Mr. DAVIS of Illinois:

H.R. 5184. A bill to establish an Office of Audit Review within the Securities and Exchange Commission to oversee the audits of certain public companies; to the Committee on Financial Services.

By Mr. GALLEGLY (for himself, Mr. WELDON of Pennsylvania, Mr. LEWIS of California, Mr. GIBBONS, Mr. CALVERT, Mr. CANNON, Mr. SOUDER, and Mr. HORN):

H.R. 5185. A bill to remove a restriction on the authority of the Secretary of Agriculture and the Secretary of the Interior to enter into agreements with any Federal agency to acquire goods and services directly related to improving or using the wildfire fighting capability of those agencies; to the Committee on Agriculture, and in addition to the Committees on Resources, and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. KINGSTON (for himself, Mr. GUTKNECHT, Mr. THUNE, Mr. STUMP, Mrs. JO ANN DAVIS of Virginia, Mr. KOLBE, Mr. DAN MILLER of Florida, Mrs. NORTHUP, Mrs. EMERSON, Mr. CROWLEY, Mr. BARTLETT of Maryland, Mr. BALDACCI, Mr. PAUL, Mr. DUNCAN, Mr. SHAYS, Mr. TANCREDO, Mr. JONES of North Carolina, Mr. WAMP, Mr. POMEROY, and Mr. HOEKSTRA):

H.R. 5186. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the importation of prescription drugs; to the Committee on Energy and Commerce.

By Mr. MENENDEZ (for himself, Ms. ROS-LEHTINEN, Mr. GREEN of Texas, Mrs. CHRISTENSEN, Mr. THOMPSON of Mississippi, Mr. DIAZ-BALART, Mr. SERRANO, Mr. SMITH of New Jersey, Ms. LEE, Mrs. JONES of Ohio, Mr. FROST, Mr. CONYERS, Ms. WOOLSEY, Mr. RODRIGUEZ, Ms. ROYBAL-ALLARD, Mr. BACA, Mr. GONZALEZ, Mr. HINOJOSA, Mr. CUMMINGS, Mr. ACEVEDO-VILA, Mr. PALLONE, Mr. PASTOR, Mr. UDALL of New Mexico, Mr. PASCRELL, Mr. STARK, Mr. PAYNE, Mr. BENTSEN, and Mr. ROTHMAN):

H.R. 5187. A bill to authorize the Health Resources and Services Administration and the National Cancer Institute to make grants for model programs to provide to individuals of health disparity populations prevention, early detection, treatment, and appropriate follow-up care services for cancer and chronic diseases, and to make grants regarding patient navigators to assist individuals of health disparity populations in receiving such services; to the Committee on Energy and Commerce.

By Mrs. MORELLA (for herself, Mr. LANGEVIN, Mr. RAMSTAD, Mr. OWENS, Mr. HONDA, Mr. WAXMAN, Ms. SCHAKOWSKY, Mr. GEORGE MILLER of California, Mr. KILDEE, Ms. NORTON, Mr. DAVIS of Illinois, Mr. FROST, Mr. LANTOS, Mr. FARR of California, Mr. MCNULTY, and Mrs. JOHNSON of Connecticut):

H.R. 5188. A bill to authorize the presentation of a gold medal on behalf of the Congress to the next of kin or other personal representative of Justin W. Dart, Jr., on behalf of the entire disability community and in recognition of his many contributions to the Nation throughout his lifetime, especially his tireless work to secure passage of the Americans with Disabilities Act of 1990, and for other purposes; to the Committee on Financial Services.

By Mr. NUSSLE:

H.R. 5189. A bill to provide that the educational assistance provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall be permanent; to the Committee on Ways and Means.

By Mr. POMEROY:

H.R. 5190. A bill to amend the Internal Revenue Code of 1986 to expand retirement savings for moderate and lower income workers, and for other purposes; to the Committee on Ways and Means.

By Mr. SANDERS (for himself, Ms. LEE, Mr. HINCHEY, Mr. LARSON of Connecticut, and Mr. FRANK):

H.R. 5191. A bill to amend titles XIX and XXI of the Social Security Act to provide for expanded dental coverage under Medicaid and State children's health insurance programs and to provide for funding for expanded community oral health services; to the Committee on Energy and Commerce.

By Mr. SCHAFFER (for himself, Mr. HOEKSTRA, Mr. SHOWS, Mr. LIPINSKI, Mr. CAMP, Mr. LEWIS of Kentucky, Mr. MCINNIS, Mr. KINGSTON, Mr. DEMINT, Mr. SHADEGG, Mr. TANCREDO, Mr. CANTOR, Mr. SMITH of Michigan, Mr. TIBERI, Mr. PITTS, Ms. HART, Mr. GUTKNECHT, Mr. PAUL, Mr. BARR of Georgia, Mr. AKIN, Mr. KERNS, Mr. TERRY, Mr. SENSENBRENNER, Mr. BURTON of Indiana, Mr. SOUDER, and Mr. PICKERING):

H.R. 5192. A bill to amend the Internal Revenue Code of 1986 to allow a credit for contributions for the benefit of elementary and secondary schools; to the Committee on Ways and Means.

By Mr. SCHAFFER (for himself, Mr. HAYWORTH, Mr. MCINNIS, Mr. WELLER, Mr. HULSHOF, Mr. ENGLISH, Mr. BOEHNER, Mr. HERGER, Mr. SHADEGG, Mr. HOEKSTRA, Mr. TERRY, Mr. OTTER, Mr. SMITH of Michigan, Mr. KINGSTON, Mr. AKIN, Mr. DOOLITTLE, Mr. BURTON of Indiana, Mr. DEMINT, Mrs. JO ANN DAVIS of Virginia, Mr. SOUDER, Mr. TIBERI, Mr. RYUN of Kansas, Mrs. MYRICK, Mr. THUNE, Mr. POMBO, Mr. BUYER, Mr. GREEN of Wisconsin, Mr. ARMEY, Mr. TOOMEY, Mr. JEFF MILLER of Florida, Ms. HART, Mr. BROWN of South Carolina, Mr. PAUL, Mr. LIPINSKI, Mr. SENSENBRENNER, Mrs. CUBIN, Mr. HILLEARY, Mr. BARR of Georgia, and Mr. PICKERING):

H.R. 5193. A bill to amend the Internal Revenue Code of 1986 to allow a deduction to certain taxpayers for elementary and secondary education expenses; to the Committee on Ways and Means.

By Mr. SMITH of Texas (for himself, Mr. HOSTETTLER, Mr. PITTS, Mr. PENCE, Mr. GREEN of Wisconsin, Mr. PHELPS, Mr. TERRY, Mr. OSBORNE, Mr. ENGLISH, Mr. WELDON of Florida, Mr. RYUN of Kansas, Mr. ADERHOLT, Mr. SCHAFFER, Mr. SULLIVAN, Mr. STEARNS, Mr. AKIN, and Mr. PICKERING):

H. Con. Res. 445. Concurrent resolution expressing the sense of Congress supporting vigorous enforcement of the Federal obscenity laws; to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

MEMORIALS

Under clause 3 of rule XII, memorials were presented and referred as follows:

340. The SPEAKER presented a memorial of the General Assembly of the State of Delaware, relative to House Resolution No. 70 memorializing the United States Congress to consider impeachment proceedings against the Judges responsible for this decision limiting our public school children's freedom of speech; to the Committee on the Judiciary.

341. Also, a memorial of the Legislature of the State of Illinois, relative to House Joint Resolution No. 54 memorializing the United States Congress to authorize funding to construct 1,200-foot locks on the Upper Mississippi and Illinois River System; to the Committee on Transportation and Infrastructure.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 17: Mr. HALL of Ohio.

H.R. 267: Mr. CASTLE.

H.R. 572: Mr. SHIMKUS.

H.R. 599: Mr. PRICE of North Carolina.

H.R. 633: Mr. SNYDER.

H.R. 760: Mr. ANDREWS.

H.R. 831: Mr. LYNCH, Mr. SOUDER, and Mr. RANGEL.

H.R. 1090: Mr. MATHESON, Mr. RILEY, Mr. HOYER, Ms. BERKLEY, Mr. BOEHLERT, Mr. DOOLEY of California, and Mr. TIAHRT.

H.R. 1092: Mrs. MALONEY of New York.

H.R. 1331: Mrs. WILSON of New Mexico.
H.R. 1418: Mr. CARSON of Oklahoma.
H.R. 1452: Mr. FARR of California.
H.R. 1490: Mr. GRAHAM.
H.R. 1723: Mr. MOORE.
H.R. 1724: Mr. OLVER.
H.R. 1918: Ms. LEE, Mr. HONDA, Mr. DAVIS of Illinois, Ms. SCHAKOWSKY, Mr. PASTOR, and Ms. VELAZQUEZ.
H.R. 1982: Mr. HASTINGS of Washington and Mr. KENNEDY of Minnesota.
H.R. 2074: Mr. KLECZKA.
H.R. 2125: Mr. FERGUSON, Mr. RAMSTAD, and Mr. GREENWOOD.
H.R. 2173: Mr. LARSEN of Washington.
H.R. 2290: Mr. HALL of Ohio and Mrs. JONES of Ohio.
H.R. 2373: Mr. MOORE.
H.R. 2483: Mr. OBERSTAR.
H.R. 2638: Mr. WILSON of South Carolina, Mr. STUPAK, Mr. BAIRD, and Mr. TAUZIN.
H.R. 2908: Mr. GEPHARDT.
H.R. 3062: Mr. BALLENGER.
H.R. 3105: Mr. WHITFIELD.
H.R. 3132: Mr. LAFALCE, Mr. LEWIS of Georgia, Ms. MILLENDER-MCDONALD, and Mr. BENTSEN.
H.R. 3238: Mr. KILDEE.
H.R. 3273: Mr. SCHROCK.
H.R. 3320: Mr. NUSSLE.
H.R. 3443: Mr. BILIRAKIS.
H.R. 3450: Ms. ROS-LEHTINEN, Mrs. WILSON of New Mexico, Mr. FROST, Mr. WALDEN of Oregon, and Mr. BLUMENAUER.
H.R. 3498: Ms. ROS-LEHTINEN.
H.R. 3612: Mr. YOUNG of Alaska.
H.R. 3617: Mr. TAYLOR of Mississippi.
H.R. 3659: Mr. ROTHMAN, Mr. CLAY, Mr. WILSON of South Carolina, Mr. WEXLER, Mr. ENGLISH, Mr. DEFAZIO, Mr. SOUDER, and Mr. LEWIS of Georgia.
H.R. 3673: Mr. JOHN.
H.R. 3884: Mr. LARSEN of Washington, Mr. LANTOS, and Mr. BORSKI.
H.R. 3887: Ms. SOLIS and Ms. WATERS.
H.R. 3899: Mr. CLYBURN.
H.R. 3956: Ms. BALDWIN.
H.R. 3989: Mr. SHERMAN.
H.R. 4010: Mr. HAYWORTH.
H.R. 4017: Mr. GORDON, Mr. ABERCROMBIE, and Mr. HOLDEN.
H.R. 4058: Mr. GUTIERREZ.
H.R. 4060: Mr. ACEVEDO-VILÁ, Mr. BROWN of Ohio, and Mr. KILDEE.
H.R. 4113: Ms. ROYBAL-ALLARD, Ms. HARMAN, Mr. KIND, Ms. BALDWIN, Mr. BACA, and Mr. CROWLEY.
H.R. 4114: Mr. WAXMAN.
H.R. 4152: Mr. HAYWORTH.
H.R. 4446: Mr. YOUNG of Alaska.
H.R. 4483: Mrs. BONO, Mr. UPTON, Mr. WELDON of Pennsylvania, Mr. BERRY, Mr. STRICKLAND, and Mr. ROSS.
H.R. 4524: Mr. GUTIERREZ and Mrs. MALONEY of New York.
H.R. 4554: Mr. FROST and Mr. ENGLISH.
H.R. 4555: Mr. PITTS, Mr. KOLBE, and Mr. PUTNAM.
H.R. 4575: Mr. FATTAH and Mr. ROTHMAN.
H.R. 4600: Mr. LEWIS of California, Mr. WOLF, Mrs. BONO, Mr. MICA, and Mr. PORTMAN.
H.R. 4604: Mr. LATHAM and Mr. GOODE.
H.R. 4693: Mr. ROTHMAN, Mr. ADERHOLT, Mrs. TAUSCHER, Mr. HAYWORTH, and Mr. SHADEGG.
H.R. 4704: Mr. SMITH of Washington.
H.R. 4706: Mr. NUSSLE.
H.R. 4720: Mr. ROSS.
H.R. 4729: Mr. FROST, Mr. CUMMINGS, and Mr. FRANK.
H.R. 4738: Mr. GORDON and Mrs. THURMAN.
H.R. 4753: Mr. GORDON.
H.R. 4754: Mr. WATT of North Carolina and Mr. SPRATT.
H.R. 4760: Mr. ROTHMAN.
H.R. 4777: Mr. PAYNE and Mr. LYNCH.
H.R. 4785: Mr. MASCARA.
H.R. 4840: Mr. SESSIONS.
H.R. 4852: Mrs. THURMAN.
H.R. 4857: Mrs. DAVIS of California.
H.R. 4967: Mr. MANZULLO.
H.R. 5060: Mrs. THURMAN, Mr. UNDERWOOD, Ms. HART, Mr. JEFF MILLER of Florida, Ms. MCKINNEY, Ms. SCHAKOWSKY, and Mr. RODRIGUEZ.
H.R. 5064: Mr. PHELPS, Mr. GEKAS, Mr. MCHUGH, and Mr. PLATTS.
H.R. 5088: Mr. FRANK, Mr. BROWN of Ohio, Mr. BALDACCI, Ms. NORTON, and Ms. MCKINNEY.
H.R. 5090: Mrs. JO ANN DAVIS of Virginia.
H.R. 5092: Mr. ROTHMAN.
H.R. 5107: Mrs. CHRISTENSEN, Mr. LANGEVIN, Ms. ROS-LEHTINEN, and Mr. JEFFERSON.
H.R. 5110: Mr. HONDA, Ms. WATSON, Mr. CLYBURN, Mr. HILLIARD, Ms. MCKINNEY, Ms. MILLENDER-MCDONALD, Ms. SCHAKOWSKY, Mr. PAYNE, Mr. TOWNS, Mr. RUSH, Mr. EVANS, Mr. KUCINICH, Ms. KAPTUR, Mr. OLVER, Ms. SOLIS, Mr. BISHOP, Mr. SERRANO, Ms. WATERS, and Mrs. JONES of Ohio.
H.R. 5157: Mr. BURR of North Carolina, Mr. BLUNT, and Mr. MEEHAN.
H. Con. Res. 20: Mr. DINGELL, Ms. WOOLSEY, Mr. UNDERWOOD, and Mr. DOYLE.
H. Con. Res. 70: Mr. BACA.
H. Con. Res. 188: Ms. VELAZQUEZ.
H. Con. Res. 269: Mrs. MYRICK.
H. Con. Res. 327: Mr. BURTON of Indiana, Mr. CHAMBLISS, Mr. ENGLISH, Mr. CLEMENT, Mr. BERMAN, Mr. CRAMER, Mr. SESSIONS, Mr. JOHNSON of Illinois, Mr. CHABOT, Mr. CROWLEY, and Ms. SCHAKOWSKY.
H. Con. Res. 341: Ms. MILLENDER-MCDONALD.
H. Con. Res. 351: Mr. SABO and Mr. LEACH.
H. Con. Res. 380: Mr. BACA.
H. Con. Res. 432: Mr. HOEFFEL, Ms. BERKLEY, Mr. GREEN of Wisconsin, Mr. SKELTON, Mr. DEUTSCH, and Mr. ROEMER.
H. Con. Res. 437: Mr. CHAMBLISS, Mr. SESSIONS, Mr. ORTIZ, and Mr. BARRETT.
H. Con. Res. 438: Mr. DAVIS of Illinois, Mr. CAPUANO, Mr. BROWN of Ohio, Mr. FATTAH, and Mr. THOMPSON of Mississippi.
H. Con. Res. 442: Mr. HOLDEN, Mr. PASCRELL, Mr. LAMPSON, Mr. CLEMENT, Mr. MASCARA, Mr. MENENDEZ, Mr. LIPINSKI, Mr. SANDLIN, Ms. BROWN of Florida, Mr. RAHALL, Mr. HONDA, Mr. CUMMINGS, Mr. COSTELLO, Mr. BERRY, and Mr. KENNEDY of Minnesota.
H. Res. 295: Mr. TOWNS, Mr. RUSH, Mr. ROSS, and Mr. CAMP.
H. Res. 398: Mr. HYDE, Ms. ROS-LEHTINEN, Mr. ISAKSON, Mr. WILSON of South Carolina, Mr. INSLEE, and Mr. WEXLER.
H. Res. 454: Mr. ENGLISH, Mr. MCDERMOTT, and Mr. VISCLOSKY.
H. Res. 484: Mr. CRAMER and Mr. CARSON of Oklahoma.
H. Res. 487: Mr. MCNULTY and Mr. GIBBONS.

AMENDMENTS

Under clause 8 of rule XVIII, proposed amendments were submitted as follows:

H.R. 4628

OFFERED BY: MR. CHAMBLISS

AMENDMENT NO. 3: At the end (page 30, after line 7), add the following new title:

TITLE VI—INFORMATION SHARING

SEC. 601. SHORT TITLE.

This title may be cited as the ''Homeland Security Information Sharing Act''.

SEC. 602. FINDINGS AND SENSE OF CONGRESS.

(a) FINDINGS.—The Congress finds the following:

(1) The Federal Government is required by the Constitution to provide for the common defense, which includes terrorist attack.

(2) The Federal Government relies on State and local personnel to protect against terrorist attack.

(3) The Federal Government collects, creates, manages, and protects classified and sensitive but unclassified information to enhance homeland security.

(4) Some homeland security information is needed by the State and local personnel to prevent and prepare for terrorist attack.

(5) The needs of State and local personnel to have access to relevant homeland security information to combat terrorism must be reconciled with the need to preserve the protected status of such information and to protect the sources and methods used to acquire such information.

(6) Granting security clearances to certain State and local personnel is one way to facilitate the sharing of information regarding specific terrorist threats among Federal, State, and local levels of government.

(7) Methods exist to declassify, redact, or otherwise adapt classified information so it may be shared with State and local personnel without the need for granting additional security clearances.

(8) State and local personnel have capabilities and opportunities to gather information on suspicious activities and terrorist threats not possessed by Federal agencies.

(9) The Federal Government and State and local governments and agencies in other jurisdictions may benefit from such information.

(10) Federal, State, and local governments and intelligence, law enforcement, and other emergency preparation and response agencies must act in partnership to maximize the benefits of information gathering and analysis to prevent and respond to terrorist attacks.

(11) Information systems, including the National Law Enforcement Telecommunications System and the Terrorist Threat Warning System, have been established for rapid sharing of classified and sensitive but unclassified information among Federal, State, and local entities.

(12) Increased efforts to share homeland security information should avoid duplicating existing information systems.

(b) SENSE OF CONGRESS.—It is the sense of Congress that Federal, State, and local entities should share homeland security information to the maximum extent practicable, with special emphasis on hard-to-reach urban and rural communities.

SEC. 603. FACILITATING HOMELAND SECURITY INFORMATION SHARING PROCEDURES.

(a) PROCEDURES FOR DETERMINING EXTENT OF SHARING OF HOMELAND SECURITY INFORMATION.—

(1) The President shall prescribe and implement procedures under which relevant Federal agencies determine—

(A) whether, how, and to what extent homeland security information may be shared with appropriate State and local personnel, and with which such personnel it may be shared;

(B) how to identify and safeguard homeland security information that is sensitive but unclassified; and

(C) to the extent such information is in classified form, whether, how, and to what extent to remove classified information, as appropriate, and with which such personnel it may be shared after such information is removed.

(2) The President shall ensure that such procedures apply to all agencies of the Federal Government.

(3) Such procedures shall not change the substantive requirements for the classification and safeguarding of classified information.

(4) Such procedures shall not change the requirements and authorities to protect sources and methods.

(b) PROCEDURES FOR SHARING OF HOMELAND SECURITY INFORMATION.—

(1) Under procedures prescribed by the President, all appropriate agencies, including the intelligence community, shall, through information sharing systems, share homeland security information with appropriate State and local personnel to the extent such information may be shared, as determined in accordance with subsection (a), together with assessments of the credibility of such information.

(2) Each information sharing system through which information is shared under paragraph (1) shall—

(A) have the capability to transmit unclassified or classified information, though the procedures and recipients for each capability may differ;

(B) have the capability to restrict delivery of information to specified subgroups by geographic location, type of organization, position of a recipient within an organization, or a recipient's need to know such information;

(C) be configured to allow the efficient and effective sharing of information; and

(D) be accessible to appropriate State and local personnel.

(3) The procedures prescribed under paragraph (1) shall establish conditions on the use of information shared under paragraph (1)—

(A) to limit the redissemination of such information to ensure that such information is not used for an unauthorized purpose;

(B) to ensure the security and confidentiality of such information;

(C) to protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(D) to provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

(4) The procedures prescribed under paragraph (1) shall ensure, to the greatest extent practicable, that the information sharing system through which information is shared under such paragraph include existing information sharing systems, including, but not limited to, the National Law Enforcement Telecommunications System, the Regional Information Sharing System, and the Terrorist Threat Warning System of the Federal Bureau of Investigation.

(5) Each appropriate Federal agency, as determined by the President, shall have access to each information sharing system through which information is shared under paragraph (1), and shall therefore have access to all information, as appropriate, shared under such paragraph.

(6) The procedures prescribed under paragraph (1) shall ensure that appropriate State and local personnel are authorized to use such information sharing systems—

(A) to access information shared with such personnel; and

(B) to share, with others who have access to such information sharing systems, the homeland security information of their own jurisdictions, which shall be marked appropriately as pertaining to potential terrorist activity.

(7) Under procedures prescribed jointly by the Director of Central Intelligence and the Attorney General, each appropriate Federal agency, as determined by the President, shall review and assess the information shared under paragraph (6) and integrate such information with existing intelligence.

(c) SHARING OF CLASSIFIED INFORMATION AND SENSITIVE BUT UNCLASSIFIED INFORMATION WITH STATE AND LOCAL PERSONNEL.—

(1) The President shall prescribe procedures under which Federal agencies may, to the extent the President considers necessary, share with appropriate State and local personnel homeland security information that remains classified or otherwise protected after the determinations prescribed under the procedures set forth in subsection (a).

(2) It is the sense of Congress that such procedures may include one or more of the following means:

(A) Carrying out security clearance investigations with respect to appropriate State and local personnel.

(B) With respect to information that is sensitive but unclassified, entering into nondisclosure agreements with appropriate State and local personnel.

(C) Increased use of information-sharing partnerships that include appropriate State and local personnel, such as the Joint Terrorism Task Forces of the Federal Bureau of Investigation, the Anti-Terrorism Task Forces of the Department of Justice, and regional Terrorism Early Warning Groups.

(d) RESPONSIBLE OFFICIALS.—For each affected Federal agency, the head of such agency shall designate an official to administer this Act with respect to such agency.

(e) FEDERAL CONTROL OF INFORMATION.—Under procedures prescribed under this section, information obtained by a State or local government from a Federal agency under this section shall remain under the control of the Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply to such information.

(f) DEFINITIONS.—As used in this section:

(1) The term ''homeland security information'' means any information (other than information that includes individually identifiable information collected solely for statistical purposes) possessed by a Federal, State, or local agency that—

(A) relates to the threat of terrorist activity;

(B) relates to the ability to prevent, interdict, or disrupt terrorist activity;

(C) would improve the identification or investigation of a suspected terrorist or terrorist organization; or

(D) would improve the response to a terrorist act.

(2) The term ''intelligence community'' has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(3) The term ''State and local personnel'' means any of the following persons involved in prevention, preparation, or response for terrorist attack:

(A) State Governors, mayors, and other locally elected officials.

(B) State and local law enforcement personnel and firefighters.

(C) Public health and medical professionals.

(D) Regional, State, and local emergency management agency personnel, including State adjutant generals.

(E) Other appropriate emergency response agency personnel.

(F) Employees of private-sector entities that affect critical infrastructure, cyber, economic, or public health security, as designated by the Federal government in procedures developed pursuant to this section.

(4) The term ''State'' includes the District of Columbia and any commonwealth, territory, or possession of the United States.

SEC. 604. REPORT.

(a) REPORT REQUIRED.—Not later than 12 months after the date of the enactment of this Act, the President shall submit to the congressional committees specified in subsection (b) a report on the implementation of section 603. The report shall include any recommendations for additional measures or appropriation requests, beyond the requirements of section 603, to increase the effectiveness of sharing of information between and among Federal, State, and local entities.

(b) SPECIFIED CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsection (a) are the following committees:

(1) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

(2) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

SEC. 605. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out section 603.

SEC. 606. AUTHORITY TO SHARE GRAND JURY INFORMATION.

Rule 6(e) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (2), by inserting '', or of guidelines jointly issued by the Attorney General and Director of Central Intelligence pursuant to Rule 6,'' after ''Rule 6''; and

(2) in paragraph (3)—

(A) in subparagraph (A)(ii), by inserting ''or of a foreign government'' after ''(including personnel of a state or subdivision of a state'';

(B) in subparagraph (C)(i)—

(i) in subclause (I), by inserting before the semicolon the following: ''or, upon a request by an attorney for the government, when sought by a foreign court or prosecutor for use in an official criminal investigation'';

(ii) in subclause (IV)—

(I) by inserting ''or foreign'' after ''may disclose a violation of State'';

(II) by inserting ''or of a foreign government'' after ''to an appropriate official of a State or subdivision of a State''; and

(III) by striking ''or'' at the end;

(iii) by striking the period at the end of subclause (V) and inserting ''; or''; and

(iv) by adding at the end the following:

''(VI) when matters involve a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, to any appropriate federal, state, local, or foreign government official for the purpose of preventing or responding to such a threat.''; and

(C) in subparagraph (C)(iii)—

(i) by striking ''Federal'';

(ii) by inserting ''or clause (i)(VI)'' after ''clause (i)(V)''; and

(iii) by adding at the end the following: ''Any state, local, or foreign official who receives information pursuant to clause (i)(VI) shall use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.''.

SEC. 607. AUTHORITY TO SHARE ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION.

Section 2517 of title 18, United States Code, is amended by adding at the end the following:

''(7) Any investigative or law enforcement officer, or other Federal official in carrying out official duties, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to a foreign investigative or law enforcement officer to the extent that such disclosure is appropriate to the

proper performance of the official duties of the officer making or receiving the disclosure, and foreign investigative or law enforcement officers may use or disclose such contents or derivative evidence to the extent such use or disclosure is appropriate to the proper performance of their official duties.

''(8) Any investigative or law enforcement officer, or other Federal official in carrying out official duties, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to any appropriate Federal, State, local, or foreign government official to the extent that such contents or derivative evidence reveals a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.''.

SEC. 608. FOREIGN INTELLIGENCE INFORMATION.

(a) DISSEMINATION AUTHORIZED.—Section 203(d)(1) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT ACT) of 2001 (Public Law 107–56; 50 U.S.C. 403–5d) is amended by adding at the end the following: ''Consistent with the responsibility of the Director of Central Intelligence to protect intelligence sources and methods, and the responsibility of the Attorney General to protect sensitive law enforcement information, it shall be lawful for information revealing a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, obtained as part of a criminal investigation to be disclosed to any appropriate Federal, State, local, or foreign government official for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.''.

(b) CONFORMING AMENDMENTS.—Section 203(c) of that Act is amended—

(1) by striking ''section 2517(6)'' and inserting ''paragraphs (6) and (8) of section 2517 of title 18, United States Code,''; and

(2) by inserting ''and (VI)'' after ''Rule 6(e)(3)(C)(i)(V)''.

SEC. 609. INFORMATION ACQUIRED FROM AN ELECTRONIC SURVEILLANCE.

Section 106(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806) is amended by inserting after ''law enforcement officers'' the following: ''or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)''.

SEC. 610. INFORMATION ACQUIRED FROM A PHYSICAL SEARCH.

Section 305(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1825) is amended by inserting after ''law enforcement officers'' the following: ''or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)''.

H.R. 4628

OFFERED BY: MR. ENGEL

AMENDMENT NO. 4: At the end of title III (page 21, after line 11), insert the following new section:

SEC. 311. LIMITATIONS ON ASSISTANCE TO THE PALESTINIAN SECURITY SERVICES.

(a) IN GENERAL.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by adding at the end the following new section:

''LIMITATIONS ON ASSISTANCE TO THE PALESTINIAN SECURITY SERVICES

''SEC. 118. (a) PROHIBITION ON LETHAL ASSISTANCE.—Notwithstanding any other provision of law, no assistance in the form of lethal military equipment may be provided, either directly or indirectly, by any element of the intelligence community to the security services of the Palestinian Authority, or to any officials, employees or members thereof.

''(b) REQUIREMENTS FOR OTHER FORMS OF ASSISTANCE.—With respect to forms of assistance other than the provision of lethal military equipment, provided by any element of the intelligence community to the security services of the Palestinian Authority, or to any officials, employees or members thereof, such assistance may only be provided if the assistance is designed to—

''(1) reduce the number of security services of the Palestinian Authority to no more than two; and

''(2) reform such security services so that its officials, employees, and members—

''(A) respect the rule of law and human rights;

''(B) no longer fall under the command of, or report to, Yasir Arafat; and

''(C) are not compromised by, and will not support, terrorism.

''(c) QUARTERLY REPORTS ON ASSISTANCE PROVIDED SINCE 1993.—(1) Not later than 3 months after the date of the enactment of this section, the Director of Central Intelligence shall submit to the appropriate committees of Congress a report that describes all forms of assistance that have been provided to the security services of the Palestinian Authority since the date on which the Declaration of Principles was signed, including the dates on which such assistance was provided and whether any member of the security services of the Palestinian Authority who received any such assistance has committed an act of terrorism.

''(2) After the submittal of the report under paragraph (1), the Director of Central Intelligence shall submit to the appropriate committees of Congress quarterly reports on the forms of assistance under paragraph (1) provided during the preceding calendar quarter and progress toward—

''(A) reducing the number of security services of the Palestinian Authority to no more than two;

''(B) ensuring that officials, employees, and members of such security services are not compromised by, and will not support, terrorism;

''(C) reforming the security services of the Palestinian Authority so that they respect the rule of law and human rights; and

''(D) ensuring that the security services of the Palestinian Authority are no longer under the control of Yasir Arafat.

''(3) Reports shall be submitted in unclassified form, but may include a classified annex.

''(d) DEFINITIONS.—In this section—

''(1) the term 'lethal military equipment' has the meaning given the term for purposes of the Foreign Assistance Act of 1961; and

''(2) the term ''appropriate committees of Congress'' means the Permanent Select Committee on Intelligence and the Committee on International Relations of the House of Representatives and the Select Committee on Intelligence and the Committee on Foreign Relations of the Senate.''.

(b) CLERICAL AMENDMENT.—The table of contents for the National Security Act of 1947 is amended by inserting after the item relating to section 117 the following new item:

''Sec. 118. Limitations on assistance to the security services of the Palestinian Authority.''.

H.R. 4628

OFFERED BY: MR. GOSS

AMENDMENT NO. 5: At the end of title I (page 9, after line 4), insert the following new section:

SEC. 106. LIMITATION ON USE ON CERTAIN APPROPRIATIONS FOR INTELLIGENCE AND INTELLIGENCE-RELATED ACTIVITIES.

(a) IN GENERAL.—Subject to subsection (b), the amounts requested for the Defense Emergency Response Fund that are designated for the incremental costs of intelligence and intelligence-related activities for the war on terrorism may only be obligated or expended for the intelligence and intelligence-related activities specified in the letter dated July 19, 2002 of the Deputy Director for Central Intelligence to the Permanent Select Committee on Intelligence of the House of Representatives.

(b) LIMITATIONS.—The amounts referred to in subsection (a)—

(1) may only be obligated or expended for activities directly related to identifying, responding to, or protecting against acts or threatened acts of terrorism;

(2) may not be obligated or expended to correct programmatic or fiscal deficiencies in major acquisition programs which have not achieved initial operational capabilities within two years of the date of the enactment of this Act; and

(3) may not be obligated or expended until the end of the 10-day period that begins on the date notice is provided to the Select Committee on Intelligence and the Committee on Appropriations of the Senate and the Permanent Select Committee on Intelligence and the Committee on Appropriations of the House of Representatives.

H.R. 4628

OFFERED BY: MR. HASTINGS OF FLORIDA

AMENDMENT NO. 6: At the end of the title III (page 21, after line 11), insert the following new section:

SEC. 311. SENSE OF CONGRESS ON DIVERSITY IN THE WORKFORCE OF INTELLIGENCE COMMUNITY AGENCIES.

(a) FINDINGS.—Congress finds the following:

(1) The United States is engaged in a war against terrorism that requires the active participation of the intelligence community.

(2) Certain intelligence agencies, among them the Federal Bureau of Investigation and the Central Intelligence Agency, have announced that they will be hiring several hundred new agents to help conduct the war on terrorism.

(3) Former Directors of the Federal Bureau of Investigation, the Central Intelligence Agency, the National Security Agency, and the Defense Intelligence Agency have stated that a more diverse intelligence community would be better equipped to gather and analyze information on diverse communities.

(4) The Central Intelligence Agency and the National Security Agency were authorized to establish an undergraduate training program for the purpose of recruiting and training minority operatives in 1987.

(5) The Defense Intelligence Agency was authorized to establish an undergraduate training program for the purpose of recruiting and training minority operatives in 1988.

(6) The National Imagery and Mapping Agency was authorized to establish an undergraduate training program for the purpose of recruiting and training minority operatives in 2000.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Director of the Federal Bureau of Investigation (with respect to the intelligence and intelligence-related activities of the Bureau), the Director of Central Intelligence, the Director of the National Security Agency, and the Director of the Defense Intelligence Agency should make the creation of a more diverse workforce a priority in hiring decisions; and

(2) the Director of Central Intelligence, the Director of National Security Agency, the Director of Defense Intelligence Agency, and the Director of National Imagery and Mapping Agency should increase their minority recruitment efforts through the undergraduate training program provided for under law.

H.R. 4628

OFFERED BY: MR. HASTINGS OF FLORIDA

AMENDMENT NO. 7: At the end of title III (page 21, after line 11), insert the following new section:

SEC. 311. ANNUAL REPORT ON HIRING AND RETENTION OF MINORITY EMPLOYEES IN THE INTELLIGENCE COMMUNITY.

Section 114 of the National Security Act of 1947 (50 U.S.C. 404i) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection:

''(c) ANNUAL REPORT ON HIRING AND RETENTION OF MINORITY EMPLOYEES.—(1) The Director of Central Intelligence shall, on an annual basis, submit to Congress a report on the employment of covered persons within each element of the intelligence community for the preceding fiscal year.

''(2) Each such report shall include disaggregated data by category of covered person from each element of the intelligence community on the following:

''(A) Of all individuals employed in the element during the fiscal year involved, the aggregate percentage of such individuals who are covered persons.

''(B) Of all individuals employed in the element during the fiscal year involved at the levels referred to in clauses (i) and (ii), the percentage of covered persons employed at such levels:

''(i) Positions at levels 1 through 15 of the General Schedule.

''(ii) Positions at levels above GS–15.

''(C) Of individuals hired by the head of the element involved during the fiscal year involved, the percentage of such individuals who are covered persons.

''(3) Each such report shall be submitted in unclassified form, but may contain a classified annex.

''(4) Nothing in this subsection shall be construed as providing for the substitution of any similar report required under another provision of law.

''(5) In this subsection, the term 'covered persons' means—

''(A) racial and ethnic minorities,

''(B) women, and

''(C) individuals with disabilities.''.

H.R. 4628

OFFERED BY: MS. PELOSI

AMENDMENT NO. 8: Amend section 501 to read as follows:

SEC. 501. USE OF FUNDS FOR COUNTER-DRUG AND COUNTERTERRORISM ACTIVITIES FOR COLOMBIA.

(a) AUTHORITY.—Funds designated for intelligence or intelligence-related purposes for assistance to the Government of Colombia for counter-drug activities for fiscal years 2002 and 2003, and any unobligated funds available to any element of the intelligence community for such activities for a prior fiscal year, shall be available to support a unified campaign against narcotics trafficking and against activities by organizations designated as terrorist organizations (such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC)), and to take actions to protect human health and welfare in emergency circumstances, including undertaking rescue operations.

(b) REQUIREMENT FOR CERTIFICATION.—(1) The authorities provided in subsection (a) shall not be exercised until the Secretary of Defense certifies to the Congress that the provisions of paragraph (2) have been complied with.

(2) In order to ensure effectiveness of United States support for such a unified campaign, prior to the exercise of the authority contained in subsection (a), the Secretary of State shall report to the appropriate committees of Congress that the newly elected President of Colombia has—

(A) committed, in writing, to establish comprehensive policies to combat illicit drug cultivation, manufacturing, and trafficking (particularly with respect to providing economic opportunities that offer viable alternatives to illicit crops) and to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerrilla organizations;

(B) committed, in writing, to implement significant budgetary and personnel reforms of the Colombian Armed Forces; and

(C) committed, in writing, to support substantial additional Colombian financial and other resources to implement such policies and reforms, particularly to meet the country's previous commitments under ''Plan Colombia''.

In this paragraph, the term ''appropriate committees of Congress'' means the Permanent Select Committee on Intelligence and the Committee on Appropriations of the House of Representatives and the Select Committee on Intelligence and the Committee on Appropriations of the Senate.

(c) TERMINATION OF AUTHORITY.—The authority provided in subsection (a) shall cease to be effective if the Secretary of Defense has credible evidence that the Colombian Armed Forces are not conducting vigorous operations to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerrilla organizations.

(d) APPLICATION OF CERTAIN PROVISIONS OF LAW.—Sections 556, 567, and 568 of Public Law 107–115, section 8093 of the Department of Defense Appropriations Act, 2002, and the numerical limitations on the number of United States military personnel and United States individual civilian contractors in section 3204(b)(1) of Public Law 106–246 shall be applicable to funds made available pursuant to the authority contained in subsection (a).

(e) LIMITATION ON PARTICIPATION OF UNITED STATES PERSONNEL.—No United States Armed Forces personnel or United States civilian contractor employed by the United States will participate in any combat operation in connection with assistance made available under this section, except for the purpose of acting in self defense or rescuing any United States citizen to include United States Armed Forces personnel, United States civilian employees, and civilian contractors employed by the United States.

H.R. 4628

OFFERED BY: MR. ROEMER

AMENDMENT NO. 9: At the end (page 30, after line 7), add the following new title:

TITLE VI—NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES.

SEC. 601. ESTABLISHMENT OF COMMISSION.

There is established the National Commission on Terrorist Attacks Upon the United States (in this title referred to as the ''Commission'').

SEC. 602. COMPOSITION OF THE COMMISSION.

(a) MEMBERS.—Subject to the requirements of subsection (b), the Commission shall be composed of 10 members, of whom—

(1) 3 members shall be appointed by the majority leader of the Senate;

(2) 3 members shall be appointed by the Speaker of the House of Representatives;

(3) 2 members shall be appointed by the minority leader of the Senate; and

(4) 2 members shall be appointed by the minority leader of the House of Representatives.

(b) QUALIFICATIONS.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 5 members of the Commission shall be from the same political party.

(2) NONGOVERNMENTAL APPOINTEES.—No member of the Commission shall be an officer or employee of the Federal Government or any State or local government.

(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service and intelligence gathering.

(c) CHAIRPERSON; VICE CHAIRPERSON.—

(1) IN GENERAL.—Subject to the requirement of paragraph (2), the Chairperson and Vice Chairperson of the Commission shall be elected by the members.

(2) POLITICAL PARTY AFFILIATION.—The Chairperson and Vice Chairperson shall not be from the same political party.

(d) INITIAL MEETING.—If 60 days after the date of enactment of this Act, 6 or more members of the Commission have been appointed, those members who have been appointed may meet and, if necessary, select a temporary Chairperson and Vice Chairperson, who may begin the operations of the Commission, including the hiring of staff.

(e) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the Chairperson or a majority of 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. 603. FUNCTIONS OF THE COMMISSION.

(a) IN GENERAL.—The functions of the Commission are to—

(1) review the implementation by the intelligence community of the findings, conclusions, and recommendations of—

(A) the Joint Inquiry of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives regarding the terrorist attacks against the United States which occurred on September 11, 2001;

(B) other reports and investigations of the House Permanent Select Committee on Intelligence of the House of Representatives and the Senate Select Committee on Intelligence of the Senate; and

(C) other such executive branch, congressional, or independent commission investigations of such the terrorist attacks or the intelligence community;

(2) make recommendations on additional actions for implementation of the findings, recommendations and conclusions referred to in paragraph (1);

(3) review resource allocation and other prioritizations of the intelligence community for counterterrorism and make recommendations for such changes in those allocations and prioritization to ensure that counterterrorism receives sufficient attention and support from the intelligence community;

(4) review and recommend changes to the organization of the intelligence community, in particular the division of agencies under the jurisdiction of the Secretary of Defense and the Director of Central Intelligence, the dual responsibilities of the Director of Central Intelligence as head of the intelligence community and as head of the Central Intelligence Agency, and the separation of agencies with responsibility for intelligence collection, analysis, and dissemination; and

(5) determine what technologies, procedures, and capabilities are needed for the intelligence community to effectively support and conduct future counterterrorism missions, and recommend how these capabilities should be developed, acquired, or both from entities outside the intelligence community, including from private entities.

(b) DEFINITION OF INTELLIGENCE COMMUNITY.—In this section, the term ''intelligence community'' means—

(1) the Office of the Director of Central Intelligence, which shall include the Office of the Deputy Director of Central Intelligence and the National Intelligence Council;

(2) the Central Intelligence Agency;

(3) the National Security Agency;

(4) the Defense Intelligence Agency;

(5) the National Imagery and Mapping Agency

(6) the National Reconnaissance Office;

(7) other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;

(8) the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of the Treasury, the Department of Energy, and the Coast Guard;

(9) the Bureau of Intelligence and Research of the Department of State; and

(10) such other elements of any other department or agency as are designated by the President, or designated jointly by the Director of Central Intelligence and the head of the department or agency concerned, as an element of the intelligence community under section 3(4)(J) of the National Security Act of 1947 (50 U.S.C. 401a(4)(J)).

SEC. 604. POWERS OF THE COMMISSION.

(a) HEARINGS AND EVIDENCE.—The Commission may, for purposes of carrying out this title—

(1) hold hearings, sit and act at times and places, take testimony, receive evidence, and administer oaths; and

(2) require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents.

(b) SUBPOENAS.—

(1) SERVICE.—Subpoenas issued under subsection (a)(2) may be served by any person designated by the Commission.

(2) ENFORCEMENT.—

(A) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under subsection (a)(2), 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 punished by the court as a contempt of that court.

(B) ADDITIONAL ENFORCEMENT.—Sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194) shall apply in the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section.

(c) CLOSED MEETINGS.—Notwithstanding any other provision of law which would require meetings of the Commission to be open to the public, any portion of a meeting of the Commission may be closed to the public if the President determines that such portion is likely to disclose matters that could endanger national security.

(d) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(e) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any department, agency, or instrumentality of the United States any information related to any inquiry of the Commission conducted under this title. Each such department, agency, or instrumentality shall, to the extent authorized by law, furnish such information directly to the Commission upon request.

(f) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States are authorized to provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(g) GIFTS.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, accept, use, and dispose of gifts or donations of services or property.

(h) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

(i) POWERS OF SUBCOMMITTEES, MEMBERS, AND AGENTS.—Any subcommittee, member, or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

SEC. 605. STAFF OF THE COMMISSION.

(a) DIRECTOR.—The Commission shall have a Director who shall be appointed by the Chairperson and the Vice Chairperson, acting jointly.

(b) STAFF.—The Chairperson, in consultation with the Vice Chairperson, may appoint additional personnel as may be necessary to enable the Commission to carry out its functions.

(c) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to 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 5316 of title 5, United States Code. Any individual appointed under subsection (a) or (b) shall be treated as an employee for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(d) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(e) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

SEC. 606. COMPENSATION AND TRAVEL EXPENSES.

(a) COMPENSATION.—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

SEC. 607. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.

The appropriate executive departments and agencies shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances in a manner consistent with existing procedures and requirements, except that no person shall be provided with access to classified information under this section who would not otherwise qualify for such security clearance.

SEC. 608. REPORTS OF THE COMMISSION; TERMINATION.

(a) INITIAL REPORT.—Not later than 1 year after the date of the first meeting of the Commission, the Commission shall submit to the President and Congress an initial report containing—

(1) such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members; and

(2) such findings, conclusions, and recommendations regarding the scope of jurisdiction of, and the allocation of jurisdiction among, the committees of Congress with oversight responsibilities related to the scope of the investigation of the Commission as have been agreed to by a majority of Commission members.

(b) FINAL REPORT.—Not later than 6 months after the submission of the initial report of the Commission, the Commission

shall submit to the President and Congress a final report containing such updated findings, conclusions, and recommendations described in paragraphs (1) and (2) of subsection (a) as have been agreed to by a majority of Commission members.

(c) NONINTERFERENCE WITH CONGRESSIONAL JOINT INQUIRY.—Notwithstanding subsection (a), the Commission shall not submit any report of the Commission until a reasonable period after the conclusion of the Joint Inquiry of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives regarding the terrorist attacks against the United States which occurred on September 11, 2001.

(d) TERMINATION.—

(1) IN GENERAL.—The Commission, and all the authorities of this title, shall terminate 60 days after the date on which the final report is submitted under subsection (b).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the second report.

SEC. 609. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission to carry out this title $3,000,000, to remain available until expended.

H.R. 5005

OFFERED BY: MR. BEREUTER

AMENDMENT NO. 1: At the end of section 201, insert the following:

(9) Participate and otherwise coordinate with the intelligence community in the tasking or establishment of priorities for the collection of foreign intelligence important for homeland security by those elements of the intelligence community authorized to undertake such collection.

Amend section 212(a)(2) to read as follows:

(2) REQUESTS FOR THE COLLECTION AND COORDINATION OF INFORMATION.—

(A) Requesting the collection of foreign intelligence by elements of the intelligence community authorized to undertake such collection, Federal law enforcement agencies, and other executive agencies.

(B) Coordinating with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector as appropriate.

H.R. 5005

OFFERED BY: MR. ENGEL

AMENDMENT NO. 2: At the end of the bill, insert the following new title:

TITLE XI—CHEMICAL WEAPON PRECURSOR LICENSING

SEC. 1101. DEFINITIONS.

For purposes of this title:

(1) The term ''chemical weapon precursor'' means a Schedule 1 chemical agent or a Schedule 2 chemical agent, as such terms are defined in section 3 of the Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6701).

(2) The term ''licensee'' means a person holding a license under this title.

(3) The term ''qualified person'' means a person found by the Secretary to meet such qualifications as the Secretary may, by rule, prescribe to protect the public health and safety from the misuse of chemical weapon precursors. No person who has been convicted of a criminal offense under this title or under any similar or related provision of Federal or State law shall be a qualified person for purposes of this title.

SEC. 1102. LICENSE REQUIRED.

After December 31, 2002, no person may purchase, sell, or distribute in interstate commerce any chemical weapon precursor unless such person is licensed under section 1103.

SEC. 1103. ISSUANCE OF LICENSES.

(a) APPLICATION.—Any qualified person may submit to the Secretary an application for a license to purchase, sell, or distribute in interstate commerce a chemical weapon precursor.

(b) ISSUANCE.—Upon receiving an application containing such information as the Secretary may require, the Secretary is authorized to issue a license to such person to purchase, sell, or distribute in interstate commerce a chemical weapon precursor if the Secretary finds that such person is a qualified person and if such person agrees to comply with this title and the regulations under this title.

(c) TERM; REVOCATION.—A license under this section shall remain in effect for such term as the Secretary may prescribe, except that the Secretary may at any time revoke such license if the Secretary determines that the licensee has failed or refused to comply with this title or any regulation under this title.

SEC. 1104. REQUIREMENTS FOR MAINTENANCE OF LICENSE.

Each licensee shall comply with each of the following requirements and such other requirements as the Secretary may establish by rule to carry out the purposes of this title:

(1) The licensee shall report any suspicious purchases or sales of chemical weapon precursors.

(2) The licensee shall maintain and make available to the Secretary and to Federal, State, and local law enforcement authorities records of the purchase, sale, or distribution of chemical weapon precursors. Such records shall be in such form and shall contain such information as the Secretary shall, by rule, prescribe.

SEC. 1105. PENALTIES FOR VIOLATION.

Any person who violates any provision of this title or any regulation under this title shall be subject to a civil penalty of not more than $10,000 for a first offense and not more than $20,000 for a second or subsequent offense. If such violation was intentional, such person shall be subject to a criminal penalty of up to 10 years in prison in addition to such civil penalties.

H.R. 5005

OFFERED BY: MR. PAUL

AMENDMENT NO. 3: In section 763—

(1) strike subsection (b) (relating to transfer of appropriations);

(2) in the section heading, strike ''; transfer of appropriations'' (and conform the table of contents accordingly);

(3) strike the subsection designation and caption for subsection (a) (and redesignate the paragraphs and subparagraphs as subsections and paragraphs, respectively); and

(4) strike ''paragraph (1)(A)'' and ''paragraph (1)(B)'' and insert ''subsection (a)(1)'' and ''subsection (a)(2)'', respectively.

In section 811(e), strike the last sentence (referring to section 763(b)).

H.R. 5120

OFFERED BY: MR. BARR

AMENDMENT NO. 23: Insert at the end before the short title the following:

SEC. . None of the funds made available in this Act under the heading ''Special Forfeiture Fund (Including transfer of funds)'' to support a national media campaign shall be used to pay any amount pursuant to contract number N00600–02–C0123.

H.R. 5120

OFFERED BY: MR. GEORGE MILLER of California

AMENDMENT NO. 24: At the end of the bill (before the short title), insert the following:

SEC. ____. None of the funds made available in this Act may be used to enter into or carry out with an entity any Federal contract subject to the provisions of the Federal Acquisition Regulation unless such entity has a satisfactory record of integrity and business ethics.

H.R. 5120

OFFERED BY:MR. GEORGE MILLER OF CALIFORNIA

AMENDMENT NO. 25: At the end of the bill (before the short title), insert the following:

SEC. ____. None of the funds made available in this Act may be used to enter into or carry out with an entity any Federal contract subject to the provisions of the Federal Acquisition Regulation unless the contracting officer for the contract determines that such entity has a satisfactory record of integrity and business ethics.

H.R. 5120

OFFERED BY: MR. SANDERS

AMENDMENT NO. 26: At the end of the bill, insert after the last section (preceding the short title) the following new section:

SEC. ____. None of the funds appropriated by this Act may be used by the Internal Revenue Service for any activity that is in contravention of section 411(b)(1)(H)(i) or section 411(d)(6) of the Internal Revenue Code of 1986, section 204(b)(1)(G) or 204(b)(1)(H)(i) of the Employee Retirement Income Security Act of 1974, or section 4(i)(1)(A) of the Age Discrimination in Employment Act.

H.R. 5120

OFFERED BY: MR. SANDERS

AMENDMENT NO. 27: At the end of the bill, insert after the last section (preceding the short title) the following new section:

SEC. ____. None of the funds appropriated by this Act may be used by the Internal Revenue Service—

(1) for any activity that is in contravention of section 411(b)(1)(H)(i) or section 411(d)(6) of the Internal Revenue Code of 1986, section 204(b)(1)(G) or 204(b)(1)(H)(i) of the Employee Retirement Income Security Act of 1974, or section 4(i)(1)(A) of the Age Discrimination in Employment Act,

(2) for the issuance of favorable tax-qualified determination letters to employers who convert to a cash balance pension plan, or

(3) to enforce the preamble to Treasury Decision 8360, issued under section 401(a)(4) of the Internal Revenue Code of 1986 on September 19, 1991, which reads as follows: ''The fact that interest adjustments through normal retirement age are accrued in the year of the related hypothetical allocation will not cause a cash balance plan to fail to satisfy the requirements of section 411(b)(1)(H), relating to age-based reductions in the rate at which benefits accrue under a plan.''

H.R. 5120

OFFERED BY: MR. SANDERS

AMENDMENT NO. 28: At the end of the bill, insert after the last section (preceding the short title) the following new section:

SEC. ____. None of the funds appropriated by this Act may be used by the Internal Revenue Service for the issuance of favorable tax-qualified determination letters to employers who convert to a cash balance pension plan.

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Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

Vol. 148 WASHINGTON, TUESDAY, JULY 23, 2002 No. 101

Senate

The Senate met at 9:45 a.m. and was called to order by the Honorable JACK REED, a Senator from the State of Rhode Island.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, Power to equalize the pressures of life, we need You! The day stretches out before us. There is more to do than time will allow; there are more people to see than the schedule can accommodate; there are more problems to solve than we have strength to endure. Life becomes a pressure cooker. Thank You for this moment of prayer in which Your peace equalizes our pressure. We press on with the duties of this day knowing that there is enough time today to do what You want us to do. There is no panic in heaven; may there be none in our hearts. Give us the gift of a productive day. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JACK REED led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 23, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JACK REED, a Senator from the State of Rhode Island, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. REED thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. REID. Mr. President, there will be a period for morning business until 10:45 a.m., with the first half of the hour under the control of the Republican leader or his designee, and the second half of the hour under the control of the majority leader or his designee.

At 10:45 a.m., the Senate will vote on the cloture motion on the nomination of Richard Carmona to be Surgeon General of the United States. We hope to voice vote the nomination shortly after the cloture vote.

Upon disposition of the nomination, the Senate will resume consideration of the prescription drug bill, with the time until 12:30 p.m. divided between the two leaders or their designees. The Senate will recess, as we do on every Tuesday, from 12:30 p.m. to 2:15 p.m. for our weekly party conferences.

At 2:15 p.m. today, the Senate will resume consideration of the prescription drug bill, with 30 minutes of closing debate on the pending Graham and Grassley prescription drug amendments, prior to two rollcall votes beginning at 2:45 p.m. first on a motion to waive the Budget Act with respect to the Graham amendment, and second on a motion to waive the Budget Act with respect to the Grassley amendment.

MEASURE PLACED ON CALENDAR—H.R. 4687

Mr. REID. Mr. President, I understand H.R. 4687 is at the desk and due for its second reading.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. REID. I ask that H.R. 4687 be read a second time, and I object to any further proceedings.

The ACTING PRESIDENT pro tempore. The clerk will read the bill by title for the second time.

The assistant legislative clerk read as follows:

A bill (H.R. 4687) to provide for the establishment of investigative teams to assess building performance and emergency response and evacuation procedures in the wake of any building failure that has resulted in substantial loss of life or that posed significant potential of substantial loss of life.

The ACTING PRESIDENT pro tempore. Objection having been heard, the bill will be placed on the calendar.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10:45 a.m. with Senators permitted to speak therein for up to 10 minutes each.

Under the previous order, the first half of the time shall be under the control of the Republican leader or his designee. Under the previous order, the second half of the time shall be under the control of the majority leader or his designee.

The Senator from Wyoming.

Mr. THOMAS. Mr. President, I ask unanimous consent to use some of the time for the Republican side.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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The ACTING PRESIDENT pro tempore. The Senator has that right. The Senator from Wyoming.

PRESCRIPTION DRUGS

Mr. THOMAS. Mr. President, we are moving on today, I am pleased to note, to deal with this business of pharmaceuticals. It is a very important issue, one that we have struggled with for some time. I am not particularly impressed with the system we have used. I am afraid it pretty much spells out the fact that it is going to be very difficult for us to come together with any real meaningful legislation with regard to pharmaceuticals. There are a couple of reasons for that. I think we could have done it a little differently.

One, of course, is we do not have a budget. We have not brought up a budget resolution. So the question of funding always comes up. That is the reason for the votes this morning to try and waive a point of order on the budget. Not only does it affect this issue, of course, but the effect is that it is irresponsible not to have a budget for this coming year and be able to have the protections that a budget provides.

We have been talking a long time about the failure of business to do things properly. This is certainly a failure, it seems to me, of the Congress not to have a budget resolution. We have not had it brought up.

The other problem is we are dealing with the very broad subject of pharmaceuticals, which does not have before it a proposition that has been treated by the committee. Obviously, almost all the issues that come before the full Senate—and certainly there are those that are difficult issues—have gone through the committee, and much of the venting, much of the argument, much of the discussion has been done in the committee, and then the committee has come forth with a majority vote.

This is the second time recently we have had bills come to the floor that are complicated and difficult without having had their exposure in the Senate committee.

The energy bill, which we are still involved with, which was on the floor for several weeks, was pulled from the committee. It was not allowed to come through with a committee recommendation, and the same thing with the Finance Committee. So we find ourselves in a very difficult position.

Nevertheless, that is where we are. We have several propositions before us. One is the Graham-Kennedy-Daschle bill, which was in the committee but apparently would not have received a majority vote in the committee, so it therefore was not brought to a vote. This creates a very large increase of Government bureaucracy and basically ultimately sets price controls in pharmaceuticals, has fairly restrictive formulas for the majority of managed-care companies.

The Graham bill has plans to cover at least one name brand drug but not more than two in each therapeutic class. Pharmaceuticals is a difficult issue: How to provide them in terms of distribution; are they a part of this case in the Graham bill; and will they really become part of Medicare?

The competing bill, they have done more in the private sector, and it is separate somewhat. It is a real tough job to encourage people to do it as economically as can be done. How will generics become hopefully more used and useful than they have in the past and therefore reduce some of the costs? How is the distribution done so consumers have some choices in terms of not only brands that are available to them but, frankly, some of us are concerned in States where we have low population whether or not there will be opportunities for consumers to have some choices, whether they will be able to use the local drugstore, or whether they will all have to be mail-in kinds of things.

So it is a tough decision. There are differences in the two proposals. One will be a part of Medicare and will be handled by the Government. The other will be a private sector delivery system that will be set up.

In the case of the Government system, of course, whoever does the distribution will not have to make any particular choices with regard to costs or helping to reduce them. But on the other hand, in the private sector the more they can make it economical, the more profitable it will be.

So I am hopeful as we go through this, we can seek to set forth the best proposition that is possible, at the same time taking into account spending, and the spending in the two bills are quite different. The Democrat bill, the Graham bill, over a period of 7 years, is basically twice as expensive as the other bill. It costs in the area of $600 billion. The other one is very expensive as well, about $330 billion over the course of 10 years. So either one is going to be very expensive, but one quite less expensive than the other. Certainly we need to take a look at the expenses.

The tripartisan plan seems truly to find some common ground between traditional Democrat and Republican views, and that is useful. It reforms Medicare. It provides a prescription drug benefit to ensure that seniors do have coverage more similar to employee-sponsored plans that, of course, we have been accustomed to in the past.

I hoped this proposal could have been debated more—I have already mentioned that—in committees. It spends $330 billion over 10 years to provide prescription drugs for seniors. Even at that, whoever thought we would be talking about something in the area of $330 billion? Nevertheless, that is the case. It is a compromise between various proposals.

In addition to simply the drug benefits, it spends $40 billion to make some overdue changes in Medicare Parts A and B, which need to be done. We have not made changes in Medicare for some time. The prices and payments have caused it to be difficult for people to get services. It tends to bring the Medicare into the 21st century. It does spend $370 billion over 10 years to make those changes, but I think it is a reasonable proposal. It has a monthly premium, which I think is reasonable if they are going to have these kinds of services. It has an annual deductible which, again, is not unusual in terms of insurance payments of these kinds. I think first dollar payments are very important in terms of any insurance program. It has a benefit cap. The Government pays 50 percent for seniors with drug costs up to $3,400. It has catastrophic coverage beginning at $3,700. Seniors will then be responsible for only 10 percent of the cost above that.

So it is a tough program. It is one of the programs, however, that does deal with seeking to solve the problem without excessive expenditure. Low-income assistance below the 150 percent Federal poverty level is good for the entire structure. There is no so-called doughnut, middle ground, for low-income seniors, and that is good. This is the program that provides assistance, of course, to all seniors, and for their drug costs. It gives them access to discounted drug prices, and seniors generally now are the only group who pay full retail prices for drugs.

So I am hopeful as we go into this afternoon's program, even though under the circumstances of bringing these bills this way without having a budget we will have to have 60 votes to get one passed, I hope we will give some thought to the only one that is indeed bipartisan, in fact, tripartisan, in nature, so we have the best opportunity of finding success in the Government to provide pharmaceutical and drug coverage to seniors, something that almost everyone agrees needs to be done.

The question is how it is best done, and how we deal with the costs, the distribution; what ought to be the difference in access between low-income and those who are not; what we do to make some improvements in Medicare. This seems to be the proposition before the Senate that can provide for these benefits.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, our time is very short this morning, so I will be brief. Let me discuss the key criteria Senators should consider.

First, is the drug coverage permanent and dependable? Under the tripartisan amendment, drug coverage would be a permanent part of the Medicare entitlement, for the 21st Century.

Under the Graham amendment, however, that coverage disappears into a black hole. The benefit expires the very same year the baby boomers begin to retire. In my view, it's terribly irresponsible to pull a ''bait and switch''

on people who depend on Medicare. How will my colleagues explain to seniors in 2010 that they are out of luck because of a gimmick they used to hide the true cost of their proposal? I ask the Senate to support permanent, dependable drug coverage.

The Graham amendment seriously restricts Medicare enrollees who want access to brand-name drugs. Its restrictive policy will result in long lines for ground-breaking drugs. Why? Because Senator GRAHAM requires Medicare enrollees to wade through a bureaucratic appeals process in order to get needed drugs that are off the formulary. And it's not a short list—their formulary denies access to at least 90 percent of brand-name drugs!

We've heard a lot about gaps in coverage. Mr. President, here's the biggest gap of all: the gap between the large number of brand name drugs beneficiaries may need, and the paltry number Medicare would cover under the Graham amendment. Of the 2,400 brand name drugs approved by FDA, less than 10 percent would be covered. What a gap in coverage.

Our amendment, on the other hand, sets policies to ensure that Medicare enrollees get the drugs they need. We do not limit them to an arbitrary number of drugs in each class, as Senator GRAHAM does. We support making generic drugs an option, with lower cost-sharing, but we don't think depriving seniors of access to brand-name drugs is the way to go about it. So that is a key difference.

Our opponents have talked a great deal about the fact that less than 20 percent of beneficiaries would face a gap in coverage under the tripartisan amendment. But compare that number with the number of beneficiaries who would experience a gap in coverage under their amendment. Under the Graham amendment, fully 100 percent of enrollees would lack full access to brand-name drugs in Medicare. When you lay the two gaps against one another, isn't it clear that their gap, which will affect all enrollees, is the worse one?

Our bill also delivers a cost-effective, quality benefit. CBO says that the only way to contain the cost of a drug benefit is to ensure that drugs are delivered efficiently.

In turn, CBO says that the only way to have drugs delivered efficiently is to have true competition among private plans that stand to make money if they drive hard bargains with drug manufacturers. That's what our amendment offers.

Now, our opponents have gone on and on about private plans not being willing to deliver a drug benefit. Well, they too rely on a private sector delivery system, although it is non-competitive and thus is so expensive.

We have worked hard to ensure our delivery system works. Our opponents say that insurers will refuse to participate, even though the government lays $340 billion on the table and bears 75 percent of the economic risk, and even though CBO projects it to work everywhere in the country. But what happens in the off-chance that private plans won't want to participate?

Well, here's what will happen. The government has a duty—mandated in our bill—to do what it takes to ensure a drug benefit for every last Medicare beneficiary. If insurers won't participate at the level of competition we expect, the Secretary must adjust the competition bar downward until they will participate.

At a last resort, we would end up with a Graham-type delivery model in which pharmacy benefit managers are simply government contractors, bearing only minimal performance risk. Put another way, our Plan B is Senator GRAHAM's approach. So why are our opponents so afraid of that?

Under no circumstances will our bill allow any senior, anywhere, to go without access to a drug plan. It's an iron-clad guarantee, and it's right there in our bill.

Now, the Senator from Massachusetts has repeatedly objected to the asset test for the low-income benefit in our bill, as if it's something new. What a red herring! There has been asset testing for low-income Medicare populations since 1987, under the Qualified Medicare Beneficiary program and the Specified Medicare Beneficiary programs. And Senator KENNEDY and his Democratic colleagues voted for it overwhelmingly. There's nothing but politics behind those objections.

Another thing the tripartisan amendment offers is an enhanced option in Medicare. The enhanced option will add protection against the devastating costs of serious illness, and make preventive benefits free to help seniors avoid serious illness in the first place. And it is completely voluntary—seniors get to choose, and they don't need to take it in order to get drug coverage.

What does the Graham amendment have to offer beyond drugs? Nothing. Why would anyone want to deny Medicare beneficiaries the choice of free preventive benefits and better protection against serious illness? I will let the other side answer that.

The choice is clear. The Graham amendment offers drug coverage that swiftly disappears into a black hole, and it has the biggest gap of coverage of all. The tripartisan amendment is the right prescription for 21st century medicare. Because that is the biggest gap of coverage of all. The tripartisan plan is the right prescription for 21st century Medicare.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, in the last 2 weeks the Senate has taken up two of the most important issues facing the American people. First, we took on the issue of corporate governance. We passed a tough, new regulatory framework to deal with the cronyism and corruption in America's private sector. Now we are moving on to deal with prescription drugs for seniors.

I have talked to many seniors in my State. They are really worried. They are worried about corporate scandals and they are worried about the impact these scandals are having on the market. They are watching the Dow Jones go down along with their life savings. While they see their life savings evaporating, they also see the cost of their prescription drugs going up. These two issues are linked. The crisis in corporate governance and the crisis in our markets, and also the whole issue of making affordable prescription drugs available to seniors, are linked together.

Seniors now are talking about their own lives and times and families. The two things they do not want to worry about at this point in their lives are outliving their savings and the rising cost of prescription drugs. With the evaporation of their savings and the escalation of the cost of prescription drugs, they are really scared.

We have faced many fears in the United States of America this year. We salute our military and others who are working on homeland defense. But we really need to provide another defense, a defense against the fear of outliving your savings and not being able to afford the prescription drugs you need. In my State, my constituents are fairly conservative investors. They put money in CDs. I don't mean the kind that are rock and roll recordings, I mean certificates of deposit. Or they put money into conservative mutual funds. We had many of those family funds run right in Maryland.

What did they see? They saw as Greenspan lowered interest rates, it meant a lower return on their conservative investments. Again, what is happening in the stock market, they see the downside of the Dow Jones and no one is trusting the numbers and no one is trusting the CEOs.

Because of what was happening to the cost of prescription drugs, many families got help from their adult children. But their own adult children are worried about the loss of jobs and the loss of economic security as well. What we see in the private sector is that it is being squeezed in terms of the benefits it had hoped to provide.

In my own State, what we see is that American manufacturing, such as the American automobile industry, is competing against Japanese companies that do not have to pay for prescription drug benefits because they have a national health care system. Steel in my State is in bankruptcy because of predatory foreign competition. It is struggling to keep its promises to workers and retirees, providing pensions and health care.

I even see it as someone who appropriates funds for the veterans health care system. More and more veterans who do not have service-connected disabilities are turning to VA because of

the prescription drug benefit. The collapse of the system in which they were able to afford that benefit is having them turn to other systems.

We need a prescription drug benefit, and we need it now.

Considering the possibility of passing a prescription drug benefit, it has to be a meaningful benefit, not just slogans and sound bites. Seniors need a benefit they can count on, and it needs to follow these criteria. First, any benefit we pass has to be voluntary. It must be run by Medicare, not by insurance companies that simply gatekeep, that privatize profits and socialize risks.

The second thing is the benefit must be the same for all seniors, no matter where they live. No benefit should vary from State to State.

Then, who should decide what medications a senior gets? The decision should be made by the doctor, not an insurance gatekeeper. Of course, it needs to be affordable to seniors and also to the taxpayer.

I believe the Democratic plan, the Graham-Miller plan, which I support, meets these criteria. It answers the questions that seniors ask me as I am out and about talking to them.

Who runs it? Our plan is run by Medicare.

Is it available anywhere I live? Our plan says yes.

Who decides what medicines I get? Your doctor.

Is it affordable? You bet. There is no deductible; premiums are $25; copays are defined, specific, and reasonable; catastrophic drug costs are covered if you have to spend more than $4,000 on prescription drugs.

This is what our plan is. It is voluntary. It is available anywhere. It is going to be run by Medicare, not by insurance companies. The other plans fail those criteria and therefore I believe fail seniors. The Republican and tripartisan plans do not provide a benefit under Medicare. They turn it over to the insurance companies. Remember them? They are the same people who brought us Medicare+Choice, and they pulled out, leaving seniors without coverage throughout my State. People had signed up believing it was going to be a benefit, but after they squeezed their profits, they dumped the seniors. We cannot have the same experience in this bill.

Another problem is the benefit will not be the same for all seniors. It will vary according to different plans and different States. If in fact it is going to be a Federal program, it should be uniform and available in every State.

Who decides the prescription drugs? Once again, insurance companies will be the gatekeepers, not doctors, and their decisions will be based on profits, not patient care.

These plans will not be affordable for seniors. They are going to have a high deductible, copayments that fluctuate, and also an enormous, huge gap in coverage. The tripartisan plan—on which I know there was serious effort—leaves people without a drug coverage between the costs of $3,400 to $5,000 a year. For $1,500, you are on your own.

These plans raise more questions than they answer. How would a senior know what he or she is getting? How would they know what is covered? Who will make sure that insurance companies stick by the plans they offer? And how do seniors pay for their medicine in the gap months? America's seniors need their questions answered. They deserve more than that. They deserve—and they need—a real benefit under Medicare.

I know the Presiding Officer could tell me stories he hears in his own State of Rhode Island. I hear them wherever I go in my home State. I hear them from seniors, and I hear them from their families. When you listen to the families, you hear heart-wrenching stories. With the collapse of manufacturing in my State, it is even worse. The fact is that the farmers in my State are facing drought and will have to turn to Federal assistance. The fact is that watermen, who are out there on the Chesapeake Bay during this heat trying to forage for crabs, are foraging for their health care. We have to help meet those needs.

I held a hearing earlier this year on the healthcare benefits of steelworker retirees where I heard from retired steelworkers and their widows. If steel goes under, these people will lose their prescription drug coverage.

I was particularly touched by a story from a steel-widow—Gertrude Misterka. She has diabetes, high blood pressure, high cholesterol, asthma, and periodic chest pains.

She asked her pharmacist how much her medications would cost her without her retiree coverage. He told her—about $5,800. Gertrude may lose her health care from Beth Steel. Under the Republican and the Tripartisan plan, assuming she could get coverage from a Maryland insurer, she'd pay a $250 deductible and up to $33 in monthly premiums. That is $646 a year, before buying a single pill, and, she could still have no coverage for total drug costs between $3,450 and $5,300.

How does that help her? She needs a benefit that she can count on. Beth Steel and other American manufacturing companies need the Federal Government to offer a Medicare benefit so their workers are taken care of.

By passing a Medicare prescription drug benefit Congress will deliver real security to America's senior. Retirement security means more than pension security. Seniors need healthcare security to be at ease in their retirements.

Congress created Medicare as a promise to our seniors. It guaranteed meaningful healthcare coverage. Medicare kept seniors healthy and relieved their fears of being bankrupt by huge hospital bills. But Medicare didn't keep up with medical advances. To be a meaningful safety net, Medicare must include a prescription drug benefit. To be a meaningful benefit, Congress can't leave it up to insurance companies. Promises made to our seniors must be promises kept.

I really hope we will pass a senior prescription drug benefit that is meaningful, affordable, available nationwide, and that we do it now. Truly honor your father and mother. It is a great Commandment to live by, and it is a great Commandment to govern by.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Ms. STABENOW. Mr. President, I rise to join with my colleague from Maryland who spoke so eloquently about the need for real Medicare prescription drug coverage. I thank her for her leadership for our seniors over the years, both in Maryland and around the country. I join her today, and I would like to start by sharing some additional stories, some voices from Michigan.

I have been inviting people to join me in a prescription drug peoples' lobby. The idea of the people's lobby is to counter the huge special interest lobby in the form of the prescription drug lobby that we see every single day. We know there are six drug company lobbyists or more for every Member of the Senate. Yet what we are doing here is so important to people—businesses, farmers, seniors, families—and their voices need to be heard in this debate. I am very confident, if their voices are heard, the right thing will be done.

So I would like to share a story from Christopher Hermann from Dearborn Heights, MI. He writes now as a member of our People's Lobby:

I am a Nurse Practioner providing primary care to Veterans. I am receiving many new patients seeking prescription assistance after they have been dropped by traditional plans and can no longer afford medications. Many of them have more than $1,000/month in prescription costs.

The Vets are lucky! We can provide the needed service. Their spouses and neighbors are not so lucky.

I also have such a neighbor. ''Al'' is 72, self-employed all his life with hypertension. When he runs out of his meds due to lack of money, his blood pressure goes so high, he has to go to the emergency room and be admitted to prevent a stroke. I provide assistance through pharmaceutical programs, but this is not guaranteed each month. We either pay the $125.00 per month for his medications, or Medicare pays $5,000.00 plus each time he is admitted. It's pretty simple math to me.

I would agree with Mr. Hermann that it is pretty simple math, that what we are talking about is saving dollars in the long run by helping people stay out of the hospital and remain healthy. It is important that it be a real program that is defined, that folks can count on every month.

Let me also share a story from Debbie Ford from Clio, MI, who called

my office. Her 72-year-old mother cannot afford a supplemental, so the family pays for her prescriptions. This is a very common story, as I know the Presiding Officer knows. She is the widow of an ironworker whose pension continued for only 10 years. She gets what assistance she can—food assistance, energy credits—but no medication assistance. Her Social Security disability is $800 a month. She has resorted to pill splitting and borrowing medication from others who have prescription coverage.

This is the greatest country in the world. This is the United States. We should have folks having to either split pills or borrow medication in order to get what they need to live.

Let me also share something from Myra McCoy of Detroit, MI. She says:

> I receive disability due to a number of medical problems; it is not a choice for me. My poor health has been the hardest thing I have ever had to deal with in my life and it started at age 35, my whole life over. I have lost so much and the depression has made it so bad, I'm in so much debt for medication, I have a second mortgage I can't afford because of my medication.
>
> I've been robbing Peter to pay Paul for medication and trying not to lose my mind in the process. It is hard to talk about this even after ten years. I hope something can be done about the high cost of medication.
>
> We do live in a time of damaged care, if I could work again I would just to cut the cost of my medication. I would like to know what has to happen to make sure all people get treated fairly!

I thank Myra for sharing this as a part of the People's Lobby.

Now is the time to get it right, to make it fair, to make prices affordable for everybody, and to have a real plan.

What do we have in front of us? We have two kinds of plans: One passed by the House, a similar one called the tripartisan plan supported by my good friend from Vermont and Senator BREAUX from Louisiana, joining with the Republicans in this plan; and then we have a separate plan which is being supported by the Democrats in the Senate.

What are the differences? What does it mean to the people I have been talking about today, and so many others?

The question is, Which plan guarantees seniors a defined benefit and premium? They know they receive the benefit, and they know what the premium will be every month. This is a pretty important issue to folks—to have a regular benefit, and they know what it is, they know what it will cost.

The Democratic plan will provide that. The other plans—Republican or tripartisan—will not.

Seniors receive the same benefit regardless of where they live. That is a very important issue. Whether you are in the upper peninsula of Michigan or the southwestern tip of Benton Harbor, St. Joe or Detroit or Saginaw or Bay City or Alpena, it should not matter where you live, you should be able to have the predictability of knowing the same plan exists with the same premium for you. The Democratic plan does that. The other plan in front of us does not.

Seniors are guaranteed affordable coverage throughout the whole year. People debating this issue have talked about the so-called doughnut hole. People probably think we are debating breakfast or something, but the reality is, there is a gap in every plan, except the Graham-Miller-Kennedy plan, supported by the majority.

For the other plans, you would be paying all year but there would be part of the year—in some cases a majority of the year—where you would not receive any help, even though you have to continue to pay. I do not think that is a very good idea.

The plan that we have in front of us, the Graham-Miller-Kennedy plan, would guarantee people that if they pay all year, they get coverage all year.

Another important principle: Seniors are guaranteed access to local pharmacies and needed prescriptions. Under our plan, yes; under the other plan in front of us, no.

And then, finally, seniors retain their existing retiree coverage. This is very important. I have a lot of retirees in Michigan, retired autoworkers and others, who have coverage and we want to make sure they can keep their coverage. Our plan would say yes to that; the other plan would say no.

On the last point, let me share that the Congressional Budget Office has estimated that a similar provision to the one that is in the tripartisan plan, a similar provision that was in the House plan would prompt about one-third of the employers to drop retiree coverage. This translates into about 3.6 million seniors who would lose their coverage. That is not a good deal.

What we have in front of us is an optional plan, optional under Medicare, so you can get the full clout of Medicare and get a group discount. People are covered all year. It is affordable. It is reliable. It has a premium of $25 a month. It is clear. Every month you pay you are getting help with your bill. It is a very clear, straightforward effort to make sure that low-income seniors are fully covered, without out-of-pocket expenses.

And we make sure that we keep intact Medicare because one of the real concerns I have, in the long run, is that by forcing seniors to retain coverage through private drug-only insurance plans or HMOs—such as the tripartisan plan does—I am concerned that ultimately we are moving to a privatization of Medicare. It certainly is a step in that direction, which would be certainly something that I would strongly, strongly oppose.

So I say to people today—even though we are voting today—if there are not the votes for either of the two plans in front of us, we are going to be continuing to work in a direction to get the kind of plan that we need.

I urge people across the country to get involved and go to a Web site that has been set up—fairdrugprices.org—to sign a petition, to get involved, to share their story, to make their voice heard in this debate.

There is nothing more important than the debate in front of us—to the economy, to the cost of business, to the out-of-pocket expenses for our seniors and for our families.

It needs to be done right. We have the right plan. I urge my colleagues to support the Graham-Miller-Kennedy plan. If, in fact, that is not adopted, I urge that we keep these principles in whatever plan that we are able to construct.

Thank you, Mr. President. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I ask unanimous consent to speak for not more than 10 minutes.

The ACTING PRESIDENT pro tempore. There are 8 minutes available.

Mr. GRASSLEY. He may have all of that 8 minutes and whatever else the Senate wants to do for another 2 minutes.

The ACTING PRESIDENT pro tempore. The Senator may proceed.

Mr. JEFFORDS. Mr. President, I will proceed for 8 minutes. I first commend all of our colleagues who have devoted so much effort and leadership on the issue we have the privilege of debating today.

It is largely through their collective efforts that we have the chance to provide our seniors with the most significant expansion of the Medicare program in over 35 years an opportunity to provide them with the most important weapon in our healthcare arsenal prescription medicines.

This is an opportunity that we cannot let political differences block from going into law this year.

Many of our colleagues have come to the Senate floor during this debate and voiced either opposition or support for the two amendments that we will vote on today.

Our colleagues from both sides of the aisle have made pointed criticisms and voiced their strong objections over specific provisions in both of these measures.

There are honest differences and disagreements over the details of how we should develop this Medicare prescription drug expansion.

However, it is important that we recognize something that few have mentioned, and that is, there is extraordinary agreement that we should create this benefit.

We are not debating the question of whether but instead, the question of how to best provide medicines for our seniors. Senators from across the political spectrum, liberal to conservative, Republican, Democrat and Independent have declared their support for providing prescription drugs.

We should not let this opportunity pass today because we may not see it again for a very long time.

Today, we will have the opportunity to vote on two approaches for creating this new entitlement.

One approach has been offered by my friends, Senator GRAHAM and Senator MILLER, and others; and it is an approach with merit and one that I gave serious consideration to supporting.

The other measure is one that many have come to call the Tripartisan Medicare bill. It is called the Tripartisan bill because it was developed by Senators who are Republican, a Democrat and myself, the lone independent in the U.S. Senate.

But that is a bit of a misnomer, because it is not about being tripartisan—or even nonpartisan.

This proposal should not be about politics. It is about providing older Americans with the medicines they need through the best Medicare program we can afford. We can only do that by finding a measure that at least 60 of our colleagues can support. We have to get 60 votes to get it out of here.

I am very proud to join my colleagues here today in support of the tripartisan bill, the 21st Century Medicare Act. Senators GRASSLEY, SNOWE, BREAUX, HATCH, and I have dedicated ourselves to this effort.

We have had many policy discussions over the course of the last year and each have made their particular contributions to the underlying bill. I am honored to be a part of this outstanding group of legislators.

I believe our bill is the best opportunity we have to enact a modernized and strengthened Medicare program that will for first time provide a meaningful and affordable prescription drug benefit for all of our seniors.

This measure guarantees the promised care of the original Medicare program created in the mid-1960s and it delivers the benefits of today's modern health care system.

These are the key provisions of the 21st Century Medicare Act.

First, our legislation preserves the traditional Medicare program for our seniors today and tomorrow.

Our bill does not weaken traditional Medicare, make it more expensive or less available.

If the traditional Medicare program is what seniors want then it will be there for them plain and simple—guaranteed.

Second, we create an all new voluntary enhanced fee-for-service part to the Medicare program that provides new benefits such as disease prevention screenings and coverage for catastrophic health care costs while continuing all of the services available under traditional Medicare.

Our enhanced Medicare program protects our sickest seniors from the high costs of repeated hospitalizations that Medicare doesn't pay for at this time. Our enhanced Medicare would establish a single, $300 deductible that will save seniors hundreds of dollars in high hospitalization costs.

In addition to better benefits for our sickest seniors, the enhanced Medicare plan provides better disease prevention benefits so our healthy seniors can remain healthy. These benefits, which are not now provided under traditional Medicare, include: tests to detect breast, prostrate, and other cancers early when they are most treatable; adult vaccines that prevent a host of diseases; tests to predict the loss of bone mass before people break their hips and other bones; and, medical nutritional therapy to make sure seniors are getting the nutrition they need to keep them healthy.

Finally, the 21st Century Medicare Act ensures that seniors will have access to prescription drug coverage no matter where they live. I know my colleagues will spend the rest of today praising or criticizing the details of each other's proposal for providing the prescription drug benefit, but I want to be straight to the point: our plan is comprehensive, affordable and sustainable into the future. Is it perfect? No, it probably isn't perfect, but it is a good solid plan that will provide seniors with a significant drug benefit at an affordable cost.

Yesterday, Senator SNOWE, my good friend and co-sponsor of the 21st Century Medicare Act, pointed out that this language is not a line drawn in the sand. I agree with her. It is a legislative proposal that was developed, like the one our colleagues, Senators GRAHAM and MILLER have proposed, in a good faith effort. I think all of the principal cosponsors of these bills and many of our other colleagues are willing, and can agree to further refine this measure during a conference with the House, but let's get them out of here.

Over the next hours there will be detailed descriptions of competing ideas and competing proposals debated here on the Senate floor, and I look forward to that debate. I have examined the proposals that are being proposed and this is what I found that is unique about our 21st Century Medicare Act. It strengthens Medicare by building on programs where patients and their doctors can choose the best course of treatment and it ensures that a better Medicare will be there for today's seniors.

It improves Medicare by providing a comprehensive prescription drug benefit and new voluntary disease-prevention benefits that will help seniors live longer, healthy lives. And, it guarantees that the benefits of today will be there for seniors tomorrow.

I am very proud to join my colleagues Senators GRASSLEY, SNOWE, BREAUX and HATCH in support of the 21st Century Medicare Act. This legislation is the result of over a year of concentrated effort and it includes in it provisions that should garner the support of a wide majority of our colleagues.

I look forward to working with all of my colleagues to resolve our differences and enact this quality health care program and prescription drug benefit for our seniors. I urge my colleagues to begin that effort with their support of the 21st Century Medicare Act.

The ACTING PRESIDENT pro tempore. The Senator from Georgia.

Mr. CLELAND. Mr. President, I ask unanimous consent that I be allowed to speak for 7½ minutes and then my colleague from Missouri, Senator CARNAHAN, be allowed to speak for 7½ minutes.

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

Mr. CLELAND. Mr. President, I come to the floor this morning to share the story of Betty Almeida, a gentle southern lady of 75 years and a life-long resident of Atlanta, who just last week came face to face with the hard reality that she can no longer afford the medications she needs. Betty called my office shortly after visiting her local pharmacy, where she had discovered that the cost of the two medications her doctor prescribed for her was simply too much for her to afford. She had been following the prescription-drug debate in Congress for some time, but last week, with a new sense of urgency, she called me to plead for swift action.

Betty had been retired for a year when she learned she had a heart condition. Unable to afford the medications she needed to keep her condition under control, she came out of retirement and went back to work just to earn money to pay for her prescription drugs. For a while, that arrangement, though a hardship, enabled Betty to earn just enough to pay for her medicine. But recently, after Betty underwent a surgical procedure to remove a blockage from her heart, her doctor prescribed two new medications: one to treat an irregular heartbeat and one to lower her cholesterol to a safe level. Thank God these wonderful, life-saving drugs exist. But when Betty approached the pharmacy counter last week hoping to buy them, she was asked for $197 for the cholesterol-lowering drug and almost $150 for the other. Fortunately, it was Senior Citizens Day, so Betty was able to make use of a $5 discount. Still, the combined cost of the two medications—nearly $350—was far beyond what Betty could afford. And so, as she stood at the counter, Betty faced a choice: which condition would she treat? Her doctor told her she needed to treat both, but Betty couldn't afford to do that, so she had to choose. Which did she need more: a regular heartbeat, or safe cholesterol levels that would prevent future blockages?

The time to pass a prescription drug benefit for seniors like Betty is now. Actually, the time was yesterday, but it would be an act of gross negligence on the part of the Congress—and a violation of a promise—if we fail this year to bring Betty and so many others the help they desperately need. The Graham-Miller-Cleland bill has received high marks from the AARP and

will, if passed, bring meaningful relief to Betty. Forced to choose, Betty elected to forego the cholesterol-lowering medication because of its $200 cost. Under the prescription drug program established by the Graham-Miller-Cleland bill, Betty would pay just $40 for the $200 drug—one-fifth the cost. There would be no deductible to meet first, and there would be no gap in coverage. Over the course of a year, Betty would pay $4,200 just for the two heart drugs I mentioned without coverage. Under the Graham-Miller-Cleland bill, her annual out-pocket-expenses on medications, even after factoring in the $25 monthly premium, would be just $1,260—a 70 percent reduction in yearly costs. Under the House bill, however, Betty's annual out-of-pocket expenses for just those two drugs would be $3,500—her savings, just 17 percent.

For Betty, and for the millions like her, I urge my colleagues in this body and in the House to pass the Graham-Miller-Cleland Medicare prescription drug benefit without delay. Anything less is unacceptable.

Thank you, Mr. President. I yield the floor.

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

Mr. REID. Mr. President, Senator CLELAND asked for 7½ minutes and time for the Senator from Missouri, and that is fine. To be fair, we should also give the minority 7½ minutes. I ask unanimous consent that they be given 7½ minutes and that the vote occur at or around 11 o'clock, whenever that time runs out.

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

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

Mrs. CARNAHAN. Mr. President, next week marks the 37th anniversary of the day the Medicare program was signed into law. President Johnson traveled to Independence, MO to sign the bill in the presence of Harry S. Truman, who began the fight for the Medicare program in 1945. I am sure that our effort today to add a prescription drug benefit to Medicare is the type of common sense measure that President Truman would understand. Without this benefit, the Medicare program does not provide seniors with the security and protection its Founders intended.

If you have expensive and debilitating surgery, Medicare will pick up virtually the whole cost. But Medicare will not pay a single penny for prescription drugs that would cure your condition and make the surgery unnecessary. That does not make sense.

So today the Senate has an historic opportunity. People such as Annie Gardner from Columbia, MO will be watching us closely. She is an impressive 63-year-old, retired, mother of five adult children. But she suffers from diabetes and high blood pressure. She lost her health insurance and then could not afford her prescriptions. First she rationed her prescriptions by taking half the prescribed amount, even though she knew, as a former nurse, that this was a dangerous practice. Later she had to quit purchasing the drugs entirely because of other expenses, like fixing her car and paying increased taxes on her house.

In 21st century America, no one should have to make this type of choice. Today we have the chance to make Medicare the kind of program that we all want it to be. But we have before us two very different plans.

In my view, the benefit plan proposed by my colleagues BOB GRAHAM and ZELL MILLER is the superior choice. Their bill would create a benefit program that seniors could afford and could count on regardless of where they live.

Assistance begins with the very first prescription and is the same all year long. Senior will pay a monthly premium and then $10 for generic drugs and $40 for brand name drugs. There are no gaps or limits on the coverage. And once you hit the catastrophic cap of $4,000, you do not pay another dime for prescription drugs.

The alternative plan before the Senate is riddled with complexities and gaps. Before getting any benefits, seniors pay a $250 deductible. After that, seniors must pay 50 percent of the cost of their prescriptions. And then, once seniors have paid $3,451 on drugs—which is a great deal of money for virtually all seniors in Missouri—the coverage simply stops. But seniors still have to continue paying their monthly premium. The coverage does not start up again until seniors have laid out $5,300.

Under this plan, seniors will be paying a different amount almost every month. Some months they will get coverage—others they will not. I do not believe this is what seniors want from a prescription drug benefit.

The same flaws occur in the alternative plan for the treatment of low income seniors. But our plan would give low income seniors assistance with copayments and premiums, and 220,000 senior citizens in Missouri would qualify for this assistance. But under the alternative plan, low income seniors will have to pass rigorous assets test.

Mr. President, the reason we are passing a drug benefit is so seniors do not have to sell the family possessions to pay for their prescriptions. I cannot understand why the alternative plan would require low-income seniors to sell off assets to qualify for additional help.

My other concern is that seniors be guaranteed access to a benefit no matter where they live. Under the Graham-Miller plan, all seniors, regardless of whether they live in a rural or urban area, would have guaranteed access to a reliable, affordable benefit administered by the Medicare program.

We all know that the Medicare system is not perfect, but it is reliable, has always been there for our seniors, and always will be there in the future.

The alternative plan we are voting on today, however, creates a risky structure that does not guarantee that all seniors will be able to access the benefit.

Seniors in rural areas would have the greatest risk of being left empty-handed. How do I know this? Because the Republican plan gives government subsidies to drug HMOs to administer the benefit. This is the same system that Medicare+Choice runs on.

Seniors in rural Missouri know that Medicare+Choice programs have shut down all over the state. We do not want the same thing to happen to the prescription drug benefit. Our seniors deserve a dependable benefit, under Medicare, available to all.

Today is the day when we can put this program in place. We have a choice between an affordable, secure, and reliable benefit that will work for seniors—and a confusing plan that will not provide security and stability.

Mr. President, the Irish poet, Seamus Heaney, wrote that:

> Once in a lifetime, the longed for tidal wave of justice can rise up . . . and hope and history rhyme.

Today we have a chance to perfect the Medicare Program, and I pray we have the courage to seize the moment.

I yield the floor.

PROTECTING WOMEN'S RIGHTS AND HEALTH IN AFGHANISTAN

Mr. REID. Mr. President, under the Taliban regime in Afghanistan, women were forbidden to work or attend school. They weren't allowed to leave their homes unless they were accompanied by a male relative. For example, women who laughed out loud or wore shoes that made clicking noises could be beaten. There were many other examples of how women were so poorly treated.

After the fall of the Taliban, we heard encouraging news from Afghanistan. Women could go back to work and to school. They were no longer forced to wear burqas; that was a matter of choice.

A recent report from the United Nations found that now nearly 3 million Afghan children are attending school, and 30 percent of these kids are girls.

In fact, women took part in last month's Loya Jirga, a national conference to choose an interim government, and four women were appointed to positions in the interim Afghan Government.

Earlier today, I had the pleasure of meeting these courageous women. I met them in the Senate. Habibha Surrabi is Minister of Women and Refugee Affairs in Afghanistan. She was a professor of pharmacy at Kabul University, but was forced to flee when the Taliban took over in 1996. In Pakistan, she worked for refugee organizations where she focused on the rights of women, education, human rights, health care, and sanitation.

After September 11, President Bush promised not only to fight al-Qaida in Afghanistan but here in Washington to work to restore peace and democracy in that war-torn country. The President promised promoting women's rights in Afghanistan would be an important part of that mission.

Although the Taliban has been routed and al-Qaida is on the run, Afghanistan is far from peaceful today. Some say the country is on the verge of a civil war as rival warlords battle for control of the countryside.

Vice President Haji Abdul Qadir was assassinated 2 weeks ago. The international group, Human Rights Watch, reported local warlords are forcing young men to serve in their militias against their will. The United Nations has halted its return of refugees to parts of Afghanistan because of the increased violence.

On top of threats to their safety, families suffer from sabotage and from shortages of food, water, and health care because warlords are disrupting humanitarian aid deliveries. These humanitarian aid deliveries are essential. If they cannot be made, then the country cannot proceed.

Unfortunately, the gains Afghan women appeared to be making after the fall of the Taliban in many instances are simply an illusion. Afghan women continue to feel unsafe and most are afraid to remove their burqas. Many of the women who participated in the Loya Jirga a matter of weeks ago have been threatened and intimidated. Violence against women remains pervasive. They have no recourse or protection.

Aid workers, foreigners, and Afghan women and children have been targeted for robberies, assaults, and rapes. I was told by the Minister of Women and Refugee Affairs with whom I met earlier today about some brutal things that have taken place in that country, such as a 14-year-old girl raped. I have it in my mind and it is hard to get it out. Women's rights in Afghanistan will not be secure if there is no law or order.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. REID. I ask unanimous consent I be extended an additional 3 minutes and that same time be extended to the Republicans.

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

Mr. REID. Mr. President, the rights of women in Afghanistan will not be secure if there is no law and order in Afghanistan. Afghanistan's new government does not have the resources, no matter what their will, to combat warlord infighting, banditry, and lawlessness while trying to reestablish institutions of a civil society that were destroyed by the Taliban.

Interim President Karzai has requested international troops to help maintain order across the country. We have countries that are willing to come in and help. They have been told by our country that they should not come. Afghan women say they feel safer when international peacekeeping troops are present. That is obvious.

United Nations Secretary Kofi Annan has called for more peacekeepers, and there has been a call by both parties for more peacekeepers in Afghanistan. Yet the Bush administration has not yet committed to increasing the number of troops engaged—in fact, they have pushed against it—in peacekeeping, and they also refuse to allow the International Security Assistance Force, ISAF, to operate outside Kabul. We need these troops. We need this presence outside Kabul. Afghan is more than Kabul. It is a country that has great traditions and has a tradition of peace, except for the past 20 years. It can be reestablished.

When President Bush began military operations in Afghanistan, he promised Afghanistan would have a stable, democratically elected government that can govern in peace. We should not be skeptical of his promises. He should follow through on the promises he made. President Bush owes that to the American people, but especially to the people of Afghanistan. We cannot let the people of Afghanistan down again, and we cannot allow either our allies or enemies to believe America does not stand by its promises.

Today I call on the President of the United States to expand the International Security Assistance Force immediately to stop the violence, allow humanitarian aid to reach impoverished areas, and protect Afghan women and children. They need our help, Mr. President.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I have a Republican member who wishes to speak. I wonder if I can get a Democratic member to speak. If not, I will go ahead. Is there anyone waiting to speak on the Democratic side? If they are, I do not want to lose the time.

Mr. REID. How much time do the Republicans have now?

The ACTING PRESIDENT pro tempore. The Republicans have 10 minutes.

Mr. GRASSLEY. I will proceed, Mr. President.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

PRESCRIPTION DRUGS

Mr. GRASSLEY. Mr. President, I wish to speak once again, before the vote this afternoon at 2:45 p.m., on the Graham prescription drug bill and point out that that bill sunsets in the year 2010. Also, it omits coverage of most drugs. First of all, the fact the bill sunsets on December 31, 2010, ought to be an overriding factor of how people vote on this amendment.

Pages 78 and 79 of the bill say ''drug coverage must stop after December 31, 2010.'' That is section 1860(k), for people who want to look it up and verify what I am saying.

The Graham-Miller-Kennedy bill would not provide, if enacted, a permanent Medicare prescription drug benefit.

In the tripartisan bill, we are talking about a plan that is permanent. There is no sunset because we know that senior citizens on December 31, 2010, are not going to sunset themselves. They are going to need prescription drugs on January 1, 2001, just as much as they did on December 31, 2010.

We have a bipartisan program that is permanent and continues drug coverage in the future. Why? Because prescription drugs ought to be a part of Medicare as much in the year 2002 as hospitalization was a very important part of Medicare in 1965.

Medicare beneficiaries should understand that there is no guarantee that a prescription drug plan being offered by Senators GRAHAM, MILLER, and KENNEDY, will continue to cover their drug expenses after 2010.

Some refer to this as a sunset, but I wish to make clear, as this chart points out very well, that this is just one very obvious big black hole in this program that will sunset in the year 2010. Sunsetting a Medicare Program seems to be a very strange thing to do. Medicare is an entitlement program. Dependability has been one of its central features. So why should a new drug benefit be any different than any other program that we have—hospitalization, doctor care, or other provisions in Medicare that we have had since 1965.

There is no need to speculate as to why the sponsors sunset their program in 2010. It is a device to make the costs of the bill appear lower than it otherwise would be. In other words, it is a mere gimmick.

I point out another very crucial flaw with the Graham amendment and restrictive formularies that might keep beneficiaries from getting help with their medications that they and their doctor prefer. If we look at the tripartisan plan, any drug that is available, generic or patent that is available, what the doctor and what the patient decide is best for them is going to be available. There is a lower copay for generic drugs. We want to promote generic drugs over patented drugs if that is possible, but for sure we should not in any way limit the availability of drugs as is being done under the Democrat plan.

We have a poster that shows that 100-percent brand name drugs, albeit approved by the FDA, are going to be available under the program we have in the tripartisan bill, but only 10 percent of the brand name drugs are covered by the Graham-Daschle-Kennedy plan, a Government-run process certain to be time consuming and bureaucratic. If a beneficiary wants to appeal the fact that the drug they want and their doctor wants for them is not available under the Kennedy plan, it is possible to go through a Government appeal process to get the preferred drug covered.

Why should we put people to that test of bureaucratic decisionmaking when we have other programs that are available to make the drug that the doctor wants and thinks best for that patient? We do have that in the tripartisan plan. Controls on the pharmacy that can participate in the program, surely this is the biggest gap in coverage.

In any case, the important point is it is going to take another act of Congress to continue the program once it sunsets in the year 2010. Once a program like this sunsets, it could be difficult to pass legislation which would be required to extend it. I do not think that is a particularly good deal for our seniors. Having a drug benefit that disappears into a black hole is a terrible idea, as sunsetting is equivalent to disappearing into a black hole.

I would like to have Senators who are still in doubt about how they are going to vote this afternoon look at the tripartisan 21st century Medicare amendment as a reasonable alternative because it is bipartisan, because it is middle ground between the least expensive and the most expensive plans. It is not a big cost to Medicare, and it is something that brings permanency and that is predictable well into the future for Medicare. That is what we should have, and that is what we have in the tripartisan drug plan.

Any Senators on my side of the aisle who want to speak should get here soon.

I reserve the remainder of my time.

Mr. FEINGOLD. Mr. President, I rise today in strong support of a comprehensive and affordable prescription drug benefit for America's seniors. At the same time, we must modernize the entire Medicare benefits package by promoting regional equity in Medicare spending to ensure access to Medicare's basic services.

The absence of affordable prescription drug coverage for most seniors is devastating, and we must address this issue with the same vigor that our predecessors in Congress brought to their effort to enact the original Medicare program.

The addition of a prescription drug benefit will be the largest expansion of the Medicare program since it was initiated in 1965. But we should not simply add a benefit, we must get it right.

Congress must pass an attractive benefit with an affordable premium and a provision on catastrophic costs that is an insurance policy for all Medicare beneficiaries. While I recognize that the cost of any new benefit will be shared with Medicare beneficiaries, any deductibles or co-payments must be low enough to ensure significant participation in the program.

I am very encouraged that my colleagues from Florida and Georgia have recognized the importance of a comprehensive benefit through the Medicare program. It is affordable, comprehensive, and reliable. I am particularly supportive of their effort to fund a defined benefit with no deductible.

While I am certainly open to working with my colleagues on the benefit structure, I am very concerned about proposals to enact this benefit outside the Medicare program that would amount to a privatized benefit. Past efforts to offer privatized benefits outside the Medicare benefit structure have simply not worked in Wisconsin.

The Medicare+Choice program has offered very few choices to most Wisconsin seniors. While the structures of some of the private Medicare prescription drug benefits are plainly different from the Medicare+Choice program, I remain concerned that states like Wisconsin will end up with few choices. As with Medicare HMOs in the Medicare+Choice program, Wisconsin seniors will likely be faced with little choice with Medicare prescription drug HMOs.

We must also harness the purchasing power of the Medicare program to ensure that the Federal Government gets a fair price for the prescription drug program. That's the reason why I support the Hatch-Waxman reforms in the underlying bill.

By closing a series of loopholes in the original Hatch-Waxman law, these reforms will increase competition by preventing brand-name pharmaceutical firms from blocking generic drugs from entering the market. While I strongly support the original Hatch-Waxman law because it promoted competition and consumer choices, the reforms in the underlying bill will modernize the law and strengthen competition in the marketplace.

If we simply allow pharmaceutical companies to dictate the price of prescription drugs to consumers, the cost of the prescription drug benefit will skyrocket out of control. I am not advocating price controls. But we must ensure that taxpayers and Medicare beneficiaries get a fair price.

And I have further concerns on behalf of American taxpayers, as each of the proposals we are likely to consider actually digs our deficit hole deeper at a time when our budget deficit already is getting worse every day.

In its recently released mid-session review of the budget, the Office of Management and Budget estimates that the budget deficit for the current fiscal year, the one ending on September 30, will be a whopping $165 billion, and that includes the Social Security Trust Fund balances.

If you look at the real budget deficit—the one that does not use the Social Security Trust Funds to help mask our fiscal problems—the figure is $322 billion.

The projected $322 billion deficit for this year is just shy of the $340 billion deficit that we faced when I was first elected to the U.S. Senate in 1992.

We spent the balance of the last decade climbing out of that deficit hole, and in the end, thanks to the virtuous cycle of fiscally responsible budget policies and a growing economy, we were able to balance our books and actually began to pay down some of the massive Federal debt that was racked up during the 1980s and early 1990s.

But in the course of a little over a year, thanks in large part to the fiscally reckless tax cut enacted last year, the administration and Congress have squandered what was achieved during the previous eight years.

Even OMB's estimate of the real deficit over the next five years is over $1 trillion! And that estimate may be based on overly optimistic assumptions.

It is against that backdrop that we are now considering Medicare prescription drug proposals.

There is no doubt that we need to modernize Medicare by adding a prescription drug benefit. I strongly favor such a reform. But we should find offsets to fund a drug benefit.

It would be far better if we pay for this new program. Unless we pay for this needed reform, it will always be at risk of being severely cut back or even eliminated. Medicare beneficiaries can not rely on any drug benefit enacted under such circumstances, and we will do a disservice to them if we do so.

We must enact a real prescription drug benefit, one that provides meaningful help to seniors, and one which beneficiaries will know will be there for them when they really need it, not placed on the budget chopping block the instant it is enacted.

Congress could achieve some of these cost savings by modernizing other aspects of the Medicare program. For example, I am hopeful that the Senate will consider proposals to modernize the underlying Medicare program to promote regional fairness among Medicare beneficiaries.

We must address Medicare's discrimination against Wisconsin's seniors and health care providers. The Medicare program should encourage the kind of high-quality, cost-effective Medicare services that we have in Wisconsin. By encouraging this high-quality, low-cost care, we may well achieve cost savings to the program and offset part of the cost of a prescription drug benefit.

To give an idea of how inequitable the distribution of Medicare dollars is, imagine identical twins over the age of 65. Both twins worked at the same company all their lives, at the same salary, and paid the same amount to the Federal Government in payroll taxes, the tax that goes into the Medicare Trust Fund. But if one twin retired to New Orleans, LA, and the other retired in Madison, WI, they would have vastly different health care options under the Medicare system. The twin in Louisiana would get much more.

For example, in most parts of Louisiana, the first twin would have a wide array of options under Medicare. The high Medicare payments in those areas allow Medicare beneficiaries to choose between an HMO or traditional fee-for-

service plan, and, because area health care providers are reimbursed at such a high rate, those providers can afford to offer seniors a broad range of health care services. The twin in Madison would not have the same access to care. Because of low Medicare payments in Madison, there is no option to choose an HMO, and there are fewer health care agencies that can afford to provide care under the traditional fee-for-service plan.

How can two people with identical backgrounds, who paid the same amount in payroll taxes, have such different options under Medicare? They can because the distribution of Medicare dollars among the 50 States is grossly unfair to Wisconsin, and much of the Upper Midwest. Wisconsinites pay payroll taxes just like every American taxpayer, but the Medicare funds we get in return are much less than what other states receive.

The low payment rates received in Wisconsin are in large part a result of our historic high-quality, cost-effective practice of health care. In the early 1980s, Wisconsin's lower-than-average costs were used to justify lower payment rates. Since that time, Medicare's payment policies have only widened the gap between low- and high-cost states.

I have introduced a package of legislation that will take us a step in the right direction by reducing the inequities in Medicare payments to Wisconsin's hospitals, physicians, and skilled nursing facilities. At the same time, my proposals would establish pilot programs to encourage high-quality, cost-effective Medicare practices. My proposal would reward providers who deliver higher quality at lower cost. It would also require that the pilot states create plans to increase the amount of providers providing high-quality, cost-effective care to Medicare beneficiaries.

Congress must modernize Medicare and add a prescription drug benefit. It should do so in a fiscally-responsible manner. And it must also restore basic equity to the Medicare program and stop penalizing higher quality providers of Medicare services.

The issue before us is an important one. And it is important enough to do it right.

Mr. THOMPSON. Mr. President, I rise today to discuss the important issue of adding a prescription drug benefit to the Medicare program. As a part of the debate on this drug pricing bill, we are considering amendments to provide Medicare beneficiaries with coverage for their prescription drug costs. This would be the largest expansion of any Federal entitlement program since Congress enacted Medicare in 1965. And as I listen to the debate, I am concerned that this body is ignoring some very serious issues, namely the cost of what we are doing and whether we can afford to take this action given the current budget situation.

I think each of us here today would agree that the Medicare program is outdated. If we were creating this program from scratch right now, there is no question that we would include coverage for prescription drugs. Medicines have become integral to the treatment of disease, in many cases replacing costly surgical procedures. However, in our desire to address one serious flaw in Medicare, I am concerned that we are missing the broader questions of the impact of our actions on future generations of taxpayers and on the sustainability of the Medicare program. We cannot legislate in a vacuum.

I want to begin my remarks by reminding my colleagues of the demographic time bomb we are facing in this country. The first wave of the 76 million baby boomers will begin retiring in 2008. Between now and 2035, the number of Americans over the age of 65 will double. We will go from having 3.4 workers to support Medicare and Social Security beneficiaries today to 2.3 workers by 2026. Not only is the over-65 population growing rapidly, but they are living longer. Increased life expectancy is a good thing, but it also has serious implications for the Federal budget and entitlement spending.

According to the Medicare Trustees' most recent report to Congress, the Medicare Part A Trust Fund is scheduled to be in a cash deficit beginning in 2016 and will go bankrupt in 2030. Spending on Medicare Part B, which covers outpatient services, is growing at a faster rate than our economy. Over the next 10 years, the Medicare trustees estimate that Part B spending will increase on average by 6.1 percent each year, compared to a growth rate in the economy of 5.1 percent per year. The Congressional Budget Office projects that Federal expenditures on Medicare, Social Security and Medicaid combined will grow from the current 7.8 percent of GDP to 14.7 percent of GDP in 2030. I think it's important to remember that the Federal Government has generally taken no more than 20 percent out of the economy in taxes to fund the government. Entitlement spending is moving dangerously close to that limit.

David Walker of the General Accounting Office testified before the Senate Budget Committee earlier this year, and he warned us that by 2030, absent any changes to Social Security and Medicare, there will be virtually no money left for discretionary spending such as national defense, education or law enforcement. This estimate does not take into consideration any new spending Congress may authorize, such as adding a Medicare prescription drug benefit or increasing Medicare payments to health care providers. As inadequate as the current Medicare program may be, it is not sustainable even in its current form.

In addition, I feel compelled to offer additional context to this debate. We all know that our world and budget situation have changed dramatically over the past 10 months. The latest projections from the Office of Management and Budget are that our deficit this year could reach $165 billion. In addition, the requirements of protecting our Nation and combating terrorism have placed urgent new claims on Federal resources.

In fiscal year 2002, we will spend at least $29.2 billion on homeland security. The supplemental appropriations bill would spend an additional $5.8 billion, bringing the total to nearly $38 billion. The President's budget request for fiscal year 2003 proposes spending of $37.7 billion for homeland security. This amount is double what we were spending on homeland security items prior to the September 11 attacks. The Brookings Institute recently recommended funding of $45 billion for fiscal year 2003 on homeland security.

We are also in the process of considering the President's proposal to create a new Department of Homeland Security. The cost of creating this new department could be another billion dollars. The truth is that we just don't have a good notion of how much homeland security spending will cost in the coming years, but we know that the costs will be tremendous, and we know that we must spend whatever it takes.

On top of these security-related claims on our Federal resources, we need to remember that a majority of Congress just voted to increase spending on farmers by $90 billion above the current level over the next 10 years. I opposed that legislation, because I believe much of that money would be better spent on other priorities, including a prescription drug benefit. And let us not forget that we voted in May to create a new, $20 billion federal health care entitlement for workers displaced by trade. These things add up. We're spending money we no longer have.

I do believe that Congress should address the needs of the one-third of seniors who have no prescription drug coverage now. But when I look at the cost of adding a prescription drug benefit, it is clear to me that there is just no inexpensive way to provide seniors with a meaningful drug benefit. CBO projects that seniors' spending on prescription drugs over the next 10 years will be $1.8 trillion. That is 21 percent higher than CBO's 10-year estimate from last year. Although two-thirds of that increase is due to the changing budget window, dropping the low-cost year, 2002, and adding the higher cost year, 2012, this projection still concerns me.

The various Medicare prescription drug proposals we are debating have 10-year cost estimates ranging from a low of $150 billion for the Hagel/Ensign, bill to $370 billion for the tripartisan bill, to as much as $600 billion for the Graham/Kennedy bill. Can we really rely on the accuracy of these numbers?

Last year's budget resolution set aside $300 billion over 10 years for Medicare modernization and a prescription drug benefit. My colleagues on the

other side of the aisle strongly supported that $300 billion number as sufficient to pay for a Medicare drug benefit. If we were to trend that $300 billion forward one year, we would be looking at a $350 billion drug package. This year, the budget resolution that was reported by the Senate Budget Committee, but never passed by the full Senate, contains $500 billion over 10 years for a Medicare prescription drug benefit and for increased Medicare provider payments and for providing health coverage to the uninsured. How is it that we are even considering a $600 billion bill that would only provide prescription drug coverage?

I am firmly in the camp of those who believe that we should not add a prescription drug benefit to Medicare without also making much-needed changes to strengthen the program. The Medicare and Social Security Trustees advise us that we can make relatively small changes now to put the Medicare and Social Security programs on sound financial footing for the future. But, the longer we wait, the harder it will be. This debate over a Medicare prescription drug benefit provides us with an excellent opportunity to begin taking steps that will make Medicare sustainable over the long term.

I want to commend the members of the tri-partisan group for their efforts to put us on the path toward a strengthened Medicare program. They have worked hard for more than a year to craft their bill to provide a reasonable and permanent drug benefit, unlike the proposal of my colleague from Florida. And, they have drafted the only proposal that makes any meaningful improvements to the Medicare program. I believe that the tri-partisan proposal would provide greater security for today's seniors and for tomorrow's seniors. The new fee-for-service plan, Medicare Part E, would make the transition to Medicare more seamless for those Americans who are beginning to age into the Medicare program by providing them with a benefit that more closely resembles the private health plan they are used to. The tri-partisan bill would also provide seniors with protection from unusually high health care costs for the first time.

I am deeply disappointed that the Finance Committee has not been given the opportunity to mark up either the tri-partisan bill or any other Medicare prescription drug bill. It is a shame that the Majority Leader has decided once again to by-pass the committee process, which might have yielded a product that could garner the 60 votes needed to pass a Medicare prescription drug benefit. Even more important is that we would not be in the current parliamentary situation of needing 60 votes to waive a budget point of order on these bills if the Senate had passed a budget this year.

In the likely event that neither of two comprehensive prescription drug proposals garners 60 votes, then I would hope we could at least pass the Hagel/Ensign proposal. The Hagel/Ensign amendment would provide the neediest seniors with assistance with their prescription drug costs. It would allow all seniors to benefit from group discounts. And, it would provide all seniors with protection from unusually high drug costs. These benefits could be implemented immediately, and the proposal would buy us time to find bipartisan consensus on an affordable, comprehensive Medicare prescription drug benefit.

I hope we can carry forward the spirit of the tri-partisan group and work together to address the needs of our seniors who lack prescription drug coverage, bring Medicare into the 21st century and set it on sound financial footing, and do so while recognizing the new budget world in which we live.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. CARNAHAN). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Madam President, I yield back our 3 minutes.

The PRESIDING OFFICER. All time is yielded back.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF RICHARD H. CARMONA, OF ARIZONA, TO BE MEDICAL DIRECTOR IN THE REGULAR CORPS OF THE PUBLIC HEALTH SERVICE, AND SURGEON GENERAL OF THE PUBLIC HEALTH SERVICE

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session and proceed to the cloture vote on Executive Calendar No. 921, which the clerk will report.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on Executive Calendar No. 921, the nomination of Richard H. Carmona, of Arizona, to be the Surgeon General of the Public Health Service:

Edward M. Kennedy, Debbie Stabenow, Tom Daschle, Harry Reid, Jack Reed, Richard J. Durbin, Barbara Mikulski, Patrick Leahy, Jean Carnahan, Tom Carper, Byron L. Dorgan, Paul Wellstone, Jon Corzine, Jeff Bingaman, Daniel Inouye, Kent Conrad.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on Executive Calendar No. 921, the nomination of Richard H. Carmona, of Arizona, to be Medical Director in the Regular Corps of the Public Health Service, and to be Surgeon General of the Public Health Service, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

The yeas and nays resulted—yeas 98, nays 0, as follows:

[Rollcall Vote No. 185 Exe.]

YEAS—98

Akaka	Dorgan	Lugar
Allard	Durbin	McCain
Allen	Edwards	McConnell
Baucus	Ensign	Mikulski
Bayh	Enzi	Miller
Bennett	Feingold	Murkowski
Biden	Feinstein	Murray
Bingaman	Fitzgerald	Nelson (FL)
Bond	Frist	Nelson (NE)
Boxer	Graham	Nickles
Breaux	Gramm	Reed
Brownback	Grassley	Reid
Bunning	Gregg	Roberts
Burns	Hagel	Rockefeller
Byrd	Harkin	Santorum
Campbell	Hatch	Sarbanes
Cantwell	Hollings	Schumer
Carnahan	Hutchinson	Sessions
Carper	Hutchison	Shelby
Chafee	Inhofe	Smith (NH)
Cleland	Inouye	Smith (OR)
Clinton	Jeffords	Snowe
Cochran	Johnson	Stabenow
Collins	Kennedy	Stevens
Conrad	Kerry	Thomas
Corzine	Kohl	Thompson
Craig	Kyl	Thurmond
Crapo	Landrieu	Torricelli
Daschle	Leahy	Voinovich
Dayton	Levin	Warner
DeWine	Lieberman	Wellstone
Dodd	Lincoln	Wyden
Domenici	Lott	

NOT VOTING—2

Helms	Specter

The PRESIDING OFFICER. On this vote, the yeas are 98, the nays are 0. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The Senator from Arizona.

Mr. MCCAIN. Thank you, Madam President. It is my understanding we are now in postcloture debate time; is that correct?

The PRESIDING OFFICER. The Senator is correct.

THE ANDEAN TRADE PREFERENCE ACT

Mr. MCCAIN. Madam President, I want to take a few minutes to talk about the failure of the Congress to enact the Andean Trade Preference Act, the importance of this issue in our hemisphere, and the absolute criticality of us acting before we go out for the August recess on the Andean Trade Preference Act.

Madam President, America is facing a crisis in its relations with our Latin

neighbors. Political instability and a fierce backlash against free market reforms are hobbling friendly democratic governments across the region, with consequences that clearly endanger the democratic and free market tide that has swept the continent in the past decade. Yet partisan wrangling over other issues has prevented Congress from renewing the Andean Trade Preference Act, even though both Houses have approved it. It is time to stop the politics and send the President an Andean trade bill, immediately.

Madam President, wrongly, the Andean Trade Preference Act has been linked to the larger issues of trade adjustment authority and other trade issues. I do not know why that is the case.

Mr. REID. Parliamentary inquiry, Madam President.

Mr. McCAIN. Madam President, I have the floor.

Mr. REID. Would my friend yield——

The PRESIDING OFFICER. The Senator declines the inquiry.

Mr. REID. Will my friend yield for a question then?

Mr. McCAIN. What is that?

Mr. REID. The question I have——

Mr. McCAIN. Do I have the floor, Madam President?

The PRESIDING OFFICER. The Senator from Arizona has the floor and may decline to yield for an inquiry.

Mr. McCAIN. I decline to yield.

I remind my colleagues that only a few years ago we in Washington were congratulating ourselves on living in a hemisphere that, with the exceptions of Cuba and Haiti, had embraced freedom and free markets after long years of military rule and statist economic policies.

Although there remained deep poverty, aggressive free market reforms were seen as the best way to improve the welfare of people across Latin America.

Mr. REID. Madam President, regular order.

Mr. McCAIN. Expanded trade policies, including the Andean Trade Preference Act and America's vision of a hemispheric trade area——

Mr. REID. I ask the Chair to call for the regular order.

Mr. McCAIN. Lent momentum to the Latin reform agenda, which produced real gains in people's daily lives and provided a critical base for the consolidation of democratic institutions and free markets.

The PRESIDING OFFICER. The Senator from Nevada is calling for the regular order in debate. Under cloture, debate must be germane.

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

The PRESIDING OFFICER. The Senator from Arizona should confine his remarks to the question before the body.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. REID. Madam President, I ask unanimous consent the Senator from Arizona be extended up to 15 minutes to speak on any subject he desires.

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

The Senator from Arizona.

Mr. McCAIN. I thank my colleague from Nevada. I intend to be brief.

I do believe this is an important issue. The other body is going out at the end of this week—in just 3 days. Unless we act on the Andean Trade Preference Act, it will have significant consequences, both socio and economic, in our hemisphere.

I thank my colleague from Nevada for allowing me this time.

Today, as we look south, the picture is altogether more bleak, and deeply troubling in the eyes of both Americans and the people of Latin America. Free market reforms are undergoing a crisis of legitimacy as a result of political mismanagement, corruption and cronyism, and because many of the easy reforms have already been made. It is fair to place part of the blame on a failure of national leadership in parts of Latin America. But almost every government in the hemisphere has been democratically elected, and will be held democratically accountable. What is more worrisome, and within our power to change, is Washington's hands-off policy toward some of the very partners we touted only a few years ago as a symbol of Latin America's success, their policy accomplishments made possible with the support of the United States.

Today, as our friends in the Andean region grapple with the problems of poverty, terrorism, drug trafficking, and the forces of political extremism, leaders in Washington squabble over unrelated issues that hold up speedy passage of the Andean Trade Preference Expansion Act. This trade measure is not controversial. Were it to face an up-or-down vote, it would probably garner 90 votes of support. But a political decision made with no consideration of the plight of our Andean partners—to bundle the noncontroversial ATPA into a trade package including trade promotion authority and trade adjustment assistance—is having stark consequences in Latin America at exactly the same time as the backlash against reformist economic Ecuador, Colombia, and Peru.

In Bolivia, the president of the country's coca-growers' association, an avid opponent of free market policies, won enough votes in the next presidential election to force a runoff against a more mainstream candidate, in defiance of all pollsters' predictions. In Colombia, a new President with a historic mandate for change needs our support against the narcoterrorists that threaten his government; strangely, we provide the aid his government needs But not the trade that is so important to his people, and that costs America nothing. In Ecuador, political instability grows as the spillover from Colombia's war and the depth of poverty threaten state institutions. In Peru, a democratically elected president who, as an opposition leader, stood down a dictatorship has been forced by popular pressure to fire the very reformers within his cabinet who hold the key to his country's development. America is not to blame for every setback on the road to free market, democratic governance in Latin America. But we are to blame when we abdicate our responsibility to advance our interests and support our friends with the trade preferences that they believe to be critical to their economic future.

Madam President, on Friday the New York Times ran a front-page story highlighting the growing political instability that increasingly haunts Latin American leaders who understand that their country's development hinges on a reform agenda supported by the United States. The article traces a political rift over free-market reforms that runs straight down the continent, from Venezuela to Argentina, and whose consequences threaten to upend the extraordinary progress Latin American reformers have made since they ended the era of military dictatorship and statist economics. I ask unanimous consent the Times article be printed in the RECORD, as well as an opinion piece by John Walters, our drug czar, entitled ''Just Say Yes to ATPA.''

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

[From the New York Times, July 19, 2002]

STILL POOR, LATIN AMERICANS PROTEST PUSH FOR OPEN MARKETS

(By Juan Forero)

The protest that shook this colonial city last month was very much like others in Latin America recently. There were Marxists shouting 60's-era slogans, and hard-bitten unionists. But there was also Fanny Puntaca, 64, a shopkeeper and grandmother of six. Though she had never before protested, Ms. Puntaca said, she could not bear to see a Belgian company buy what she called ''our wealth''—the region's two state-owned electrical generators. So armed with a metal pot to bang, she joined neighbors in a demonstration so unyielding that it forced President Alejandro Toledo to declare a state of emergency here, suspend the $167 million sale and eventually shake up his cabinet. ''I had to fight,'' Ms. Puntaca said proudly. ''The government was going to sell our companies and enrich another country. This was my voice, my protest.''

Across Latin America, millions of others are also letting their voices be heard. A popular and political ground swell is building from the Andes to Argentina against the decade-old experiment with free-market capitalism. The reforms that have shrunk the state and opened markets to foreign competition, many believe, have enriched corrupt officials and faceless multinationals, and failed to better their lives.

Sometimes-violent protests in recent weeks have detailed the sale of state-owned companies worth hundreds of millions of dollars. The unrest has made potential investors jittery,and whipsawed governments already weakened by recession. The backlash

has given rise to leftist politicians who have combined pocketbook issues and economic nationalism to explosive effect. Today the market reforms ushered in by American-trained economists after the global collapse of Communism are facing their greatest challenge in the upheavals sweeping the region. ''The most worrying reading is that perhaps we have come to the end of an era,'' said Rafael de la Fuente, chief Latin American economist for BNP Paribas in New York. ''That we are closing the door on what was an unsuccessful attempt to orthodox economic reforms at the end of the 90's.''

For at time the policies worked, and many economists and politicians say they still do. The reforms increased competition and fueled growth. Stratospheric inflation rates fell back to earth. Bloated bureaucracies were replaced with efficient companies that created jobs. The formula helped give Chile the most robust economy in Latin America. In Mexico exports quintupled in a dozen years. In Bolivia, poverty fell from 86 percent of the population in the 70's to 58.6 percent today.

Still, the broad prosperity that was promised remains a dream for many Latin Americans. Today those same reforms are equated with unemployment and layoffs from both public and private companies, as well as recessions that have hamstrung economies. ''We privatized and we do not have less poverty, less unemployment,'' said Juan Manuel Guillen, the mayor of Arequipa and a leader in the antiprivatization movement here. ''On the contrary. We have more poverty and unemployment. We are not debating theoretically here. We are looking at reality.'' Indeed, 44 percent of Latin Americans still live in poverty, and the number of unemployed workers has more than doubled in a decade. Tens of millions of others—in some countries up to 70 percent of all workers—toil in the region's vast informal economy, as street vendors, for instance, barely making ends meet. Economic growth has been essentially flat for the last five years.

Popular perceptions—revealed in street protests, opinion polls and ballot boxes—are clearly shifting against the economic prescriptions for open markets, less government and tighter budgets that American officials and international financial institutions have preferred. A regional survey supported by the Inter-American Development Bank found last year that 63 percent of respondents across 17 countries in the region said that privatization had not been beneficial. ''It's an emotional populist attitude people have,'' said Larry Birns, director of the Council on Hemispheric Affairs, a Washington-based policy analysis group. ''It may not be reasoned, but it's real, and it's explosive and it's not going to be easily contained by coming up with arguments that free trade is the wave of the future.''

In Brazil, South America's largest country and its economic engine, revulsion with American-led market orthodoxy has fueled strong support for the labor leader Luiz Inacio da Silva, known as Lula, who is now the front-runner in the October presidential election, to the chagrin of worried financial markets. In Paraguay protests last month blocked the $400 million sale of the state phone company by President Luis Gonzalez Macchi, whose government has been dogged by a dismal economy and corruption charges. This week deadly demonstrations led the president to declare a state of emergency. In Bolivia the country's political landscape was redrawn this month when Evo Morales, an indigenous leader who promised to nationalize industries, finished second among 11 candidates for president. This spring, the sale of 17 electricity distributors in Ecuador fell through in the face of political resistance, a blow to a country that has adopted the dollar as its currency and is heavily dependent on foreign investment. Meanwhile, in Venezuela, President Hugo Chavez's left-leaning government has been intent on scaling back reforms, exacerbating the divisions that led to his brief ouster in April. The backlash in many of these countries gathered momentum with the economic meltdown in Argentina, which forced a change of presidents after widespread rioting in December.

While the causes are multifold, many Argentines blame the debacle on a combination of corrupt politicians and the government's adherence to economic prescriptions from abroad that have left the country with $141 billion in public debt, the banking system in ruins and one in five people unemployed. Argentines now look for possible salvation from Elisa Carrio, a corruption fighter in Congress who has been scathing in her criticism of the International Monetary Fund. She is now the early favorite in the upcoming presidential election. ''This has created the backlash because now there's a debate all around Latin America,'' said Pedro Pablo Kuczynski, Peru's former economy minister and a favorite of Wall Street who resigned under pressure last week. ''Everywhere you look people say, 'The guys followed the model and they're in the soup. So obviously the model does not work.' ''

The backlash comes as foreign direct investment in Latin America has fallen steeply, dropping from $105 billion in 1999 to $80 billion in 2001. A big reason for the decline is that many big-ticket sales of state companies to private investors have already been completed. But economists like Mr. Kuczynski, who say market reforms must continue for capital-poor Latin economies to progress, are worried. Bolivia, for instance, was an early convert along with Chile in the 1990's to what is called the neoliberal model. It reined in loose monetary policies and shrank the government by unloading dozens of state-owned companies to private international investors. The results, particularly in taming inflation and reducing poverty, were impressive.

But in one of Latin America's poorest nations, it is hard for Bolivian officials to talk about progress to the wide portion of the population that continues to live in grinding poverty and feels that entitlements the government once provided in the form of subsidized rates for water and electricity have been stripped away. The better services that have accompanied the sale of state enterprises have left many indifferent, particularly in impoverished areas where residents have invested their own money and sweat to string up electrical lines or put in water pipes and drainage. ''Clearly if you're poor and have no water, sewage and live in a rural area, having three long distance telephone companies when you have no phone lines doesn't make a bean of difference,'' Bolivia's president, Jorge Quiroga, acknowledged in an interview.

In Peru the resistance to privatization and market reforms is especially pronounced and, for its government, puzzling. Unlike most of Latin America, the economy here has steadily grown since Mr. Toledo's election in June 2001 as the government has continued sales of assets begun during the decade-long rule of Alberto K. Fujimori. Government officials say the program has been successful. Phone installation, which used to take years and cost $1,500 or more, now costs $50 and takes a day or two. Electrical service, once shoddy and limited, has spread across the country. The privatization of mines, which is nearly complete, has improved efficiency and output so much that employment in that sector and related activities has increased to more than 60,000 today from 42,000 in 1993. But government belt-tightening also led to widespread layoffs. Mr. Toledo's government has been hit hard by protests and popular discontent, much of it fueled by its inability to alleviate poverty. Many have blamed the privatizations, seeing them as a vestige of the corruption-riddled presidency of Mr. Fujimiri, who is now in exile in Japan.

Here in Arequipa, where the economy was already limping, when word came that the government was about to sell the two state-owned electric companies, Egasa and Egesur, people recalled that Mr. Toledo had campaigned on a pledge never to sell the companies to private owners. It did not matter that the government promised Arequipa half the sale price, and that the investor, the Brussels-based Tractebel S.A., would invest tens of millions of dollars more to improve services. The promises were not believed. Soon the workers federation, neighborhood organizations and university students organized protests, suspecting that higher electricity costs and layoffs were on the way. ''Thanks to our fight, our perseverance, the government backed down,'' Alejandro Pacheco, a leader in the protests here, told a roomful of supporters this week. ''Now we need to do this in the rest of Peru.''

[From the Hill, Mar. 20, 2002]

JUST SAY YES TO ATPA

(By John Walters)

It is rare when an easy-to-understand, bipartisan foreign policy initiative that is embraced by all the countries involved and lauded by the Federal Government for its effectiveness is developed and passed into law. It is rarer still when such an initiative is allowed to simply slip away due to legislative indifference or neglect. Yet that could be the fate of one of our most effective South American policy initiatives.

On December 4, 2001 the Andean Trade Preferences Act (ATPA) expired. Although the House has voted to extend ATPA, the Senate has not yet acted. There is a temporary duty deferral in place, but if it is allowed to expire without being reauthorized, thousands of people in the Andean region will suffer—and we will have needlessly lost a valuable tool in our ongoing anti-drug efforts.

ATPA simultaneously furthers two important policy goals: stimulating legitimate economic growth while destabilizing the drug trade. To make progress in the fight against illegal drug production we must provide alternative and expanded job opportunities to support economic growth and democratic institutions in the Andean region. For the past ten years, ATPA has been a powerful trade tool in the fight against illicit drug production and trafficking by successfully helping our Andean allies (Colombia, Bolivia, Ecuador and Peru) develop legitimate commercial exports as alternatives to the illegal drug industry—an industry that supplies Colombia's leading terrorist group, the FARC, with an estimated $300 million a year.

ATPA's benefits to the region's development are indisputable. In 1991, the last full year before ATPA was implemented, the United States imported $12.7 billion in total commodities from the Andean nations. In 2000, the U.S. imported $28.5 billion in total commodities from these nations, a 125 percent increase. One of the great successes tied to ATPA is the Andean region's development of a robust flower industry—an industry that is especially important because of the large number of economically distressed people it employs. There are often as many as ten employees per hectare of flower-producing land involved in cultivating the flowers for export. ATPA has also generated significant

job opportunities in other industries, such as fruits and vegetables, jewelry, and electronics. These new jobs draw workers who otherwise might have been drawn to drug-producing narco-terrorist groups for employment.

Our economy has realized direct benefits from this program as well. Under ATPA, U.S. exports to the Andean region have soared, growing by nearly 65 percent to a total of $6.3 billion in 1999.

Now that the House has voted, the Senate should act quickly. The passage of ATPA reiterates our commitment to helping the Andean region develop economic alternatives to drug crop production. We know that drug production in this region is tied to our country's demand for these poisonous substances. But as we work to cut the demand for drugs in the United States, we must support our southern neighbors in their efforts to build their economies and promote democracy.

Last week the House also passed H. Res. 358, which expressed the support of Congress for the democratically elected government of Colombia and its efforts to counter terrorism. I applaud their actions and wholeheartedly agree that we must actively support our neighbors in Colombia and the Andean region. ATPA is a direct and tangible way for the United States to demonstrate this support.

Letting ATPA lapse would not just be a missed economic opportunity; it would be a threat to regional stability. Our goal is to help these countries create an economic and social environment in which legitimate industry, rather than narcotics cultivation and trafficking, is the norm. We have the opportunity to help our neighbors build and expand their economies and democratic institutions. Renewing ATPA is a top regional priority and a top anti-drug priority. I urge the Senate to act quickly.

Mr. McCAIN. Renewing the Andean Trade bill is the most immediate action we could take to remind our partners in the region of our commitment to reform and free markets. Unfortunately, Congress' inaction on ATPA is rightly viewed by our friends in the region as a symbol of America's unfortunate disregard for their plight in this difficult time. It is time we paid attention. I urge immediate action from the conferees to the trade bill to separate out and pass ATPA. This issue is critical to American leadership and economic growth in the Andean region, as its leaders will tell anyone who listens. America has too much at stake to turn our back on our Andean partners, who confront threats from terrorists, drugs, and poverty that threaten their governments and their people's future. Our friends in Peru, Colombia, Ecuador, and Bolivia cannot wait much longer.

Madam President, I do not want to hold up the progress of the Senate on this important prescription drug bill. But I think it is generally regarded as factual that we will probably not provide trade promotion authority or trade adjustment authority to the President of the United States before the other body goes out at the end of this week. That would be a terrible mistake.

I will come to the floor on Wednesday or Thursday and ask consent that we move, take up, and pass the Andean Trade Preference Act. I believe that is probably the only way we will get this done before the Congress goes out for the August recess.

We have a serious situation in our hemisphere from Mexico to the Tierra del Fuego. Argentina, once the fifth largest economy in the world, is facing an economic crisis of incredible proportions. Venezuela is in a chaotic socioeconomic situation. Peru, Bolivia, and Ecuador are all in various stages of extreme difficulties. Colombia is in the midst of a civil war which at least, if they are not losing, they are probably not winning either.

This is a modest proposal. I have been visited by the leaders of these countries, and they say the following: We do not want aid, but we do want trade.

This is a trade agreement that was made by the first Bush administration. It should clearly be passed. It would get 90 votes in this body if it were up by itself. We should address it, move it forward, and do these nations a small favor. We could pay a very heavy penalty in terms of socioeconomic difficulties in our own hemisphere if we do not act quickly on this issue.

Mr. NICKLES. Will the Senator yield?

Mr. McCAIN. I am glad to yield.

Mr. NICKLES. Madam President, I wish to be associated with my friend and colleague from Arizona and thank him for his tenacity in raising this issue. The Senate is being very irresponsible in not passing the Andean Trade Preference Act.

I thank the Senator from Arizona. I will be happy to join him in making that unanimous consent request and ask that our colleagues join us in helping these four allies. I appreciate our friend from Arizona bringing the matter to the attention of the Senate.

Mr. McCAIN. I thank my friend from Oklahoma. I hope we won't have to do it. We owe it to these very great allies of ours in a very difficult time to act before we go out. The other body goes out at the end of this week.

I thank my colleague from Nevada for his indulgence. I thank my colleagues for their indulgence, and I yield the remainder of my time.

Mr. KENNEDY. Madam President, I commend our Senate leadership for moving so promptly to the consideration of the nomination of Dr. Richard Carmona to be Surgeon General of the United States.

Today, the U.S. Senate is in the midst of an historic health care debate. So it is appropriate that we consider at this time a nominee to this position of such crucial importance to the public health.

The Surgeon General is our Nation's doctor. He is our country's principal official on health care and health policy issues. He is the leader of the Public Health Service and the Service's Commissioned Corps, one of the seven uniformed services of the United States.

In fact, almost exactly 204 years ago, the Public Health Service was created on July 16, 1798. President John Adams signed a law creating what was then called the Merchant Hospital Service for the care of sick or injured merchant seamen. Boston was the site of the first such facility, but the Service soon extended through the Great Lakes, the Gulf of Mexico and to the Pacific.

As our country grew in the 19th century, so did the Service. It was Service physicians who inspected the immigrants who arrived at Ellis Island. Even then, the Surgeon General was at the head of national disease prevention campaigns against cholera, tuberculosis, and smallpox.

When the Service was renamed the Public Health Service in 1912, it was the Surgeon General who was at the forefront in combating the great influenza epidemic of 1918. At a time when modern medicine was in its infancy, this epidemic took more than 600,000 lives, the worst epidemic in American history.

I raise this history to make a simple point. The Surgeon General has been, and continues to be, one of the most important job in our National Government. Our Nation has faced extraordinary public health threats in the past, and today, the challenges are just as grave.

Once, the threat was cholera. Today, it is AIDS. Smallpox threatened our cities in the 19th century. Today, it is bioterrorism. It will be the Surgeon General who will continue to promote and protect the health of all Americans.

Over the years, our country has been blessed with courageous and outspoken Surgeons General. They did not allow politics to blunt their work to alert the public to health threats. By speaking the truth about public health, they enabled millions of our fellow citizens to live longer, fuller lives.

We remember Dr. David Satcher's work on mental health and against the tobacco industry, and Dr. C. Everett Koop's historic leadership on AIDS. There is Dr. Julius Richmond's pioneering work on Head Start and, of course, Dr. Luther Terry's landmark report on smoking.

These are big shoes to fill. But today, our country needs another such champion of public health. We need a strong and independent Surgeon General who will put public health first, and leave politics and ideology well behind.

In this new century of the life sciences, the Surgeon General must help us take the breakthroughs at the lab bench and ensure they improve the lives of all Americans. He must lead our country in preventing tobacco use by our children and youth, expanding access to health care, ending disparities in health care among our nation's communities, improving childhood immunization rates, preparing for the threat of bioterrorism, and preventing the spread of the AIDS epidemic.

These are heavy responsibilities, and they demand an individual of extraordinary expertise and experience, who has demonstrated a strong commitment to improving the public health.

Dr. Carmona comes to us with an impressive background. He has taken on many important responsibilities. He is a trauma surgeon, a decorated police officer, a former health care administrator, and a former Green Beret. He is a father of four children. In addition to his heroic service in the Army and as a law enforcement officer, Dr. Carmona made his professional mark in the fields of trauma care and bioterrorism preparedness.

The Committee carefully considered Dr. Carmona's nomination. In both his oral testimony and in response to written questions from the Committee, he satisfactorily addressed all the tough questions that would be expected for someone nominated to this important position.

Dr. Carmona impressed us with his commitment to preventive health, and made particularly clear his intention to aggressively oppose tobacco use by our children and youth and to combat the HIV/AIDS epidemic.

Dr. Carmona is a trauma surgeon and nurse by training. But he has assured us that he will also listen to, and learn from, the greater public health community. There is an army of health professionals and educators in our country eager to help him do his job. Theirs is an army waiting to be led in the campaign for better health.

I would close by noting that Dr. Carmona is endorsed by the National Safe Kids Campaign, the National Alliance for the Mentally Ill, the American Medical Association, the American Dental Association, and the National Hispanic Medical Association.

For these reasons, I support Dr. Carmona to be Surgeon General of the United States, and encourage my colleagues to vote in favor of his nomination.

Mr. KYL. Madam President, I rise in support of the nomination of Dr. Richard Carmona to be Surgeon General. He is clearly the person we need at this critical time for this position.

Dr. Carmona is exceptionally qualified for this important position. The President has announced that the new Surgeon General will address a number of important health issues, among them, helping America prepare to respond to major public health emergencies, such as bioterrorism.

Dr. Carmona's education and extensive career in public service have prepared him to lead ably on all health issues facing Americans today. He received his medical education from the University of California at San Francisco and a Masters of Public Health at the University of Arizona. He is currently a Clinical Professor of Surgery, Public Health, and Family and Community Medicine at the University of Arizona, as well as Chairman of the State of Arizona Southern Regional Emergency Medical System. Dr. Carmona has published numerous scholarly articles on such varied subjects as emergency care, trauma care and responses to terrorism.

He is also currently a Deputy Sheriff in the Pima County Sheriff's Department SWAT team and the National Association of Police Organizations named him the Nation's Top Cop in 2000.

Dr. Carmona has also been an administrator of a community hospital. Additionally, he was a Special Forces Medic and served in Vietnam, where he received the Bronze Star, two Purple Hearts, and a Combat Medical Badge.

As you can tell, Dr. Carmona not only has the medical experience to be Surgeon General, but also other expertise that will be necessary for the Surgeon General position at this crucial time. Unfortunately, one of the key areas Dr. Carmona will be involved in is bioterrorism. He will provide valuable leadership in helping to prepare the United States for possible future attacks. It is very important for America to be able to turn to trusted leaders if such a terrible event should occur and Dr. Carmona has the experience and skills necessary to respond to such events.

I have no doubt that Dr. Carmona will be an excellent Surgeon General and help our nation deal not only with bioterrorism, but other pressing issues such as alcohol and drug abuse, and overcrowding in hospital emergency rooms. Dr. Carmona will also be able to bring guidance in these other critical areas. His experience in trauma care will help guide him in dealing with the multitude of problems that are affecting hospital emergency rooms. I urge every Senator to support his confirmation.

Mr. DOMENICI. Madam President, I rise today in support of Dr. Richard Carmona, the President's nominee to be the Surgeon General of the United States.

The job of Surgeon General is a challenging and evolving one. The traditional requirements of disease prevention and health promotion continue to be vitally important. We must have a Surgeon General who is qualified and prepared to address these issues.

However, in this post-September 11 world, being the chief Public Health Officer also involves addressing the very real threat of bioterrorism. Therefore, it is imperative that our Surgeon General have the background and ability to deal with this new threat.

Fortunately, the President selected a candidate for this position who is uniquely qualified to address all of these requirements of the job. I won't attempt to recite all of his numerous accomplishments and qualifications, but I would like to briefly touch on a few, simply to illustrate why I believe this is the right man at the right time for this job.

Dr. Carmona's educational background, with a medical degree and a Masters in Public Health, provides a solid foundation. It is his experience, however, that solidifies his qualification for this position.

Dr. Carmona has a tremendous amount of hands-on experience as a trauma surgeon, professor, and medical director of the Arizona Department of Public Safety Air Rescue Unit. His experience as a professor at the University of Arizona has given him the opportunity to teach about public health, surgery, and family and community medicine. As a result, he has spent a great deal of time dealing with those more traditional aspects of the job.

As for the more recent responsibilities that come with being named Surgeon General, Dr. Carmona has been working on the issue of bioterrorism since the mid-1990's. He has worked to develop seminars on bioterrorism for medical students. Furthermore, he recognizes the importance of coordinating the schools of public health with other local agencies to prevent and respond to potential threats.

While I could spend much more time touting the qualifications of Dr. Carmona, I will instead end by saying I am thankful that this remarkable American has answered the President's call to serve.

As a New Mexican, I am pleased to extend a neighborly welcome to someone else from the great Southwest. As a U.S. Senator, I am proud to cast my vote to confirm him as the Surgeon General of the United States.

Mr. McCAIN. Madam President, I rise in strong support of the nomination of Dr. Richard Carmona to be Surgeon General of the United States.

Dr. Carmona's inspiring story is the living embodiment of the American dream. A high school dropout, Richard Carmona first served our nation with the Special Forces in Vietnam, where he became a decorated Green Beret. Upon his return, he obtained his high school equivalency and became the first member of his family to graduate from college. He went on to become a nurse and later enrolled in medical school, specializing in trauma surgery.

When he graduated, Dr. Carmona relocated in Tucson, Arizona, and established southern Arizona's first trauma center. Later he continued his education, obtaining a master's degree in public health from the University of Arizona, where he now serves as a member of the faculty. As a professor, Dr. Carmona shares his knowledge and experience in clinical surgery, public health and community medicine with our nation's future doctors.

Always in pursuit of more challenges, in 1986, Dr. Carmona joined the Pima County Sheriff's Department as a surgeon and a part-time SWAT team leader. Today, Dr. Carmona is a celebrated Deputy Sheriff. In fact, he has received the honor of ''Top Cop'' from the National Association of Police Organizations, and is one of the most decorated policemen in Arizona.

In addition to his service, Dr. Carmona is a motivating community leader. He has stressed the importance of local preparedness, and warned of the dangers of a biological assault long before September 11. After the terrorist attacks, Dr. Carmona recognized the

psychological impact of the events on Tucson residents, and coordinated a team of mental health experts to assist them in dealing with the associated trauma. Due to his bioterrorism experience, he was also put in charge of implementing southern Arizona's bioterror and emergency preparedness plans.

Although Arizona will surely miss this phenomenal man, and I know he will miss Arizona, in Richard Carmona, our nation will gain an invaluable leader. With his military and law enforcement background, coupled with his demonstrated commitment to public health and community preparedness, Dr. Carmona is extraordinarily, perhaps uniquely qualified to address the needs of our nation as Surgeon General.

I urge all of my colleagues to favorably support this outstanding nominee.

The PRESIDING OFFICER. Is there further debate on the nomination? If not, without objection, the nomination is confirmed.

The nomination was confirmed.

Mr. KENNEDY. I ask unanimous consent that the motion to reconsider the vote by which the nomination was confirmed be laid upon the table, and the President be immediately notified of the action.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

The Senator from Oklahoma.

PRESCRIPTION DRUGS

Mr. NICKLES. Madam President, how much time remains on both sides on this issue?

The PRESIDING OFFICER. Forty-six minutes.

Mr. NICKLES. Does that include 46 minutes prior to the lunch break? Is it 23 minutes a side?

The PRESIDING OFFICER. It is evenly divided.

A PRESCRIPTION DRUG BENEFIT

Mr. NICKLES. I will be brief and yield myself 5 minutes.

Madam President, I hope this week the Senate will be able to pass a positive prescription drug proposal. It may be mission impossible. I wish that was not the case.

If we would have done it the ordinary way, the regular way, the way we have handled almost all Medicare bills in the last 20-some years, every single one except for one, it would have gone through the Finance Committee and been reported out with bipartisan support. Frankly, that bill would have been the basis, the foundation for reporting a bill that would eventually become law.

Unfortunately, we were not allowed to do that in this case. This particular bill happens to be probably the most important and the most expensive expansion in Medicare history, more expensive than any other changes and amendments we have made to Medicare since its creation in 1965. Yet we haven't had a hearing in committee on this proposal or the other proposals. We haven't had a markup. We had some bipartisan meetings, but we didn't have a chance to have a bipartisan markup. Maybe it is because it was likely that the product to be reported wouldn't have been what the majority leader wanted. It would have been a majority of the members of the Finance Committee.

I am very troubled by what we see in the Senate time and time again. If we have a committee that may not report something that the majority leader wants, we don't let the committee work. That happened earlier this year when we had a very extensive, expensive energy bill. Twenty-one members of the Energy Committee didn't get to offer an amendment. Now we have 19 members of the Finance Committee who have not reviewed this product or didn't have a markup on this product.

We are going to be voting at 2:45 on a bill that was introduced by Senator GRAHAM and Senator KENNEDY and Senator DASCHLE and others. It is 107 pages. The committee has not reviewed this. We didn't have a hearing on it.

I guess we now have somewhat of a scoring by the Congressional Budget Office, and they say it is $594 billion over the next 10 years. We find out it doesn't go 10 years. This is a benefit that is started but stopped. It doesn't start until the year 2005, but it stops in the year 2010. So we are going to pay part of your prescription drugs, but we are going to stop after a few years.

I find that to be very hypothetical at best. In fact, it wouldn't happen. Once you start an entitlement program, you never stop it, especially one that would be as popular as this.

But what are we starting? Some of us were estimating that the Democrat proposal, as originally outlined—I say "the Democrat proposal"; Senator GRAHAM and some Democrats are supporting other proposals, but the Graham-Kennedy-Daschle proposal was going to be a lot more expensive than $600 billion.

Keep in mind the budget we passed with bipartisan support last year called for $300 billion. Keep in mind the President requested $190 billion. Yet now we find one at 600. I thought it would be more expensive. The reason why it is not is because they decided to ration prescription drugs.

If our colleagues would look on page 62, it says:

The eligible entity [health plan] shall . . . include . . . at least 1 but no more than 2 brand name covered outpatient drugs from each therapeutic class as a preferred brand name drug in the formulary.

In other words, you can come up with one, maybe two drugs in each therapeutic class. For arthritis there must be a dozen drugs. For blood pressure there must be at least eight or nine or ten brand name drugs. Only one or two are going to get payment. The rest of it, you are on your own. If you are not the Government-chosen drug, I am sorry patients, you don't get any help from the Federal Government. You don't get any help from this new drug benefit. You are out of luck. You are on your own.

The beneficiary is responsible for the negotiated price of the nonformulary drug:

In the case of a covered outpatient drug that is dispensed to an eligible beneficiary, that is not included in the formulary established by the eligible entity for the plan, the beneficiary shall be responsible for the negotiated price for the drug.

In other words, beneficiary, you pay 100 percent. You choose or take the Government-selected drug, which would be a very small percent. Maybe that would cover about 10 percent of eligible drugs in the entire population. If you don't get that drug, you are out of luck. You are responsible for 100 percent.

I could go on and on. We are limited on time. I have several speakers on our side who wish to address this. This is one of many serious mistakes that are in this bill. It is one of the mistakes we made by following the process of not marking it up in committee. I am sure if it had been discussed in the Finance Committee, we would have modified it. Unfortunately, we didn't have that chance.

If I thought this were going to pass, we would be talking about it a lot more because it has several fatal flaws that would be very injurious to America's health. It would mean rationing of prescription drugs; certainly something that we don't want to do.

I urge my colleagues to vote no on the Graham-Daschle-Kennedy amendment at 2:45.

I yield the floor.

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001—Resumed

The PRESIDING OFFICER. The clerk will report the bill.

The assistant legislative clerk read as follows:

A bill (S. 812) to amend the Federal Food, Drug and Cosmetic Act to provide greater access to affordable pharmaceuticals.

Pending:

Reid (for Dorgan) Amendment No. 4299, to permit commercial importation of prescription drugs from Canada.

Graham Amendment No. 4309, to amend title XVIII of the Social Security Act to provide coverage of outpatient prescription drugs under the medicare program.

Hatch (for Grassley) Amendment No. 4310, to amend title XVIII of the Social Security

Act to provide for a medicare voluntary prescription drug delivery program under the Medicare program, and to modernize the Medicare program.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Madam President, I point out to my friend from Oklahoma that there are no provisions in his bill that are going to require the insurance companies to provide more than two drugs in any therapeutic group in a formulary. There is none. What is beyond that is what the cost will be.

In our bill, if the doctor recommends that a patient have a particular brand name drug that is not on the formulary, the patient can have it. We write in our bill how much that patient will pay, which is $40. But there is no such provision in the bill the Senator is talking about.

The Senator cannot show in his bill what the premiums are, what the cost is for premiums, deductibles, or the copay. It is going to be what the insurance company wants to do. It is a blank check for the insurance companies. There is no provision in there that indicates what the costs will be. That is the big difference.

Under the Graham proposal, which was spelled out in great detail last evening by Senator GRAHAM and others, beneficiaries will be able to get that off-formulary drug, and the price will be $40.

On page 29:

Treatment of medically necessary nonformulary drugs will be whatever is medically necessary.

Madam President, I withhold the remainder of my time.

Mr. NICKLES. Madam President, I believe under the unanimous consent request, we had Senator GREGG managing the time. Senator GRASSLEY will manage the remainder of the time.

Mr. KENNEDY. I yield 15 minutes to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Madam President, I was listening to the comments made by my friend from Oklahoma. It is too bad he wasn't here in 1965 because he could have joined the chorus of voices on that side of the aisle that argued against Medicare. He would have fit right in. If you read the debate, it is almost like listening to it again. So it is too bad my friend wasn't here in 1965. He could have led the charge against Medicare.

Mr. NICKLES. Will the Senator yield?

Mr. HARKIN. I only have 10 minutes.

Mr. NICKLES. I was wondering why you were guessing what I might have done in 1965.

Mr. HARKIN. I am just taking it from your approach here because you want to basically—what the Senator is saying is he wants to turn this over to the insurance companies. A lot of people wanted to do that in 1965, to turn Medicare over to the insurance companies.

Mr. NICKLES. If the Senator will yield further——

Mr. HARKIN. I will yield when I get done.

Mr. NICKLES. I would appreciate it, if my colleague is questioning my motives——

Mr. HARKIN. The point is, the Senator from Oklahoma and other people on that side are saying turn it over to the insurance companies. He talks about rationing, but what the Republicans want to do is give private insurers a free ride, charge seniors whatever they want, and then they will be able to tell them what drugs they take. That is what the insurance companies do now anyway.

Look at the debate on Medicare. Turn it over to the insurance companies. You can just go back to 1935 and look at the debate on Social Security. We have heard the same echoes all the time down through the years that we cannot do this. Well, it is time we do it. It is time we make good on the promise to 44 million Americans who rely on Medicare.

The choice is very clear: You either do it under Medicare, which is proven and has a proven track record; it cuts out all of the middlemen in the middle ground and gets the drugs right to seniors, or you can go in the other direction and say we will do it through the insurance companies, which is exactly what the bill on the Republican side proposes to do.

I know a little bit about this personally. My father was quite old when I was born. When I was in high school, my father was already in his late sixties, and he had worked just enough quarters to qualify for Social Security. He worked most of his life in coal mines, but during the war and right after the war he worked enough just to qualify for Social Security. But he would get sick every winter. We didn't have drug coverage. He would go to the hospital, and thank God for the Sisters of Mercy, who would take care of him and send him back home again. I happened to be in the military in 1965 when Medicare passed. I came home on leave and saw my father, and he had his Medicare card. Head held high, he could go in and be taken care of without relying on charity. But the one thing that was missing was prescription drugs.

My father is long gone, but for others since that time, the one thing that is missing is prescription drugs. I have never been able to understand why it is that if you get sick and you go to the hospital, Medicare pays for all your drugs, but if you want to stay healthy, stay at home, Medicare won't pay for your drugs. That has never made sense to me. It seems to me you would want to get the drugs to the elderly to keep them as healthy as possible, to keep them at home, so they don't go to the hospital.

My friend from Oklahoma mentioned rationing. We hear rationing, rationing. I say to my friend, go to Iowa right now and talk to the low-income elderly in Iowa. Here is their rationing. They cannot pay for their prescription drugs.

Mr. NICKLES. Will the Senator yield?

Mr. HARKIN. They cut them in half, or they decide whether or not to pay their heating bills in the winter or take their drugs; and when they have to cut back on their drugs, they get sicker and sicker, and they go to the hospital, and of course then Medicare pays for all their drugs.

Mr. NICKLES. Will the Senator yield?

Mr. HARKIN. I said I will yield when I get through with my statement.

So the Graham-Miller proposal is the one that does it through Medicare. It is the one on which seniors can rely, and it is rock solid.

This is the proposal the Republicans have right here on this chart.

For example, they say, under their plan, a senior with $1,000 in drug care costs still pays $913. That is 91 percent that they still have to pay. And 18 percent of seniors have drug costs of about $250. Under this, they would pay everything. Eighteen percent have drug costs of $1,000. Under the Republican proposal, they would pay 91 percent, $913. Seventeen percent of seniors have $2,000 in drug costs a year. Under the Republican proposal, they would pay $1,413, or 71 percent. Twenty-three percent of seniors—about one out of four—have $4,000 a year in drug costs. Under the Republican bill, they would pay $2,688 out of pocket, or 67 percent. If they have $5,000 in drug costs, they are going to pay 74 percent out of pocket. What kind of insurance is that, where you are paying 91 percent, 71 percent, 67 percent, or 74 percent out of your own pocket? Would you buy insurance like that?

Mr. NICKLES. Will the Senator yield?

Mr. HARKIN. Would you buy any kind of insurance—say a homeowners policy, and if your house burned down, you would pay 91 percent? Or if your car gets wrecked and it has to be fixed up, you would pay 71 percent of the fees. What kind of insurance proposal is that?

It is nonsense, not insurance. It is just another rip-off for the drug companies. Again, this does not provide adequate coverage and it doesn't contain costs.

Two weeks ago, I had a roundtable discussion in Iowa with insurers, business leaders, and consumers about drug costs. They were united in saying that not only are rising drug costs hurting seniors, they are a growing problem for employers trying to maintain affordable health insurance for workers. It is a problem for younger workers, feeling the pinch of higher health insurance premiums and cost sharing as a result. These Iowans were adamant, saying that any bill we pass has to have some new tools to hold down the rising drug prices.

Only the Graham-Miller bill makes progress toward cost containment. It

includes a bipartisan plan that will close the loopholes that have allowed drug companies to block lower cost generics from coming on the market. It addresses the issue of the 30-month rollover that they get all the time. The bill on that side doesn't do that. It is crucial because generic drugs cost a fraction of what the name brand equivalent costs, and they are just as safe and effective. But only the Graham-Miller bill addresses that issue of bringing generics on the market and providing for that competition with brand names.

The Graham-Miller bill has the Stabenow amendment, which will allow States to provide the discounts they get through Medicaid to others in the State, including seniors.

There is also the important Dorgan amendment, which says drugs could be reimported from Canada by pharmacists. If you want to know how important this is, talk to my friend Marie, a 67-year-old retired nurse from Council Bluff. She dedicated 43 years of her life to helping others. She told me she is lucky compared to her friends because she is only on three medications. She recently got an advertisement from a drug company in Canada that would sell her drugs to her for less. She did some research and got a prescription from her doctor. She is saving over $80 a month right now.

She has a friend who takes tamoxifen, an anticancer drug for breast cancer. She tried buying her tamoxifen from the Canadian company. In the United States, it cost her $319 for a 3-month supply. It cost her $37 from Canada.

The problem with that is that individuals are doing that, and they are leaving out their local pharmacists. It is vitally important for the elderly to have communication and a relationship with their local pharmacist to make sure they are taking the right drugs and the right dose.

While I think it is fine for seniors to get their drugs from Canada reimported, we have to make sure local pharmacists can do the same thing. Let them reimport the drugs from Canada at that same price. The Republican bill does not do that, but the Graham-Miller bill does.

Today we have a chance to pass a bill that will contain costs, that will provide affordable and reliable prescription drug coverage without gaping holes. We have the chance to make sure we bring generics on the market sooner to provide competition and to let our pharmacists reimport drugs from Canada at a cheaper price for our consumers.

All of that is in the Graham-Miller-Kennedy amendment, not in the Grassley-Breaux-Jeffords, et al, amendment. If you want good coverage, if you want to close the loopholes, vote for the Graham-Miller bill and not the fake substitute on the other side.

The PRESIDING OFFICER (Mrs. CLINTON). The Senator's time has expired.

Who yields time? The Senator from Iowa.

Mr. GRASSLEY. Madam President, I yield 1 minute to the Senator from Oklahoma, and then I would like to immediately yield 9 minutes to the Senator from Louisiana.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Madam President, I do not intend to object. If the Senator from Oklahoma should be provocative, which for a moment or two he might be, I hope I can yield a moment to the Senator from Iowa just to be quiet, calm and reserved, and then go to the 9 minutes for Senator BREAUX.

The PRESIDING OFFICER. The provocation standard is recognized. The Senator from Oklahoma.

Mr. KENNEDY. Do we have that understanding?

Mr. GRASSLEY. I agree.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Madam President, people are entitled to their own opinion, but they are not entitled to their own facts. The tripartisan bill—and I will let Senator GRASSLEY and Senator BREAUX and others defend it—says for people with incomes less than 150 percent of poverty, the Federal Government, or this new plan, will pick up 95 percent of the drug—95 percent.

Under the Democrat proposal, if you do not have the Government-chosen plan or prescription drug, you get zero. Zero. Not 9 percent, not 50 percent.

The chart the Senator from Iowa has is incorrect. Under the basic plan, if you have an income above 150 percent of poverty—in other words, above $20,000 for a couple—the Federal Government picks up half the prescription drug cost up to $3,450—half, 50 percent—and you choose your drug, not the Government choosing the drug. There is a big basic difference in this plan. You get to choose the drugs, not the Federal Government.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President, I ask for 1 minute to respond.

Mr. KENNEDY. I yield 1 minute.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President, I heard the Senator from Oklahoma. Talk about a Harry Houdini magic trick and trying to pull a funny curtain over issues. If you are below 150 percent of poverty, then it picks up 95 percent, but what he is not telling you is there is an assets test.

Take someone in Iowa who has an automobile worth $4,500. We need cars in Iowa. We do not have mass transportation. If you have a $4,500 car, you are not eligible for less than 150 percent of poverty. That is the assets test. If you have a burial plot worth $1,500, then you are out of the 150-percent poverty test; $2,000 worth of furniture, you are out. They are not telling you that. Have him stand up and tell you about the assets test and tell my elderly in Iowa, many who are below 150 percent of poverty, that they cannot have a $4,500 car, that they cannot have a $1,500 burial plot, that they cannot even have $2,000 worth of furniture in their house. If they do, they do not qualify. Go ahead and tell them that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. WELLSTONE. Madam President, with my colleague's indulgence, I ask unanimous consent that I follow the Senator from Louisiana for 5 minutes.

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

Mr. BREAUX. I thank the Chair. Madam President, I thank my colleague for yielding me time.

On this amendment, on the argument in which the two colleagues were engaged, there is already an assets test for Medicare. The assets test is part of the concept of delivering health care in this country. If someone has low income but has assets—a house in Florida, a large bank account, investments in stock—those assets are always considered to determine whether a person is eligible for Medicaid. We have all supported that. It is not new.

The purpose of my taking the limited time that I have is not to criticize the other approach because our approach cannot be good just because the others are deficient. The tripartisan plan should be able to stand on what it stands for, not because the Graham plan is deficient in any particular area. So I am not going to spend my time talking about any perceived deficiencies in their plan but rather explain what we have presented to the Senate.

Legislating is the art of the possible. It is not trying to get something done that cannot happen. There are a number of proposals trying out how we are going to do what everybody thinks we should do, and that is an attempt to provide some reform to Medicare and at the same time do what we should have done in 1965, and that is to cover prescription drugs under Medicare.

Prescription drugs today are equally as important as a hospital bed was in 1965. Mostly that is on what Medicare tried to focus. It should cover prescription drugs, we all agree. There are various proposals as to how we should do that, ranging from $150 billion over 10 years, the Hagel proposal from the Republican side; the House has a plan for about $350 billion which includes provider givebacks; the Graham proposal is $594 billion dollars; our proposal is Medicare reform and a prescription drug plan that is about $370 billion, which I think fits between the various proposals.

Every one of us should remember from where the money is coming. The money on any plan is coming from the Social Security trust fund. Our plan, the Graham plan, the Hagel plan—all of it is taking the money for the people today out of the trust fund for Social Security for our children and our

grandchildren. That is from where it is coming.

I can say I want $1 trillion, but from where is it coming? We have to be realistic in these economic times to recognize there is not a whole lot of money floating around that we can do with what we think is appropriate without doing grave damage to the Social Security trust fund for our children and our grandchildren.

What we have tried to do in the tripartisan approach is to figure out what is a good drug delivery system and what is an affordable price. I mentioned the price we have is about $370 billion, which includes about $30 billion for reforming Medicare, which desperately needs reforming.

The model we have used is to ask: What has worked? One approach that has worked is the health care plan I have as a Senator—it is a pretty good plan; we wrote it—as do about 9 million other Federal employees. It is contained in the Federal Employees Health Benefits Plan that we get every year. We get to choose our drug plan or our health plan. We have private contractors come in and say: This is what we can offer to provide you health care at this price.

What we have tried to do in the tripartisan plan is say let's combine the best of what Government can do with the best of what the private sector can do. Some of my colleagues on this side of the aisle would say the private sector should do everything—keep the Government out of it. Some on my side of the aisle will say we need to have a Government-run program because nothing else is going to work.

The truth is, the best of what both can do needs to be combined, and that is exactly what the tripartisan plan has attempted to do. We combine the best of what Government can do, i.e., helping to raise the money to pay for it; No. 2, supervising it to make sure nobody in the private sector tries to scam it; to have Government controls and Government approvals over all segments of participation, and then what the private sector can do is bring about innovation and bring about competition to help keep costs down. So that is the proposal we have before the Senate.

Some have said that is not going to work because the big insurance companies are somehow going to try to rip off the beneficiaries in this country. Well, there are insurance companies right now that provide Medicare to beneficiaries, which is supervised by the Federal Government. Blue Cross and Aetna regularly provide all of the benefits, the hospitals and doctor coverage, under a contract with the Federal Government.

What we are saying is have the same type of delivery system for prescription drugs but have the plans have some of the risks. We are talking about Blue Cross and Blue Shield, Aetna and Merck-Medco, national operations that are big boys in this business. Under the Graham plan, they say we are going to have a management contract with them, but if they overshoot their costs and their costs are more than they say they are going to be, the taxpayer is going to pay the difference. The difference in our plan says these guys are big players and if they say they can provide prescription drugs for $100 per beneficiary, and it ends up costing $102, they are going to have to assume the risk. They are going to have to eat their mistake, not the taxpayers of this country.

Why is that important? It is important because if they know they are on the hook for some of the risk, they are going to have an incentive to negotiate the best possible price with the pharmaceutical companies in order to make sure the price they say they can do it for is, in fact, that price or even less. They will then have an incentive.

What kind of an incentive does a provider have if they know when they bid costs more than that, the taxpayer is going to pick up the cost? That is exactly what the other approach does and why I think the approach, by saying these companies should have some of the risk, not all of it, but they ought to have enough risk to make sure they negotiate and compete, and that is one of the differences in our plan.

All of this is done under the supervision of the Health and Human Services Secretary to make sure the plans they present do not try to scam the beneficiaries, do not try to cherry-pick only the healthiest. The Government can do that, and in our plan the Government does that.

One of the other concerns I have had is that people have said it is not going to work in rural areas; Medicare+Choice does not work in rural areas. And that is true. One of the reasons is that Medicare+Choice has to do a lot more than just provide prescription drugs. They have to have a hospital in a rural area, doctors, emergency rooms, ambulance services, all the things that are necessary to create a health care system in a rural area. As the Presiding Officer knows, that is a very difficult challenge.

If only prescription drugs are being delivered, that infrastructure is not needed. The only thing that is needed is a doctor to write a prescription and a drugstore to fill it, or a mailbox if one chooses to do it by mail order. The entire infrastructure is not needed as it is under Medicare+Choice.

What we say in the bill very clearly is that every administrator shall, consistent with the requirements, approve at least two contracts to offer a Medicare prescription drug plan in an area. What that means is that every person, even in the most rural part of America, has to have at least two people or two companies offering prescription drugs to the people in that area. If only one bids, the Government can make the assumption of the risk even greater until one gets at least two plans to compete. If one ends up with only one, the Government will be the one that provides the other alternative.

So rural areas are protected. Can't we tighten that up? I am certainly willing to try and do it. I think we state very clearly that every part of the country has to have at least two plans offered to them on a competitive basis. That is what the law would be. The Government has to make sure that there are two plans, and if someone does not get two plans, then the Government will come in and offer the prescription drugs to the people in the area.

Under the Federal Employees Health Benefits Plan, pick the most rural part of New York or the most rural part of Montana and there is a Federal employee who probably works in one of those counties that has Federal health insurance. They get it in the most rural part of this country, under a system that utilizes private contractors to provide it. They get their prescription drugs under the Federal Employees Health Benefits Plan.

The other part is that people have said there is too much flexibility in our plan. Every plan that everybody gets, including mine, has flexibility of choice. We can pick the plan that is actuarially equivalent and pick the one that makes the most sense for us.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator has used 9 minutes.

Mr. BREAUX. I would conclude by saying I think we have offered something that is possible, that is doable and that we can actually adopt. I think that is a good suggestion this body ought to take under consideration.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Madam President, Eli Lilly has a discount card. It is called Lilly Answers. The card is supposed to give low-income seniors a 30-day supply of any Lilly drug for a $12 fee. Sounds like a great deal, but when one reads the fine print, it turns out that a lot of drugs are excluded.

Noland Decks from Winona sent me this letter about his sister:

> I am writing to relate to you the prescription medicine situation for my sister, Hazel Decks, who has Parkinson's disease. Her income is such that she has qualified for the Lilly Answers program which is supposed to give her a one month supply of Permax for $12. When I approached the pharmacy to get her prescription refilled, I was informed that Eli Lilly has chosen to exclude this medication from the program, in spite of the fact that the bottle says it is manufactured by Lilly. I contacted Lilly and could find no one who would explain why. I now believe that they will not allow it because it is too expensive. The 30 day supply costs Hazel $375.

For Parkinson's medication. I had two parents with Parkinson's disease.

> Her Social Security check is $479 a month.

I give this example because in 5 minutes I cannot even begin to cover the ground, but there are about three or four thoughts that come to mind as we come close to a vote. First, I do not think, based upon what we have seen in the last month or two, anybody any longer would believe that the Arthur

Andersens of this world should be writing any kind of reform legislation when it comes to securities reform, when it comes to protecting investors and consumers. I do not believe that hardly anybody in the Senate would argue that when it comes to a clean air bill or a clean water bill that environmental polluters should write that legislation.

So it is, I do not believe that the pharmaceutical companies ought to be writing a prescription drug benefit plan. I think it is a mistake.

What are the differences? I will not go through all the numbers. Everybody has heard the numbers. To me, the differences are as follows: In the Graham-Kennedy-Miller plan, at least there is a defined benefit. Does it sound familiar, a ''defined benefit''? Not defined contribution. Senior citizens' prescription drug coverage is part of Medicare. It is a defined benefit. They know what they are going to be eligible for and they are going to have the coverage.

The competing proposal basically has the Federal Government farming out a subsidy to private health insurance plans, Medicare managed-care plans, and basically saying we hope to give enough of a subsidy that they then will provide the benefit. It is a suggested benefit. It is not a defined benefit. There is no security for senior citizens with this alternative.

For my own part, I will go one step further. When there is too high a deductible or there is a doughnut hole where a lot of seniors are worried about what they are going to do about these expenses as they run up $2,000, $3,000, $4,000 a month, that is the other big issue. We do not want to have a huge gap where people get no coverage, and that is exactly what is in the competing proposal.

Finally, I say to all of my colleagues, which is a different point, but I get a chance to say this, I want to see us do better on discounts and cost containment. I want to see us for sure support the Schumer-McCain amendment on generic drugs. I want to make sure this reimportation from Canada actually is put into effect—it looks like the administration does not want to—because of the huge discount for senior citizens and other seniors as well. I would personally like to see the Federal Government become a bargaining agent for 40 million Medicare recipients, and in the Graham-Kennedy-Miller bill there is allowance for the different managers around the country, benefit managers to do that work getting discounts. I want to see the States building on the Stabenow amendment and see States able to recoup some of the savings they get from exacting a discount for people with no coverage now and adding that on to medical assistance.

Colleagues, what is going on is there are quite a few Senators in good faith—I don't assume bad faith—who do not believe there is a major government role here. They do not believe this ought to be part of Medicare. They are not quite sure they believe in Medicare, though it has been an enormously successful program. We should extend prescription drug benefits to Medicare and make it a clear, defined benefit that is affordable for senior citizens. That is the right thing to do.

I yield the floor.

Mr. FRIST. Madam President, how much time do I have?

The PRESIDING OFFICER. The Senator from Tennessee has 5 minutes and 40 seconds.

Mr. FRIST. And the other side?

The PRESIDING OFFICER. Three minutes 55 seconds.

Mr. FRIST. I yield myself 3 minutes.

Madam President, soon we will vote on one of the most important matters facing the Nation—whether to provide within Medicare a prescription drug benefit. In order to strengthen Medicare, we must include affordable prescription drug coverage as part of the package. Too many seniors today find prescription drugs unaffordable. The high cost of prescription drugs serves as a barrier between seniors and the health care security they deserve—which this body has promised them.

There is only one proposal that accomplishes the goal of modernizing Medicare and including a prescription drug benefit within Medicare: that is the tripartisan bill. Senator SNOWE, a Republican, BREAUX, a Democrat, JEFFORDS, an Independent, HATCH, a Republican, GRASSLEY, a Republican, COLLINS, a Republican, and LANDRIEU, a Democrat, collectively have sponsored this bill which reduces the cost of prescription drugs and provides a stable and sustainable prescription drug benefit. The word ''sustainable'' is critical.

The tripartisan bill provides low-income seniors and those with initially high drug costs special additional coverage in order to give them security. It expands and improves Medicare benefits under the traditional Medicare fee-for-service program that seniors and individuals with disabilities are comfortable with and understand today. It begins the critical element of instilling competition as we seek to add a new benefit—which means prudent decisionmaking will be made. The tripartisan bill is designed to be permanent, sustainable, affordable and responsible. Even though the cost—$370 billion—goes beyond what was intended in the initial budget, I believe it is a reasonable first step.

In closing, the tripartisan bill is not perfect, but it is clearly more responsible than the alternative bill. Many think $370 billion, the cost of this bill, is high. And it is high, especially since it is not coupled with as much reform as I think will be required to ultimately strengthen Medicare. Additionally, the bill lacks some of the necessary reforms that are needed to make Medicare truly sustainable—considering that the number of seniors will double in the next 30 years. Finally, the bill is not immediate, but neither is the alternative bill.

The time to help seniors is now. We must act now, act responsibly, and implement a plan that can be sustained. I will support the tripartisan bill because it provides the best and only real opportunity for progress this year on this important issue.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from North Carolina.

Mr. EDWARDS. Madam President, I yield myself 3½ minutes.

This debate taking place in the Senate is about people's lives. We have senior citizens who desperately need a prescription drug benefit. This is what they want. They want one that is affordable and reliable. It is no more complicated than that.

The Graham-Miller bill meets that criteria. Unfortunately, the bill from the other side does not for at least two major reasons. It turns the prescription drug benefit over to private insurance companies. The insurance companies themselves have said this will not work. It will not work because they are in the business of making a profit. They will only go to the markets where it is profitable. That means there will be millions of senior citizens around this country with no access to a prescription drug benefit.

Second, it has an enormous gap in coverage. For those who have $400 a month in prescription drug costs, there will be 3 or 4 months toward the end of the year where they will get no coverage at all, no help for their prescription drugs, although every month they are writing a premium check. That makes no sense. Those problems are taking care of in the Graham-Miller bill.

In addition, we have to bring the cost of prescriptions under control. That is why, no matter what, we have to pass the underlying bill that gets generics in the marketplace, stops the frivolous use of patents to keep generics out of the marketplace so we can have competition and bring down the cost of prescription drugs for everyone.

Second, to allow, in a safe fashion approved by the FDA, for drugs from Canada at lower cost to be brought into the United States so folks can buy at a lower cost.

Third, to allow States to make prescription drugs available to the uninsured at the same cost of those of us with health insurance and those in the Medicaid Program pay, to make the same cost available to them that is available to everyone else so they are not taken advantage of.

Those things will help make this prescription drug benefit affordable.

Last, in addition to all of that, this has to be considered in the context of a responsible fiscal budget, in order to get this country back on the path to fiscal discipline. In January of 2001, there was a $5.6 trillion projected surplus; $5 trillion of it is gone. Why? The biggest single reason is because of a tax cut proposed by the President that

has now been passed and signed into law.

To get this country back on the path to fiscal discipline, which it so desperately needs to be able to afford a prescription drug benefit, we ought to do at least three things; First, we ought to have pay-as-you-go rules apply in this Congress; Second, we ought to follow spending caps; Third, we ought to do something about the top layer of the tax cut for the 1 percent of Americans, the highest earning, richest people in America, scheduled to go into effect in the year 2004, to ask them to give up that tax cut in order to help their fellow Americans, in order to help us get back on the path to fiscal discipline and operate this Federal Government and this Federal budget in a responsible way.

The American people want us to do all these things. Give them a real prescription drug benefit, one that is affordable, one that is reliable, one they know they can depend on to bring down the cost of prescription drugs and find a way to pay for it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I yield myself such time as I may consume of the remaining 2 minutes and 40 seconds.

First, I am happy to hear the Senator from North Carolina mention the prescription drug program has to be within the context of a fiscally sound budget process. I agree with that. But I think that is very much an argument for a piece of legislation that is permanent as the tripartisan plan is, as opposed to a sunsetted provision coming from the other side of the aisle that is $370 billion as opposed to $595 billion, the latter being the figure from the other side of the aisle. Just basically getting more for your money in the sense that CBO has scored the tripartisan program as the only program that brings down drug prices because of competition and the efficiency with which they are delivered as opposed to the program on the other side of the aisle that is very much a partisan plan as opposed to our bipartisan plan that drives up the price of drugs according to the CBO, which is our nonpartisan scoring arm.

Also, for the benefit of the Senator from Massachusetts who is still here and my colleague from the State of Iowa who is not here, I go back to the assets test. I think they think they have something. But the point of the matter is, they do not. We have heard these repeated objections to the assets test for low-income benefits in our bill as if it is something new. That is a red herring. There has been an assets test for low-income Medicare populations since 1987, and I happen to know that these programs passed by overwhelming margins—under the qualified Medicare beneficiary program as one example, as a specified Medicare beneficiary program as a second—and these programs have passed overwhelmingly with the support of my Democrat friends on the other side of the aisle.

I think that is injecting an argument into the program that is not legitimate. Current law excludes from the test the home and property it is on, a car that is necessary. I can also say it happened to be in the 1999 Clinton Medicare bill—that included an assets test as well.

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

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:31 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CLELAND).

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001—Continued

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, what is the parliamentary situation? What is pending?

AMENDMENTS NOS. 4309 AND 4310

The PRESIDING OFFICER. Under the previous order, there will now be 30 minutes for debate, to be equally divided between the Senator from Massachusetts, Mr. KENNEDY, and the Senator from New Hampshire, Mr. GREGG.

The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, on behalf of Senator KENNEDY, whom I do not see in the Chamber yet, I yield myself 4 minutes.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I am going to vote for the Graham-Miller amendment because it is, to my mind, the best proposal before us. It will provide affordable prescription drug coverage throughout the country. I think that is the best policy.

But it now appears there may not be enough votes for that amendment. The same, I might add, is also true of the Grassley amendment, which embodies the so-called tripartisan approach.

If that turns out to be the case, we will be at a stalemate. At that point, we will have to decide whether there is some way to resolve our remaining differences so we can write a prescription drug bill that can pass.

With that in mind, I would like to briefly discuss the three key remaining differences.

The first, and probably most significant, is referred to as the delivery model. That may sound like some kind of technical jargon, but it is actually a very important matter and will determine whether we are passing some theoretical, pie-in-the-sky prescription drug benefit that works on paper but fails out in the real world or whether we are passing one that will really get prescription drugs to seniors at affordable prices.

There are two approaches.

Under the Graham-Miller approach, prescription drugs will simply be added to the existing Medicare Program, with some new incentives for efficient administration.

Under the Grassley approach, in contrast, prescription drugs will be provided through a new, market-based system that relies on private insurance companies.

People may ask: Why not try something new? What is wrong with a new market-based system?

Simply this: The new system is untested and may leave seniors without adequate coverage, especially in rural States such as my State of Montana.

Let me explain. Montana seniors, like those living in other rural areas, lack the rich retiree coverage options their urban counterparts enjoy. There just are not as many large companies offering benefits to retired workers in my State of Montana as there are in other parts of the country.

We also do not have any Medicare+Choice plans offering free or low-cost drugs to beneficiaries as in places such as Florida or some other parts of the country. In addition, our Medigap rates are higher than the national average and Medicaid coverage is lower.

On top of all that, we have been burned in the past by the promises of competition and efficiency. Rural areas often get the short end of the stick when we deregulate and leave people at the complete mercy of market forces that favor highly-populated areas. Consider airline deregulation, managed care, and energy deregulation, to name a few.

I don't want to overstate the case. I'm not saying that a new approach is absolutely unworkable. But I am not willing to buy a pig in a poke. I want a reasonable assurance that a private insurance model will work.

I know that many other Senators share my concern. How can we address this concern? Is there another way, another idea? There may be.

In essence, we would shift to a new, market-oriented system but do it gradually, with plenty of safeguards to make sure that it really works, especially in rural areas and other underserved areas.

The resulting system might not be quite as efficient as some would like but in exchange, it is more stable than it otherwise would be under the private model.

The second key difference, between the two main proposals, is how much to spend on a prescription drug benefit. Clearly, we are talking about a big investment of government dollars, and even at the amounts we are considering here, we won't buy a benefit that will meet seniors' expectations.

The proposals that include a so-called doughnut, or coverage gap, give pause for concern, simply because during some parts of the year, seniors would not receive any assistance. I don't want to belabor the point, as I know many others have talked about this problem over the past few days.

To my mind, the Graham-Miller bill is right about on target, and I hope that those who support the Grassley approach can, in the spirit of compromise, agree to devote some further resources to helping our seniors.

The final key difference involves what is referred to as ''Medicare reform.'' That means making additional changes to the Medicare system, beyond those necessary to provide a prescription drug benefit.

With due respect to the proponents of reform, I believe that we should keep our eye on the ball. We have limited resources. Many of the reforms are untested and, in some cases, risky. We will have other opportunities to consider broader changes to the Medicare program.

In light of this, I suggest that we defer the debate about additional reforms until a later date, and concentrate on prescription drug coverage.

Those are the key differences. Delivery model, spending, and other reforms.

Are they significant? They certainly are.

Can they be resolved? If we roll up our sleeves and put the interests of seniors ahead of politics or theory, we will get it done.

I yield the floor and encourage my colleagues in the next several days to work to find a compromise that gets the large vote and protects our seniors.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield 3 minutes to the Senator from Maine.

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

Ms. SNOWE. Mr. President, the moment is at hand when the Senate will determine the fate of prescription drug coverage for our Nation's seniors. I hope we will not allow a 60-vote threshold to stand between us and the possibility of passing a meaningful benefit for our Nation's seniors. That would be doing a tremendous disservice to those seniors who desperately need prescription drug coverage. I hope we will avoid the procedural gymnastics and do what is right.

The tripartisan plan is the only plan that has across-the-aisle political support. We worked on this endeavor for more than a year. I hope Members of the Senate will give it serious consideration.

The facts speak for themselves on the tripartisan plan. Our plan is permanent. It does not sunset as the Graham proposal that sunsets after 2010. The language is right in the legislation. We have never, ever added a temporary benefit to the Medicare Program in its 37-year history, and we should not start now. It is providing a false hope to seniors who need this type of coverage. They should not have to beat the clock when it comes to their own health care. I guess you had better not get sick after 2010 because that benefit will expire.

The tripartisan plan is universal, applying to seniors no matter where they live in America, with the lowest premium offered of any bill either in the House or the Senate, thanks to a 75-percent Federal subsidy, which is higher than what Federal employees get under their health care coverage. Our opponents' plan not only creates a higher premium, but they also increase the prices of prescription drugs. That is not our projection; it is the projection of the Congressional Budget Office that estimates it could be anywhere as high as 15 percent, but at least 8 percent, in driving up the cost of prescription drugs.

It is also estimated under the tripartisan plan that 99 percent of seniors will participate, and 80 percent of those who do will never reach our benefit limit of $3,450.

I remind Members that we have a catastrophic benefit of $3,700 to protect people's out-of-pocket costs that are very high. Seniors in our plan will pay less on copayments, less on copayments under our plan for 39 out of the top 50 prescribed drugs for seniors. And we cover all drugs—brand name, generics—unlike the plan offered by the Senator from Florida, Mr. GRAHAM who leaves out most of the brand name prescriptions. In fact, only 10 percent of the brand name drugs will be covered under that legislation. Under the tripartisan plan, seniors will have access to all drugs.

I ask unanimous consent for an additional minute.

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

Ms. SNOWE. That is an important feature because by excluding most of the brand names from coverage, that means you are denying seniors access to the most innovative and cutting-edge therapies available. That is not the kind of coverage we want to provide because that is a huge gap in coverage.

Finally, I hope we will not allow this issue to die today here on the floor. I appeal to my colleagues to do everything they can to prevent killing this legislation. We need to get something done. These votes today are going to be very important in determining who wants the politics or who wants the issue.

We want progress. The best way to get progress on this most vital issue to our Nation's seniors is by supporting the tripartisan plan that has bipartisan support in the Senate.

I hope Members of this body will support this plan that will do more to help our Nation's seniors in providing them a much-deserved prescription drug benefit.

I yield the floor.

Mr. LEAHY. Mr. President, in recent days the Senate has begun to consider a number of proposals designed to help Americans afford their needed prescription drugs, not the least of which is to create a Medicare prescription drug benefit. This is an important debate, and one that has been a long time in coming to the floor of the Senate. Now we have the opportunity to not just talk about creating a Medicare drug benefit but to prove to our Nation's seniors and disabled that we stand by our word. The amendment offered by Senators GRAHAM, MILLER, and others is the best proposal before us, and it is one that I urge my colleagues to support.

I am pleased to be an original cosponsor of this piece of legislation because it is the only one that would create a new, voluntary prescription drug benefit within the Medicare Program that all beneficiaries would be eligible for. Under the Graham-Miller proposal, Medicare beneficiaries will receive assistance starting from the moment they buy their first prescription drug. There is no deductible and there is no gap in coverage, ensuring that no senior will be left stranded without the drugs they need. Beneficiaries would be responsible for copayments of $10 for generic drugs and $40 for medically necessary preferred brand name drugs until they have reached $4,000 of out-of-pocket spending, at which point Medicare pays all expenses. This bill provides low-income seniors and those with disabilities with extra assistance by covering the premiums and copays for those living below 135 percent of poverty, and giving premium assistance to those between 135 and 150 percent of poverty. In my State of Vermont, 28,000 of our 87,000 Medicare beneficiaries have incomes less than 150 percent of poverty and thus will qualify for this extra assistance available under the Graham-Miller proposal.

This amendment will help our seniors get the drugs they need, no matter where they live, what their income, or how sick they are. I urge my colleagues to support this important measure that will put affordable prescription drugs within the grasp of some of our most vulnerable Americans.

Mr. AKAKA. Mr. President, I rise today as a cosponsor of the Graham-Miller-Kennedy amendment that would establish a guaranteed Medicare prescription drug benefit for all seniors.

Approximately 19 million seniors in the United States have little or no prescription drug coverage. Prescription drugs are the largest out-of-pocket health care cost for seniors. Many who cannot afford drug coverage often do not take the drugs their doctors prescribe, and one in eight senior citizens is sometimes forced to choose between buying food and buying medicine. While numerous seniors live on modest fixed incomes, prescription drug costs have increased by more than 10 percent a year since 1995. Medicare needs a voluntary prescription drug benefit so

seniors have the same protection against the high cost of prescription drugs as they have for hospital care.

The Graham-Miller-Kennedy amendment is the most comprehensive Medicare prescription drug benefit proposed in the Senate thus far. It provides coverage to all seniors regardless of their health or income. In Hawaii, 159,000 senior citizens and disabled Medicare beneficiaries would be eligible for coverage under the Outpatient Prescription Drug Act, 41,000 low-income seniors in Hawaii would qualify for additional assistance under the plan.

Affordable premiums and copayments are key components of the Graham-Miller-Kennedy plan. For example, if a senior spends $4,000 on prescription drugs, she would reach the catastrophic limit and all additional drug expenses would be covered under this proposal. Seniors will not lose their current employer retirement coverage and will not have to rely on the public benefits provided by the plan. There also would not be a asset test required for participation in the Graham-Miller-Kennedy program.

The competing amendment proposed by the Senator from Iowa is well intended, but the Grassley amendment would not provide adequate coverage for seniors. The Grassley amendment would result in 26,000 seniors in Hawaii losing their existing retirement coverage, 47,000 seniors and disabled Medicare beneficiaries in Hawaii would fall into the benefit hole and would have to continue paying premiums and paying higher drug costs while not receiving any benefits. The Grassley amendment would also include a means test to qualify for additional assistance that would prevent seniors with assets greater than $4,000 from qualifying for additional assistance.

Today, the Senate has a historic opportunity to provide seniors with the missing piece of health care coverage that is urgently needed. We must ensure that all seniors are provided with an affordable and comprehensive prescription drug benefit for all seniors. I urge my colleagues to support the plan which does this, the Medicare Outpatient Prescription Drug Act.

Mr. VOINVICH. Mr. President, I rise to speak in favor of the tripartisan prescription drug proposal before the Senate. I applaud the efforts of Senators GRASSLEY, BREAUX, HATCH, SNOWE, and JEFFORDS, in developing this legislation.

Their work is the culmination of a year's effort to bridge the gap between the Medicare of 1965 and the Medicare for today and the future. As my colleagues know, when Medicare was enacted in 1965, Congress made a commitment to our Nation's seniors and disabled to provide for their health security. Unfortunately, that security is on shaky ground because Medicare has not kept up with the evolving nature of health care. The delivery of health care has vaulted ahead so dramatically 37 years after the inception of Medicare, that this system which was once sufficient is now anticipated and ineffective.

For example, conditions that used to require surgery or inpatient care can now be treated on an outpatient basis with prescription drugs. It is time for Medicare to reflect the realities of today's health care delivery system. The vast majority of my colleagues will agree when I say providing prescription drug coverage through Medicare is the next logical step towards modernizing the program. The best way to deliver such a benefit, however, is a point on which a number of my colleagues on the other side of the aisle disagree. My colleagues from the Finance Committee have found a solution that is a good compromise and is result that can be agreed to by both Democrats and Republicans. In fact, I would venture to say that the tripartisan proposal has the support of a majority of Senators.

Unfortunately, a simple majority will not suffice. As my colleagues know, we are working under the fiscal year 2002 budget resolution, which set aside $300 billion for a prescription drug benefit. Because we never voted on a fiscal year 2003 budget resolution, the first time the Senate has not done so since 1974, we have no choice but to stay within the parameters of 2002 funding levels. The fact of the matter is we have stacked the deck against passing any sort of meaningful benefit that costs over $300 billion, regardless of whether the majority of Senators support the proposal.

Regardless, the bar has been raised to pass prescription drug coverage, which clearly indicates that any bill that passes through this body will have to be bipartisan in nature—or tripartisan in this case. The tripartisan bill is the only measure we have before the Senate that bridges both parties and is a benefit that can pass.

We cannot delay any further. Each year we delay means another year our Nation's seniors will be forced to do without. already we have heard too often of seniors that have had to choose between food and prescription drugs. I, for one, am ready to go to my constituents in Ohio and say we were able to move past partisanship and provide real security for their health. The tripartisan proposal does that. We must act now, and we must act responsibly.

It is vital that we pass a prescription drug benefit this year, and it is vital that we pass one that is fiscally responsible. Ideally, the Federal Government would able to pay for every pill ever needed for every senior. Unfortunately, we live in the real world and are subject to limited resources. I would like to take a few moments to shed some light on our Government's current fiscal condition. Last year, the Congressional budget Office predicted a unified budget surplus of $313billion or fiscal year 2002. As my colleagues know, this rosy budgetary picture is no longer the case. Recent budget projections show that the Federal Government is in much worse fiscal condition than we thought. These new projections show that the Federal Government will spend the entire Social Security surplus in both the current fiscal year and in fiscal year 2003 and we will be borrowing $52 billion this year and $194 billion in 2003.

With this in mind, it is imperative that we act not only to provide Medicare benefits for today's beneficiaries, but also for the baby boomers who will arrive in 2011. If we do not act responsibly in providing a benefit, we will end up writing IOUs not only for Social Security, but for this benefit as well. The tripartisan proposal strikes a balance between providing seniors and the disabled access to needed prescription drugs today and doing so in a fiscally sensible way that will allow benefits to extend to future generations.

I cannot say the same for the Graham-Miller bill. Top the best of my knowledge,I cannot definitively state what the Graham-Miller bill will cost. My colleagues on the other side claim that their bill will cost $450 billion over 6 years. Then, after 6 years, as their bill is currently written, the benefit would sunset.

However, let us make the assumption that the Graham-Miller bill passed and their benefit did not sunset. What would that mean for the American people? I have a sneaking suspicion that $450 billion will somehow become $800 billion or as much as $1 trillion over 10 years. This is on top of the estimated $3.6 trillion it will cost the Federal Government to provide basic Medicare services for seniors and the disabled. As I see it, under the Graham-Miller bill, the American people get stuck between choosing cyanide and hemlock.

Senator GRASSLEY and the others in the tripartisan group have put before the Senate a proposal that would cost $370 billion as scored by CBO. The natural question that I think the American people would like to know is what does $370 billion buy? In my opinion, $370 billion provides a real prescription drug benefit that is affordable to both the beneficiaries and the Federal Government.

Under the tripartisan proposal, premiums would be $24 a month, an amount that is lower than the Graham-Miller bill. After a $250 deductible, the Government would cover half of all prescription drug costs up to $3,450.

Now, my colleagues on the other side of the aisle will claim that the so-called doughnut hole after $3,450 will be the financial ruin of every senior. The truth is that the vast majority of seniors, 80 percent, would never even hit that hole. Moreover, the hole exists only until the beneficiary accrues another $250 in costs, at which time the government would pay for 90 percent of all remaining drug costs.

While this benefit will greatly help seniors throughout the Nation, there are still some seniors for whom the $24 per month premium and additional

cost-sharing is still too high. For those individuals, the tripartisan bill provides protections that will allow access to prescription drugs. For those seniors under 135 percent of poverty, the tripartisan plan would provide a full subsidy for monthly premiums. In addition, the Government would cover 95 percent of their prescription drug costs to the initial benefit limit and 100 percent above the stop-loss limit. And for those seniors between 135 and 150 percent of the poverty level, the tripartisan proposal would provide assistance with their monthly premiums on a sliding scale. In addition, these individuals would pay no more than 50 percent of their drug costs once the $250 deductible has been reached.

When we talk about dollars being spent, we should also point out to seniors that they will receive more bang for their buck under the tripartisan proposal. Seniors will not just receive direct assistance from the government to cover their prescription drug bills. Rather, under the tripartisan plan, competing pharmaceutical delivery plans will be forced to provide the best value on prescription drug prices in order to attract beneficiaries to their respective plans. To the advantage of both Medicare beneficiaries and the Federal Government, this competition will decrease the price of prescription drugs and permit all parties to stretch their dollars further. For example, the same dollar that today would buy one day's dose of Lipitor, might purchase 2 days' worth of the drug when competing plans vie for consumers as they would under the tripartisan plan.

This body has been playing this political posturing game for too long. I am tired of explaining partisanship as the excuse for why this body has not passed a prescription drug benefit and has forced the least of our brothers and sisters to choose between food and prescription drugs. I am pleased that the Senate will have the opportunity to show the American people, especially our Nation's seniors and disabled, whether we are serious about enacting legislation to provide a prescription drug benefit this year.

The tripartisan bill has support from both sides of the aisle. The House has passed their measure. The President is ready and willing to sign a bill into law this year. The burden is squarely on the Senate's shoulders. All eyes are on us. I am confident that we will have more than 50 votes in favor of the tripartisan plan. I hope that those that are considering voting against this proposal have a very good reason for not supporting it, because the people in their State will be asking them the question: Why didn't you support a plan that gets the job done in a fiscally responsible way.

So while seniors wait for a prescription drug benefit, I will continue to work to educate seniors about generic drugs. I have been working on this issue for some time, providing funds at the Food and Drug Administration for consumer education and working with other non-profits to educate our seniors about the availability and efficacy of generics.

In the meantime, I urge my colleagues to waive the budget point of order on the tripartisan amendment so that Medicare can move forward into the 21st century and so that seniors and the disabled are able to have access to affordable prescription drugs.

Ms. COLLINS. Mr. President, as an original cosponsor of the tripartisan 21st Century Medicare Act, I rise in support of this amendment to make affordable prescription drug coverage available to all of our Nation's seniors.

Prescription drugs are as important to a Medicare beneficiaries' health today as a hospital bed was in 1965, when the program was created, and I have long been a supporter of providing a prescription drug benefit as part of our efforts to strengthen Medicare. With recent advances in research, prescription drugs can literally be a lifeline for patients whose drug regimen protects them from becoming sicker and reduces the need to treat serious illness through hospitalization and surgery. Soaring prescription drug costs, however, have placed a tremendous financial burden on the millions of Medicare beneficiaries who must pay for these drugs out of their pockets.

More and more, I am hearing disturbing accounts of older Americans who are running up huge, high-interest credit card bills to buy medicine they otherwise couldn't afford. Even more alarming are the accounts of patients who are either skipping doses to stretch out their pill supplies or being forced to choose between paying the bills or buying the prescription drugs that keep them healthy. It is therefore critical that we bring Medicare into line with most private sector insurance plans and expand the program to include prescription drugs.

The tripartisan plan that is before us today will provide an affordable and sustainable prescription drug benefit that will be available to all seniors. Moreover, unlike the alternative bill, our plan will make the drug benefit a permanent part of Medicare and is fully funded at $370 billion over 10 years.

Under the tripartisan bill, all seniors will have the choice of at least two prescription drug plans, regardless of where they live. This will enable them to select the kind of prescription drug coverage that they need. Moreover, the coverage under these plans will be comprehensive. Seniors will have access to every drug, from the simplest generic to the most advanced, innovative therapy.

Our plan is also affordable and has the lowest monthly premium—$24—of any of the comprehensive prescription drug proposals that are on the table. Not only does our plan offer a lower premium, but it also offers lower copays for most drugs than the amendment proposed by the Senator from Florida. As the senior Senator from Maine pointed out on the floor the other day, seniors will pay more for most of the top 50 drugs under the Democrats' bill than they will under the tripartisan plan. For example, the copayment for Glucophage, which is used in the treatment of Type 2 diabetes, would be $40 under the Graham-Kennedy bill, and only $31 under the tripartisan plan.

In fact, our plan is such a good deal that the Congressional Budget Office tells us that just about everyone will take it. According to the CBO, 93 percent of seniors will enroll in our program, while 6 percent will elect to retain their current prescription drug coverage. This means that 99 percent of all seniors will have prescription drug coverage once our plan is implemented.

No one should have to choose between paying their bills and buying their pills. That is why our bill provides additional subsidies to low-income seniors. For example, the 10 million seniors nationwide, including 65,000 Mainers, with incomes below 135 percent of poverty will have 98 percent of their prescription drug costs covered by Medicare with no monthly premiums and no gap in coverage.

In addition, these low-income seniors will not be subject to any deductible, and they will pay an average copayment of just $1 and $2 for each prescription. This is comparable to the copays required under Maine's Medicaid Program, which requires beneficiaries to pay $2 for each generic drug and $3 for each brand name drug.

The 10,000 Maine seniors with incomes between 135 percent and 150 percent of poverty will also receive generous subsidies under our plan. All seniors with incomes below 150 percent of poverty will be exempt from the benefit limit. As a consequence, 80 percent of Medicare beneficiaries will never experience any gap in coverage under our plan. Seniors with incomes below 150 percent of poverty will also receive a subsidy that lowers their monthly premiums to anywhere between zero and $24 a month, based on a sliding scale according to income.

My biggest concern about the amendment offered by my colleague from Florida is the cost. My understanding is that this plan will cost anywhere between $600 billion and $1 trillion over the next ten years. This is simply too heavy a financial burden for both current and future generations to shoulder, particularly given our mounting Federal deficit.

Moreover, despite its tremendous cost, the alternative plan promises only temporary help, not a permanent solution. Their plan sunsets after 6 years, and makes no provision for a drug benefit after 2010. In other words, their plan ends just as the tidal wave of baby boomers is preparing to retire.

The tripartisan plan also includes other improvements to the Medicare Program that are not included in the Graham-Kennedy proposal. The current

Medicare benefit package, which was established in 1965, now differs dramatically from the benefits offered under most private health plans. Our bill would provide a new, enhanced fee-for-service option for Medicare beneficiaries that more closely mirrors private health plans. For example, it would cover more preventive services than traditional Medicare at little or no cost. It would also provide protection against catastrophic medical costs for those seniors with serious health problems. The traditional Medicare Program provides no such catastrophic protection.

No one would be forced to enter this new plan. It is simply another option. If seniors want to stay in the traditional Medicare Program, that is fine, and they will still be eligible for the new prescription drug coverage.

Access to affordable prescription drugs is perhaps the most important issue facing our Nation's seniors today. It is therefore my hope that the Senate will stop playing politics so that we can pass a meaningful Medicare prescription drug bill this year. The 21st Century Medicare Act is the only legislation before the Senate that has not just bipartisan, but tripartisan support. Moreover, it has the support of 12 of the 21 members of the Senate Finance Committee, which has jurisdiction over Medicare. That is not to say that I think the tripartisan plan is perfect. I do not, for example, like the copayments imposed on home health care in the new fee-for-service option, and I would, of course, prefer a plan that had no gaps in coverage.

The tripartisan plan does, however, provide a major improvement in coverage, and I believe that it is the only proposal that gives our seniors any real hope of getting an affordable Medicare prescription drug benefit this year.

Since the cost of providing a meaningful drug benefit will only increase as time passes, it is all the more important that we act now. I therefore urge all of my colleagues to join me in supporting this tripartisan amendment.

Mr. REED. Mr. President, I would like to take a few minutes before we vote later today on the Graham amendment and the Grassley amendment to describe some of the grave concerns I have with the tripartisan amendment sponsored by Senators GRASSLEY, JEFFORDS and BREAUX.

The tripartisan Senate bill offers the following ''benefits'' to seniors: an expected monthly premium of $24; a beneficiary must cover the first $250 in drug costs; then half of his or her drug costs are covered between $251 and $3,450; at that point the beneficiary is then responsible for all drug expenses between $3,451–$5,300;

Moreover, the plan claims to offer assistance for low-income beneficiaries. What is not mentioned is that a strict asset test would prevent 40 percent of low-income seniors from even qualifying for this subsidy. A car, a wedding ring, or a burial plot over a certain value would render a beneficiary completely ineligible.

The purpose of insurance is to provide protection against certain costs. The kind of insurance some of my colleagues in the Senate have proposed would leave those seniors and persons with disabilities holding the bag when their drug expenditures are highest. Under the tripartisan plan, beneficiaries could still be required to pay thousands of dollars in drug expenditures.

This proposal would create a serious lapse in what is supposed to be a safety net for our most vulnerable citizens, only paying a quarter of an average Rhode Islander's prescription drug costs.

When a person breaks an arm, Medicare pays for the whole cast, not half. A prescription drug benefit should pay for all of your benefits.

There are other nonprescription-drug-related provisions contained in the tripartisan bill that are also of great concern, particularly Title II, the ''Option for Enhanced Medicare Benefits'' section. To me, the provisions outlined in this section of the bill are a direct affront on the Medicare Program as we know it. It seeks to create a new Medicare option that combines both Part A and Part B with a combined premium.

Under this option, a beneficiary would pay more upfront, out-of-pocket costs, such as a $10 co-payment for the first five home health visits and $60 per day for the first 100 days in a skilled nursing facility. In return, the beneficiary would pay nothing for preventive health services such as mammography and cancer screening and would receive protection against catastrophic health care costs.

This new Medicare benefit option would reverse the universal nature of our current program by creating a new line of services for those who can pay more. During the Balanced Budget Act debate of 1997, I fought against the addition of copayments for home health and other essential services because they threaten the access of low-income beneficiaries to those services.

This new enhanced benefit option would create a two-tiered system of the haves and the have-nots. Since there is no premium assistance for low-income beneficiaries who may wish to enroll in the enhanced benefit option, only more wealthy beneficiaries would be able to afford it. And since it requires beneficiaries to pay a greater share of their upfront costs, it would divert healthier, younger beneficiaries from the traditional program. This adverse selection would ultimately result in higher costs for those who remain in the traditional Part A and Part B program.

The sponsors and supporters of the tripartisan Senate bill have argued that even though our Nation's most vulnerable citizens deserve a Medicare prescription drug benefit they can depend on, the proposal offered by Senators GRAHAM, MILLER, and KENNEDY is simply too expensive. I would like to take a moment to highlight for my colleagues a recent report by the Center on Budget and Policy Priorities that I believe adds an important perspective to that point of debate.

The report compared the cost of last year's tax cuts with the costs of two prescription drug proposals for the Medicare population. The estimated 10-year cost of the first plan being roughly $350 billion and the second $700 billion for the same period. The report found that when the tax cut is fully in effect, the cost of the tax cut for just the top 1 percent of the population would exceed the entire difference in cost between the two prescription drug proposals.

I voted against the President's tax cut because I felt that it failed to leave room for critical immediate needs such as a prescription drug benefit, nor did it allow us to adequately address the long-term solvency of Social Security and Medicare.

Once Congress enacts a Medicare prescription benefit, it will be difficult to modify or significantly alter it. If we are going to enact a benefit, we must pass a solid, reliable benefit that will continue to meet the needs of Medicare beneficiaries in years to come. And if resources are the issue, many Members have already stated clearly that there is a way to address that issue, either through the reserve fund set aside in last year's budget or by other means.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I yield myself 4 minutes, after I ask unanimous consent that Senator DAYTON be added as a cosponsor of this amendment.

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

Mr. GRAHAM. Mr. President, I rise to respond to criticisms raised about the availability and cost of drugs under the Democratic proposal. The minority leader has distributed a memo in which he cites selected provisions of our bill to come to a false conclusion about the access seniors would have to prescription drugs. I want to set the record straight.

Under the Democratic proposal, all medically necessary drugs would be available to our seniors at a rate of no more than $40 per prescription for the year 2005—all medically necessary drugs, not just the drugs that are on the preferred list.

The sections of the amendment Senator LOTT chose to omit make clear that every senior would have access to any drug that is medically necessary for that senior. Seniors are further protected because the Medicare Program would assure that the definition of a class of drugs is clinically appropriate. To the contrary, the Republican bill allows the drug HMOs to define the classes of drugs and, further, on page 32 of their amendment, clarifies that not all drugs within a class would have to be covered.

Senator LOTT may want to take a closer look at the Republican language given his concerns in this area.

Under the Democratic proposal, seniors will know in advance exactly how much they will pay for any drug. In 2005, they will never pay more than $10 for a generic and $40 for a medically necessary brand name drug.

Under the Republican plan, there is no way of knowing how much a senior would pay for a specific drug because there is no defined benefit in the Republican plan. Who makes the decisions? The drug HMOs make the decision. They choose how much the beneficiaries will pay, what the deductibles will be, and how much they will pay for each prescription in coinsurance. It could be 50 percent, which is what their charts say. It could be 80 percent. It will be determined not by the seniors, not by Medicare, but by the drug HMO.

I urge my colleagues to consider carefully the differences between the Democratic and Republican bills. Our bill uses the Medicare Program, a tried and true delivery system, to provide prescription drugs to our seniors. The Republican bill privatizes Medicare and requires seniors to get their drugs from a drug HMO—if they can find one in their State.

Our bill assures that seniors in rural America are guaranteed the same benefits provided to senior Americans elsewhere in this country. The Republican bill abandons rural Americans. Our bill gives seniors an affordable drug benefit and guaranteed prices. The Republican bill lets private insurers decide what drugs are covered and how much seniors will pay for each prescription.

Our bill uses every taxpayer dollar, every dollar paid by the beneficiary in monthly premiums to lower the cost of prescription drugs for seniors. The Republican bill uses taxpayer dollars and premium dollars to lure uneager private insurers into a market for which today there is no private insurance being offered.

Our bill is a bill for seniors. The Republican bill is a bill for drug companies and private insurers. The differences between the bills will make a very real difference in the ability of our seniors to afford the prescription drugs they need, and enjoy the improved health that those drugs will bring.

I urge my colleagues to support the Graham-Miller-Kennedy Medicare prescription drug benefit. In the event that none of the proposals that will be voted on this afternoon garner the necessary votes to move forward, I urge my colleagues to roll up their sleeves and begin work immediately on a proposal that can be adopted this year.

The outcomes of the votes today should not be viewed as a trumpet of defeat, but as an even more urgent call to find a proposal this year, in 2002, that will bring our seniors the drugs they need, the drugs that we have promised, the drugs a compassionate America will provide to this, our greatest generation.

The PRESIDING OFFICER. Who yields time?

The Senator from Iowa.

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

Mr. BREAUX. Mr. President, I thank the distinguished Senator and say how much I have enjoyed working with him on the tripartisan group.

The Senate will be faced, in a few moments, with an interesting proposition. We will have Graham legislation that will not get the requisite number of votes to proceed. And we will be faced with the tripartisan proposal to see if we have an opportunity to proceed with that legislation. That will be the second and final vote, I take it, today on this issue. At least, I think it will be.

I don't think the Senate and this Congress can go back this year and tell our constituents that we didn't do prescription drugs because it is the other party's fault. I don't think the Republicans can say they didn't bring back prescription drugs because it is the Democratic Party's fault, and I don't think we will get very far saying we didn't have a prescription drug plan because the Republicans would not support ours. I think the seniors are wising up and know that this blame game is no longer going to help them one bit. You cannot take an excuse to the drugstore and buy prescription drugs. What the seniors need is both sides to come together and create a program that would work. Our tripartisan bill is somewhere between the two versions that I have described—the Hagel bill at $150 billion, and the Graham bill at about $594 billion. All of that comes out of the Social Security trust fund money. We have tried to be responsible in how much we can spend to make sure we have a sufficient number of votes to actually pass something and also create a delivery system that can work.

What we have suggested is that for people in the Medicare Program, just like those of us in the Federal Employees Health Benefits Plan—the program that we have drug coverage under and all of our insurance—that private companies compete for the right to sell us that coverage. They compete for the right to sell us prescription drugs. The company that can do it the cheapest is the one, in most cases, from which we purchase the plan. That is what we are suggesting.

We are also suggesting that these companies are big people, big players. There are PBMs like Merck-Medco or Aetna or Blue Cross. These companies are used to assuming risk. That is their business. Why should we say we are going to get companies to deliver the product, but if they underestimate how much it is going to cost, the taxpayers are going to cover their loss? Our bill says if these companies bid $100 to provide prescription drugs for seniors, and it costs them $102, then that is their responsibility. That is the risk they have to assume. Why should the taxpayers say: Look, we don't care how much it actually costs, the taxpayer will pick up the difference no matter what.

Regarding rural areas, our legislation says there will be at least two competing plans in every area of the United States. The Government will ensure that there are at least two competing plans. It is not like an HMO. Here you had to have a hospital and doctors and emergency rooms. The only thing you need to deliver drugs in a rural area is a drugstore to have the prescription filled and a doctor to write the prescription. We guarantee that every part of the country will have at least two competing plans.

What do we do if neither side has 60 votes? Do we give up? I suggest we try to find common ground. I think we can do that and we will continue to work in that regard.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, how much time remains on each side?

The PRESIDING OFFICER. The minority has 5 minutes 45 seconds. The majority has 4 minutes 45 seconds.

Mr. GRASSLEY. Mr. President, I yield 3 minutes to the Senator from Utah.

Mr. HATCH. Mr. President, just a few years ago, when President Clinton was President, he was asking for a drug benefit program of $168 billion. Last year, the Democrats wanted a $311 billion program. This year it is $600 billion. Frankly, I think it is a lot more than that because they have written in a sunset provision that actually helps to reduce the cost of that program, but also makes the program temporary.

I have to say that some of the things I find objectionable about the Graham approach is that the bill sets up a Government formulary that allows only two drugs for each illness. Because of that, it means that literally dozens of drugs that may be prescribed by doctors will have to be purchased by the patients themselves.

I might also add that it means a situation of price controls without question. Countries that set price controls on prescription drugs have been unable to duplicate the success of the United States in developing new pharmaceuticals.

Our tripartisan plan provides a permanent benefit, not a temporary one like Graham-Miller does. It gives beneficiaries choice in Medicare coverage, drug coverage, and options to select any prescription they want. It is affordable. Our plan costs $370 billion over 10 years. The Graham plan costs $600 billion over 10 years. Our plan, in addition, includes Medicare reforms. The Graham-Miller plan does not. Our plan is not run by the Government, but by the private sector, and it depends on private competition. It trusts seniors to make their own decisions and choices. The Graham-Miller bill does not. Ours is affordable, it creates competition, and there are no price controls on drugs. We take care of the

poorest of the poor and we do it within reasonable budgetary limits.

Mr. President, I yield back the remainder of my time.

Mr. KENNEDY. Mr. President, I yield 4 minutes to the Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. MILLER. Mr. President, first I want to quickly make a point about a matter that has been raised on the provision in the Graham-Miller-Kennedy bill that says we take a second look at this legislation after a few years. That is not a weakness. It is one of its strengths, and it is nothing new. That is what we did with welfare reform, and that is what we did with the farm bill.

I submit to the Chair, if we had that provision in the original Medicare bill, we probably would have had a prescription drug benefit years ago.

Back in April, right after the Easter recess, I came to the Senate floor and talked about the urgency of passing a prescription drug bill. I spoke then of my 88-year-old Uncle Hoyle who lives next door to me in the mountains of North Georgia. He has been like a father to me in many ways. Once a very strong mountain man, Uncle Hoyle now suffers from diabetes, prostate cancer, recently had angioplasty, and also suffers from a kidney infection. Although he still makes a great garden—and I had tomatoes and corn out of it this last week—that once strong body is growing frail. I cannot get Uncle Hoyle, or millions like him, off my mind.

Many—too many—refuse to see these elderly waiting, waiting for someone, anyone, to knock on that screen door and say, as John Prine sings: ''Hello in there.''

The elderly are waiting for something else, too. They are waiting for us to do something about their health needs. So far, they have waited in vain, each day growing older, growing weaker. Now it comes down to us on this July afternoon 2002.

If we do not do something, you know who we are going to be like? If we do not do something, we are going to be like those who pass by that man in the ditch on the side of the road in that Biblical story of the Good Samaritan: Passed him by, tried not to look at him, refused to help him. We will be no better than they were and should be remembered in the same negative way.

We must come to the aid of our seniors by adding a meaningful prescription drug benefit to Medicare. The Graham-Miller-Kennedy bill would do just that. I believe and, more importantly, the AARP believes that our bill offers the best value for seniors. We deliver our prescription drug benefit through the tried and tested Medicare system. We provide extra help for our neediest seniors. We guarantee coverage 24 hours a day in every corner of this country, including that tiny rural town that the Presiding Officer knows, where I and my Uncle Hoyle live.

Remember what FDR once said: Try something; if it doesn't work, try something else. But for God's sake, try something. That is what I am trying to say. I want Uncle Hoyle and all those millions like him in this land of plenty who played by the rules, raised their families, and worked hard to have some hope and dignity in their twilight years.

Is that really too much to ask? Mr. President, I do not think so.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that the Senator from Iowa be granted 3 additional minutes and the Senator from Massachusetts, the manager of the bill, be given 3 additional minutes prior to the vote.

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

Mr. GRASSLEY. Mr. President, I yield myself such time as I might consume.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, soon we will cast what could be our final votes on a new Medicare prescription drug benefit. I am deeply disappointed with the process that brought us to this point, a process that ignored the good bipartisan will on the Finance Committee in favor of politics and partisanship that has seemed to dominate the debate on the floor of the Senate.

However, I continue to believe that our bill, the Tripartisan 21st Century Medicare Act, represents the broadest and best approach to providing prescription drug coverage.

Our work on this bill over the course of a full year involved fine Senators from every party. I have never been prouder to work in a bipartisan manner than with my colleagues Senator HATCH, Senator BREAUX, Senator SNOWE, and Senator JEFFORDS on probably the most important change in Medicare in the 37-year history of that legislation.

Together the five of us, bipartisan or tripartisan, whatever one wishes to call it, consulted stakeholders of all political persuasions and the Congressional Budget Office as we developed our policies over the last year. At every step of the way, we faced tradeoffs and made compromises, all in the spirit of cooperation, with the common goal of getting something done that could actually work without breaking the Medicare bank.

Our bill reflects the best of what good bipartisan cooperation can do. It offers seniors affordable coverage on a permanent basis. It does not sunset, and it does not take brand name drugs away from our seniors. It improves and enhances other unfair aspects of the Medicare Program, and it does it all on a voluntary basis. It does so at a total cost that reasonable people from both parties should be able to support—$370 billion over 10 years.

I urge my colleagues to remember that anything that comes to the floor on a purely partisan basis, such as the Graham-Kennedy bill before us right now, is destined to failure, and I remind everyone again that nothing ever passes this body on a partisan basis alone. Around here, it takes bipartisanship to make things happen, and apparently the Democrat leadership is not interested in making things happen for our senior citizens.

Our bill is built on a bipartisan foundation. Had it been given a chance to be debated in the Senate Finance Committee, it could no doubt have been improved further still, but we were denied that chance all because the other side did not want real debate. They wanted a real issue instead.

I urge my colleagues, especially those on the other side of the aisle, to listen closely when Senators claim to care about bipartisanship. Our bill is the only bipartisan prescription bill in all of Washington, DC, this year. It deserves consideration of the full Finance Committee, but since we have been denied that right by the Democratic leadership, it deserves your vote today.

The bill, other than the tripartisan bill before us, is without a doubt a program for big Government. Rather than allow prescription drug plans to design cost savings and innovative benefits that best suit seniors' needs, the Graham-Kennedy bill requires Federal bureaucrats to set up 10 regional drug formularies, basically deciding which prescription drugs seniors can and cannot access.

Under Graham-Kennedy, plans would not compete with one another. It would not be allowed to deviate from a regional drug formula, thus restricting seniors' choices. Plans would be further restricted from offering more than two brand name drugs in a therapeutic class.

This approach puts control squarely in the hands of bureaucrats in Government, and we know from experience that exclusive Government control over medicine has not worked well. The Government has lagged many years behind the private sector in covering immunizations, physicals, mammograms, and other preventive care in Medicare.

By contrast, the Tripartisan 21st Century Medicare Act approach puts control in the hands of our senior citizens. The bill guarantees multiple plans will compete in each region of the country, giving seniors a choice to pick the plan that best suits their needs and the right to get out of plans that do not meet their needs.

The tripartisan bill also does not restrict plans from offering more drug choices and better overall drug coverage. Under the tripartisan bill, private plans compete for seniors, not Government bureaucrats. What if the specific drug a senior relies on is not on the regional Government formulary? The Graham-Kennedy bill forces seniors to go through multiple layers of bureaucratic red tape to convince the Government to give them the drugs that their doctors think they need.

The tripartisan bill lets seniors and their doctors decide what drugs they should receive.

Take your choice. We have it within the next 5 minutes. I hope you will vote for the tripartisan plan.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Will the Chair let me know when there are 15 seconds remaining?

The PRESIDING OFFICER. The Chair will so advise the Senator.

Mr. KENNEDY. Mr. President, this vote is one of the most important any of us will ever cast. It is a vote about our national character and national priorities.

It is a vote about the quality of our society. But most of all it is a vote about senior citizens and disabled Americans and their right to live in dignity.

Medicare is a solemn promise between Government and the individual. It says, ''Play by the rules, contribute to the system during your working years, and you will be guaranteed health security in your retirement years.'' Because of Medicare, the elderly have long had insurance for their hospital bills and doctors bills. But the promise of health security at the core of Medicare is broken every day because Medicare does not cover the soaring price of prescription drugs.

Today, we have the opportunity and the duty to mend the broken promise of Medicare. It is time to pass a Medicare prescription drug benefit. It is time for Congress to listen to the American people instead of the powerful special interests.

When I first came to the Senate, I was privileged to participate in the debates that led to Medicare's passage. Then, as now, there were two plans before us. One plan was the solid, dependable, comprehensive Medicare program that became law. The other was little more than a political fig leaf for the elections. One plan was supported by all the organizations representing senior citizens and working families. The other plan was supported only by the powerful special interests. That is the same situation we face today.

Senators GRAHAM, MILLER, and I have offered a solid, affordable Medicare prescription drug benefit that offers senior citizens and disabled Medicare beneficiaries the protection they need at a price they can afford. There is no deductible, there are no gaps, there are no loopholes. The benefit and the premium are both guaranteed in the law itself. Low income senior citizens get special assistance.

But the other side has taken a different approach. Their plan is not affordable, not adequate, and not Medicare.

Under their plan, benefits are so inadequate that senior citizens will still be forced to choose between food on the table and the medicines they need to survive. There is a high deductible and a large coverage gap. Whether the senior citizen has large drug needs or more modest ones, the program only pays a small fraction of the cost of needed medicine—leaving the elderly to shoulder the rest or go without.

Special help for the low income elderly is conditioned on a cruel and intrusive assets test.

Instead of guaranteeing benefits for senior citizens, their program provides subsidies for insurance companies—and allows them to set the premium and determine the benefits that the elderly can receive.

And to reduce the cost of their plan, they have set it up in such a way that it actually encourages employers to drop the good retirement coverage that more than ten million senior citizens now enjoy.

According to the Congressional Budget Office, under the Republican plan one-third of these retirees—three and one-half million—would actually lose the good coverage they have today and be forced into the inferior Republican plan.

From the AARP to the Leadership Council of Aging Organizations to the National Committee to Preserve Social Security and Medicare, virtually every organization representing senior citizens and the disabled supports our amendment. Not a single legitimate organization of senior citizens or the disabled supports their proposal.

We are proud that our Democratic leader brought this matter to the floor of the Senate. This is the time for us to act.

The PRESIDING OFFICER. The Senator from Massachusetts has 15 seconds remaining.

Mr. KENNEDY. Senior citizens and their children and their grandchildren understand that affordable, comprehensive prescription drug coverage under Medicare should be a priority. Let's listen to their voices instead of those of the powerful special interests. Let's pass a Medicare prescription drug benefit worthy of the name.

Every single member of this body has a good prescription drug benefit. Let's do the same for the American citizens. That is what our program does.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I think the time has expired.

The PRESIDING OFFICER. The Senator from Iowa has 45 seconds.

Mr. GRASSLEY. Mr. President, I yield back the remainder of our time.

Mr. President, I make a point of order that the Graham amendment, No. 4309, violates section 302(f) of the Budget Act.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of that act for purposes of the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

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

The result was announced—yeas 52, nays 47, as follows:

[Rollcall Vote No. 186 Leg.]

YEAS—52

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

NAYS—47

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

NOT VOTING—1

Helms

The PRESIDING OFFICER. On this vote, the yeas are 52, the nays are 47. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. Under the previous order, the amendment is withdrawn.

VOTE ON AMENDMENT NO. 4310

The PRESIDING OFFICER. The question now occurs on the Grassley amendment No. 4310.

The majority leader.

Mr. DASCHLE. Mr. President, I make a point of order that the pending amendment violates section 302(f) of the Congressional Budget Act of 1974.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, pursuant to section 904 of the Budget Act, I move to waive the point of order for the pending amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

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

The yeas and nays resulted—yeas 48, nays 51, as follows:

[Rollcall Vote No. 187 Leg.]

YEAS—48

Allard	Enzi	Murkowski
Allen	Fitzgerald	Nickles
Bennett	Frist	Roberts
Bond	Gramm	Santorum
Breaux	Grassley	Sessions
Brownback	Gregg	Shelby
Bunning	Hatch	Smith (NH)
Burns	Hutchinson	Smith (OR)
Campbell	Hutchison	Snowe
Cochran	Inhofe	Specter
Collins	Jeffords	Stevens
Craig	Kyl	Thomas
Crapo	Landrieu	Thompson
DeWine	Lott	Thurmond
Domenici	McCain	Voinovich
Ensign	McConnell	Warner

NAYS—51

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

NOT VOTING—1

Helms

The PRESIDING OFFICER. On this vote, the yeas are 48, the nays are 51. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. Under the previous order, the amendment is withdrawn.

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

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. CORZINE). Is there objection?

Mr. REID. Mr. President, I object.

The PRESIDING OFFICER. The objection is heard.

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

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

Mr. REID. Mr. President, I ask unanimous consent that when the Senate considers the Hagel amendment, it be considered under the following time limitations: During today's session there be 90 minutes under the control of Senator HAGEL or his designee and 30 minutes under the control of Senator KENNEDY or his designee; that upon the use or yielding back of the time, the amendment be set aside to recur when the Senate resumes consideration on Wednesday, July 24; and there be additional time of 120 minutes prior to the vote in relation to the amendment controlled as follows: 60 minutes under the control of Senator HAGEL or his designee and Senator KENNEDY or his designee; that upon the use of the time, the Senate vote in relation to the amendment.

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

Mr. REID. Mr. President, before Senator HAGEL begins the debate, we hope to get from the House today the supplemental appropriations bill. After Senator HAGEL and Senator KENNEDY finish debate time today, we will begin the debate on the supplemental appropriation.

Based on the unanimous consent agreement just entered, I have the authority of the majority leader to announce there will be no more rollcall votes tonight.

I have been asked we have a consent request on the supplemental. The time, of course, is not running against the Senator's amendment.

Senator HAGEL has been his usual courteous self. He has been very patient in waiting for us to write this agreement. We have known his was going to be the next amendment for some time, and it is unfortunate it has taken so long to get to where we are.

Mr. President, I ask unanimous consent that at the conclusion of the Hagel amendment debate today, and notwithstanding receipt of the conference report to accompany H.R. 4775, the supplemental appropriations bill, there be 2 hours 40 minutes for debate with respect to the conference report, with the time divided as follows: 60 minutes each for the chairman and ranking member of the committee; 30 minutes under the control of Senator WELLSTONE, and 10 minutes under the control of Senator REID of Nevada or his designee; that on Wednesday, July 24, the Senate proceed to the consideration of the conference report at 10:30 a.m. with the time until 11 a.m. equally divided and controlled by Senators BYRD and STEVENS or their designee; that at 11 a.m., without further action or debate, the Senate vote on adoption of the conference report.

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

The Senator from Nebraska.

AMENDMENT NO. 4315 TO AMENDMENT NO. 4299

(Purpose: To provide medicare beneficiaries with a drug discount card that ensures access to affordable outpatient prescription drugs)

Mr. HAGEL. Mr. President, I call up amendment No. 4315, which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nebraska [Mr. HAGEL], for himself, Mr. ENSIGN, Mr. LUGAR, Mr. GRAMM, Mr. INHOFE, and Mr. GREGG, proposes an amendment numbered 4315 to amendment No. 4299.

Mr. HAGEL. I ask unanimous consent reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. HAGEL. Mr. President, we have spent 4 days debating and voting on two Medicare prescription drug proposals, the Graham-Miller-Kennedy bill and the so-called tripartisan bill. I have worked with Senators ENSIGN, LUGAR, PHIL GRAMM, INHOFE, SANTORUM, and GREGG to introduce relevant, straightforward, realistic legislation to add a prescription drug benefit to our Medicare Program.

Our legislation would create a permanent Medicare prescription drug program that would be available to all Medicare beneficiaries beginning January 1, 2004. We keep it affordable to both beneficiaries and taxpayers. We do it without creating a new Federal Government bureaucracy. The program is not perfect. None of the Medicare prescription drug bills we have considered have been perfect.

This bill accomplishes a very important goal. This bill gives seniors the peace of mind that comes with knowing they have security from extremely high drug costs, catastrophic costs that ruin families.

Why are we engaged in this debate?

Medicare was created, as we all know, in 1965—and it is a 1965 model. Preventive health care, like diet, lifestyle, and exercise, was not emphasized in 1965. Prescription drugs were not as widely prescribed or used. Research had not developed the kind of lifestyles and life expectancies and quality of life we now enjoy—prescription drugs, pharmaceutical research, being the core of that development.

Seniors needed protection, in 1965, from high hospital costs for inpatient services, and we gave them that protection. It came through Medicare Part A hospital insurance.

In 2000, the average American spent $435 a year on prescription drugs. Today, Medicare beneficiaries need protection from unlimited out-of-pocket prescription drug costs.

John C. Rother, policy director of AARP, was quoted today in the New York Times as saying:

> Another possibility is for Medicare to provide catastrophic coverage for prescription drug expenses over a certain threshold, perhaps $4,000 to $6,000 a year, with no premium. This could be combined with additional help for low-income beneficiaries and a government-authorized drug discount card.

So reported the New York Times today as a quote from Mr. Rother, the policy director of AARP. What Mr. Rother states is exactly what this bill does.

How would this program work? There are two major components to our bill. First, all participating beneficiaries

would be protected from unlimited out-of-pocket drug expenses through a cap on their private expenditures. The annual out-of-pocket limit would depend on their income. That would go as follows: For annual income levels below 200 percent of poverty, the annual expense would be no more than $1,500. That is a little more than a $100-a-month cap on out-of-pocket expenses. For those with annual income levels 200 percent to 400 percent of poverty, it would be capped at $3,500—no more, regardless of the need. For those incomes between 400 percent and 600 percent of poverty, out-of-pocket expenses would be capped at $5,500—no more. And for those who wanted to subscribe—this is a voluntary program, open to all Medicare beneficiaries—with incomes above 600 percent of poverty, their out-of-pocket expenses would be capped at 20 percent of their income.

Again, to give some relevancy to help understand those numbers, the 2002 Federal poverty level is $8,860 for an individual and $11,940 per couple. Beneficiaries with the lowest incomes would have their out-of-pocket expenses on prescription drugs limited, as I said, to about $100 a month. And almost half of all Medicare beneficiaries live on incomes lower than 200 percent of poverty.

The second part of our program would be that every beneficiary would be able to choose to enroll or not to enroll in a discount drug card program, giving them access to privately negotiated discounts on prescription drugs.

Who would administer this program? The Secretary of Health and Human Services would administer the program through the Centers for Medicare and Medicaid Services, CMMS. The Secretary would negotiate with private companies to deliver the benefits. What that means is no new Federal bureaucracy, no new Government program to administer these benefits.

I would like to point out that two-thirds of all seniors already have some type of private prescription drug coverage that they like and want to keep. Seniors would not be forced to drop supplemental coverage, and employers would be encouraged to retain and even improve existing coverage under our plan.

Our bill would allow employer-sponsored plans—all employer-sponsored plans: Medicare supplemental plans, Medicare+Choice plans—pharmaceutical benefit managers—PBMs—pharmacists, and even States working with private companies to deliver the benefits.

By structuring our program this way, we do not create an expensive and new, expansive Government bureaucracy or the subsequent redtape that follows. We would use the market system in place.

These private market tools, such as consumer choice and competition to control costs without limiting innovation, are critical to the future development and innovation of prescription drugs.

How would seniors participate? Seniors would enroll with an approved provider and pay an annual fee of $25, which would be waived for beneficiaries with incomes less than 200 percent of poverty, individuals with incomes of less than $17,720. Once beneficiaries had met their out-of-pocket limit on prescription drug expenses, they would pay a small copayment of no more than 10 percent of the cost of each prescription drug. Seniors would not have to pay monthly premiums for deductibles.

When would the program start? Our program would take effect January 1, 2004. Other bills that were considered would not have taken effect until 2005 or even later. And our benefit is permanent; we do not sunset the program.

Why do we structure the program this way? Any realistic Medicare prescription drug proposal must not only be affordable for seniors, but it must also be affordable to the taxpayers, future generations of Americans who are going to have to pay for this program. Why is that important? It is very important because if we begin a program and obligate and commit the next generations of Americans to this program, then we owe them. We have a responsibility of giving them all the facts and structuring a program that is accountable and responsible.

Let's examine something carefully. Projected Federal deficits now are seen for at least the next 2 years and probably longer. So as opposed to a couple of years ago when we looked out onto the horizon and saw surpluses as far as the eye could see, we are now in a different dynamic, a different environment. No one really knows how long we will be in deficit, so any new Federal program and entitlement that is added, someone must pay for that.

We are not operating under a new budget resolution, so, as of October 1, we will no longer be subject to budget caps. The two previous prescription drug bills we debated did not attain the 60 votes needed today in order to overcome a point of order raised because both violated the budget resolution cap of spending no more than $300 billion over the next 10 years. That was an important point. Both of the bills we debated that did not attain those 60 votes needed were in excess of the $300 billion cap that the Budget Committee of the Senate, this Senate, this body, voted for last year. But after October 1, there are no caps because we are not operating under a budget.

Finally, the underlying Medicare Program is still in danger of becoming insolvent. Let me pass on an interesting number. When Medicare was passed in 1965, Part A hospital costs for 1990 were projected to be $9 billion. In 1990, Medicare Part A actually spent $67 billion.

So from the projection, in 1965, out 25 years, as to how much Medicare Part A would cost, all the actuaries said then—all the smart people, all the medical care people—we would be spending, including inflation, and the rates of increase in costs—all the dynamics that are part of health care—$9 billion in 1990 when, in fact, we spent $67 billion in 1990.

We should pay attention to this number. I do not know of a Federal program—especially entitlement programs—that did not go far beyond any projections, partly because we always, for the political benefit, understate the numbers. But the numbers I have just recited are real numbers.

We ask, why should we be concerned about costs? I see a lot of young people sitting in the galleries. You better be concerned about some costs. You better be very concerned about what we do on prescription drugs because if we do not pay attention, and we are not concerned and enact an accountable, responsible, affordable program, I do not know how you are going to afford it—because you are going to pay for it. You will be paying for my prescription drug costs.

So we must act in a responsible, accountable way. Each of us who has the high privilege of serving in this body is but a passing, fleeting steward of your interests and the interests of this country. That is our highest responsibility.

According to a preliminary actuarial analysis—we are getting CBO scores on our amendment—our proposal would cost less than $200 billion over the next 10 years. In fact, the numbers are coming in at around $160 billion. That stays within the $300 billion budget resolution that this body, this Senate, voted for last year. The Congressional Budget Office will give us those exact numbers by the end of the day.

We have a tremendous opportunity to pass a responsible bill, to provide all Medicare beneficiaries with a permanent prescription drug benefit that would start January 1, 2004. We have that now within our grasp.

The debate we have had over the last 4 days has been good debate, relevant debate, important debate. All sides, all perspectives have had an opportunity to lay this out, as we should, as we are embarking upon this great new entitlement program. And we need this program. Make no mistake, this program is necessary. We need to deal with this issue.

This amendment that we offer today is not perfect. However, what we offer today is a real-world solution to a real-world problem.

Our amendment will give beneficiaries the protection they need most. And we focus on those who need it most, those who are without prescription drug insurance, those who are at the bottom of the social-economic ladder, those who have to make hard choices about their lives.

We can do this. We must do this. But it must be in a way that is accountable and responsible.

As the New York Times editorial phrased it this morning:

> The most important short-term priority should be the needs of the fairly narrow, and politically uninfluential, band of Americans

who have very low incomes and very high drug prices.

They have said it accurately. They have stated it correctly. They have focused on those who need it most. This amendment does that.

Mr. President, I am grateful for an opportunity to propose this amendment and debate it. We will have a vote on it tomorrow. I know a number of my colleagues wish to speak on this amendment.

So I yield the floor to my cosponsor on this amendment, who has worked long, hard, diligently, and understands the issue as well as anyone in the Senate. I am very proud we have teamed up, along with a number of our other colleagues, to present something we think is important for our country that is workable, doable, and responsible.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, I thank the co-author of this amendment, the Senator from Nebraska, for the great work he has done; and, by the way, that both of our staffs have done in coming up with an amendment that we think is fiscally responsible and that meets the needs of those seniors who need it the most.

We have heard a lot of examples during the House debate, and during the Senate debate, about those seniors who are having to choose between paying rent and paying for prescription drugs, or paying their food bills and being able to pay their drug bills. We have heard about a lot of heartbreaking stories. Those are real stories that are out there. We have those stories in my home State of Nevada. We get letters from those people all the time.

I got an e-mail a few weeks ago from a lady who sent this e-mail at 11:20 p.m. West Coast Time. She was up thinking—and probably looking through her medical bills—and just crying out for help, asking if I would be willing to take a moral stand to help seniors who need the help the most? Our amendment does exactly that. It helps those seniors who need help the most.

But this morning, I was also thinking about our responsibility to our children and the next generation of young people coming up who are going to be working for a living and paying taxes.

Will Medicare and Social Security be there for them? Will this country be there for them? Somebody has to pay for all of these programs that we are talking about.

People have not wanted to means test Medicare and Social Security because they believed that they have earned this benefit, that they have paid in for this benefit.

Realistically speaking, this new prescription drug benefit would not been earned by anybody that is going to get it, at least early on. Frankly, it is a straight giveaway to seniors. It is taking it out of the pocket of younger people who are paying into the system now and putting it into the pocket of older people who, while they were working and paying taxes, paid for a Medicare program that did not have a prescription drug benefit

All of us feel a great responsibility to our parents and our grandparents, to take care of them in their golden years. But we must do this in a way that does not put such a burden on young people in our society that they cannot prosper.

Why should their tax rates have to be so high just because we in the Senate wanted to get reelected, so we voted for things that just kept spending these young people's money? Ultimately, they will have no choice but to pay high taxes because politicians pay attention to the senior citizens because senior citizens vote. We need to pay strict attention to what we are doing here and whose money we are doing it with.

Once we add a benefit to Medicare, we will not be cutting that benefit in the future. So whatever we do, we better do in a fiscally responsible fashion.

Senator HAGEL and the rest of the team that has put this amendment together believes that we have done exactly that: We have provided help to those seniors who need it, but we have done it in a fiscally responsible manner.

I want to talk a little bit about the amendment and how it works. Senator HAGEL has covered some of this, but I want to reemphasize a couple points and to use a chart for those who need to see it. I am kind of a visual learner and need a chart to understand things sometimes, to actually be able to see the numbers on a piece of paper so I can put them in my head.

The way our bill works, first of all, is that we cap—this is catastrophic coverage—we cap the amount of out-of-pocket, expenses a senior citizen is going to have to pay. We do that based on income. The people who are have the lowest income get the most help. It goes up from there based on your income level. That seems to make sense if you think about it. Should a person like Ross Perot, who would qualify for this benefit, get the same help as somebody who makes $15, $16, $17,000 a year—a senior citizen? Should they get the same level of help? I think most people would say they should not get the same level of help.

Our bill says that if you are lower income, you are going to get more help. It also says that the sicker you are, the more help you get because those seniors who are very sick or who have a chronic condition such as heart disease, diabetes—and we will talk about a few examples later—pay much more per year in prescription drug costs and our plan limits their out-of-pocket spending. Those are the people our bill actually helps more than the leading Democrat proposal or the so-called tripartisan proposal.

For people who make $17,720 or less a year, up to 200 percent of poverty and below, we cap their out-of-pocket expenses at $1,500. This is a little over half of the seniors in this country. If you make between $17,721 and $35,440 per year, your out-of-pocket expenses are capped at $3,500, and it scales up from there.

Once again, our program is completely voluntary. I have heard that in 1987 the Senate passed, and actually enacted into law in 1988, a catastrophic drug benefit plan. We hear people—and I am not sure if they were referring to our plan or not—saying seniors opposed the 1988 plan so much, that they repealed it the next year. They were not opposed to it because of the catastrophic coverage, they were opposed to it because one, they were forced to join; and, two, their Medicare premiums went up. Ours is a voluntary program, and it only has an annual enrollment fee of $25 per year. That is strictly to take care of administrative costs. We figure about $25 per year is what is necessary to handle these costs per enrollee.

When you pay that fee and sign up for the program, you will get a drug discount card. You will be able to sign up for various plans in the area, and pharmaceutical benefit managers will have a list of pharmacies that are participating. They will have a formulary or a list of drugs that are offered. You will go through those, and you will say: I have this disease, or, I like that particular formulary; maybe I will get together with some of my fellow seniors or I will get together with my doctor and say, Which one of these plans do you recommend? Then you will sign up for that plan that best meets your needs. It is the competition between the plans and the volume buying that will allow the average senior to save somewhere between 25 and 40 percent on the drugs they buy with this drug discount card.

Right upfront, they save 25 to 40 percent. Then, we cap their out-of-pocket expenses. So it is a two-pronged approach. We believe that because the senior pays initially out of pocket—about $100, $120 a month for the low-income seniors—that they will shop for their drugs and take advantage of the lower prices that are being offered as a result of competition between the participating entities.

I want to give a couple of real-life examples of those cases we always hear about—those cases that tug at our heartstrings.

James is a 68-year-old man who has an income of about $16,000 per year. He is being treated for diabetes. These are the various medications he is taking: Glucophage, Glyburide, Neurontin, Protonix, Lescol, and Zoloft. He has monthly prescription drug costs of $478.04, and a yearly cost of $5,736.48—so James is paying out of his own pocket over $5,700 right now. Medicare doesn't cover anything.

To compare the various plans, first of all, under the Graham-Miller plan, James' out-of-pocket expenses would

be $2,940.00. Under the tripartisan plan, he would pay $2,341.65. Under the Hagel-Ensign plan, he would pay $1,923.65. So for the low- to moderate-income person who has a serious disease, the Hagel-Ensign plan gives that person more help than any of the other bills. And example after example has been heard on this floor about has been this type of a case.

If you don't like this one, we will give you the next one. Doris is a 75-year-old and has an income of around $17,000 a year. She suffers from diabetes, hypertension, and high cholesterol, which is not unusual for a senior. Her medications are Lipitor, Glucophage, Insulin, Coumadin, and Monopril, for a total cost of $304.03 a month, and $4,648.36 a year.

Once again, here is how Doris would fare under the various plans Under the Graham-Miller plan, the leading Democrat plan, she would pay $2,220.00 a year out of pocket; under the tripartisan plan, she would pay $2,086.36 a year; and, under our plan, she would pay $1,714.84 a year. Once again, this person does better under the Hagel-Ensign plan more so than either of the other two plans which were voted on and failed to get the 60-vote point of order.

To reemphasize, the plan we have all worked on together, including Senator GRAMM of Texas, provides a Medicare prescription drug benefit in a much more fiscally responsible way and takes into account future generations.

There is a third example I want to talk about. Betty, who is a 66-year-old, has an income of $15,500 per year. She is being treated for breast cancer. She is still receiving low-dose radiation therapy with Nolvadex. Her medication profile is as follows: Morphine, Paxil, Dexamethasone, Aciphex, Trimethobenzamide, and Nolvadex—monthly total of $668.33 and $8,019.96 per year.

These are three real-life cases from Nevada. The names have been changed to protect their privacy.

Betty's medications, under the three different proposals, once again: Under the Graham-Miller plan, the leading Democrat plan, she would pay $3,180.00 out-of-pocket expense; under the tripartisan plan, $2,570.00; and under the Hagel-Ensign plan, $2,152.00 out-of-pocket expense.

The person who is the sickest, who is moderate to low income, is the person our plan benefits more than any of the other plans. That is why we think our plan is superior, because when we hear about people, when they go on the talk shows, when they talk in front of seniors groups, when we are hearing all these horror stories, these last three examples are the type of people about whom they are talking.

So if my colleagues really want to help those seniors who need it the most, they should support our plan. The other thing is—and I will conclude with this—that we have had two other plans voted down today. The two plans that were voted down, because they did not get the 60-vote point of order, are pretty much dispensed with at this point. Senators should ask themselves if they want to get a bill done this year. If they do, this is your best chance of doing it.

If we pass this plan in a bipartisan fashion, lay aside the politics—and we said we are going to put seniors ahead of politics, and ahead of being a Republican, or ahead of being a Democrat—we can pass a plan now. We should put seniors ahead of a political issue in this November's election. This Hagel-Ensign bill is the bill that offers that opportunity for people.

So I encourage my colleagues to support our bill. It will be voted on tomorrow. We have a great chance and a great opportunity for the American people, and especially for those seniors and disabled people who are on Medicare, to really get the help that they need.

Mr. President, I ask unanimous consent to add Senator ALLARD as a cosponsor of amendment No. 4315.

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

Mr. ENSIGN. I yield the floor.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I am not going to speak very long, but I know my colleagues, the Senator from Nebraska and the Senator from Nevada, put forward their plan. I thought I would make a few points in regard to it. I commend them for their effort. They are trying to do something that is extremely difficult. They are trying to be both responsible in a plan in terms of how much they will provide, in terms of helping people who need help, but at the same time, they are trying to be as fiscally, I guess they would say responsible—I would say as minimal as possible. I would say, yes, if you just look at the plan and say which one should cost the least, the Hagel-Ensign plan is there.

If you look at all the other things we do in the budget and then say we don't have any money for this, repeal of the estate tax comes to mind, which I believe both of my colleagues have supported—and most have supported—and ask if it is an either/or proposition if you want to be fiscally responsible, which would people choose? A more generous plan. I think that cost us $600 billion in the President's budget to make that permanent. Putting together a generous plan and not repealing the estate tax, or repealing the estate tax and having this minimal plan, my guess is that 80 or 90 percent of the American people would reject the plan put forward by my colleagues from Nebraska and Nevada.

I guess if I had to think of the rubric of the plan, they are trying to be compassionate conservatives. It is a hard thing to do, a difficult thing to do. I respect their real effort to do it.

If my colleagues think this is a generous or adequate plan, it clearly is not. In fact, some have argued that this would be a step backward. That is not CHUCK SCHUMER, Democrat of New York, but it is AARP. I will read some excerpts from the AARP letter on this plan sent to Senator HAGEL on July 23. I ask unanimous consent that it be printed in the RECORD.

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

DEAR SENATOR HAGEL: Enacting a comprehensive prescription drug benefit in Medicare this year remains the top priority for AARP. Our members are counting on the Senate to pass a meaningful drug benefit that is available and affordable to all beneficiaries. Our members were promised in the last election that a comprehensive drug benefit would be a priority, and we are counting on you to make good on that promise this year.

We appreciate the intent of your bill, S. 2736, the ''Medicare Rx Drug Discount and Security Act of 2002,'' to provide a prescription drug discount card and stop-loss protection to Medicare beneficiaries. However, in addition to our substantive objections, we are concerned that by offering this scaled-back proposal today, you would effectively derail bipartisan discussion and compromise on more meaningful comprehensive approaches. We believe Congress should focus its efforts on enactment of a more comprehensive drug benefit this year.

In addition to the timing of your proposal, AARP has concerns about the approach taken in your bill, including:

Catastrophic coverage—While AARP has not opposed income-relating premiums, income-relating the Medicare benefit changes the nature of the program. This would set an extremely dangerous precedent in Medicare. Further, the stop-loss levels set in the bill do not provide enough protection for lower income beneficiaries. A low-income couple could spend 25 percent of their income just for drugs before this plan offered assistance. Thirdly, there are a number of issues involved in using tax returns to determine program eligibility levels, and we believe other options should be explored.

Discount card—While AARP supports the use of a discount card program as a building block for a Medicare prescription drug benefit, your proposal lacks the necessary specifications to guaranty the level of discount, what level of discount would be passed to beneficiaries, and the degree of consumer protections required of plans.

Given these concerns, AARP opposes your amendment. We remain fully committed to developing a comprehensive drug benefit for all Medicare beneficiaries and we look forward to working with you on legislation that our members can support.

Sincerely,

WILLIAM D. NOVELLI,
Executive Director and CEO.

Mr. SCHUMER. Let me quote from the letter to Senator HAGEL:

Our members are counting on the Senate to pass a meaningful drug benefit that is available and affordable to all beneficiaries.

AARP goes on to say that while they appreciate the intent of S. 2736—this is their quote—they are

. . . concerned that by offering this scaled-back proposal today, you would effectively derail bipartisan discussion and compromise on more meaningful, comprehensive approaches.

That is exactly the problem. I think when seniors from one end of this country to the other hear the exact specifics of the Hagel plan, they are going

to be shocked. I think they even probably think that the most generous of the plans—the Graham-Miller-Kennedy plan—doesn't go far enough in terms of help that they need. To hear this one—and I will get into some of the details—I think they would say: Gee whiz, what the heck did they do? If we went home and said we passed a prescription drug benefit and passed the Hagel-Ensign bill, most of our constituents would say—correctly—no, you didn't, and don't you claim that you did because you are not helping the vast majority of people who desperately need the help.

I will go on with the AARP letter. They are worried about the catastrophic nature of the Hagel-Ensign bill. Quoting them:

> While AARP has not opposed income-relating premiums, income-relating the Medicare benefit changes the nature of the problem. This would set up an extremely dangerous precedent in Medicare.

That is exactly right. Anybody who thinks this bill is helping middle-class people hasn't read it. The vast majority of our constituents who struggle with the cost of drugs, who may be making $20,000 or $25,000 and paying a couple thousand dollars—not $6,000, but $2,000—are left out in the cold by this bill. They are far more typical than the examples my good colleague from Nevada has brought up in his chart.

So to think that this is comprehensive, to think that it covers most, is wrong. We do have a choice. It is a value choice. How much are we willing to spend to help people? You cannot have it both ways. You cannot say we are passing a comprehensive prescription drug benefit and not spend the money for it. These drugs are wonderful, but they are expensive, and you cannot avoid that conundrum. You have to decide which side of the fence you are on.

With some regret, and I say it in admiration for their bold essay, the Hagel-Ensign amendment says we are on the side not of providing broad, comprehensive coverage but, rather, doing a little bit. And, again, as I said, put into the context of all the other things we spend money on, put in the context of the desire on the other side to continue with tax cuts, which takes their budget and puts it in a warped and pretzel-like way, it is not what the American people want.

So I am going to conclude with this quote:

> Given these concerns, AARP opposes your amendment. We remain fully committed to developing a comprehensive drug benefit for all Medicare beneficiaries, and we look forward to working with you on legislation that our members can support.

What AARP said to my colleagues I say as well. Let me just go over some of these things. This is the Hagel bill. Senior citizens with an income of $9,000—in parts of my State, that is not enough to pay rent, we would make that senior citizen with a $9,000 income pay $1,500 before the benefit outlined in the Hagel-Ensign bill—before they got any help at all. Now, is that fair? Is that right? Even taking the basic philosophy of Hagel-Ensign—and I disagree with it, but I respect it, helping the very poor who need the help—when you have a $9,000 income in most parts of America, you cannot afford to pay $1,500 in prescription drugs. You will never get there. That will be 17 percent of somebody's income. That is wrong.

Now, my friend from Nevada took one side of the line. I am going to take the other side of the line. He used a $17,000 example. Let's say you go to $18,000 in income. Nobody is rich on $18,000, whether you live in Nebraska, Nevada, or in Manhattan. It is harder in Manhattan than anywhere else. Your standard of living is different with the same income level there.

Listen to this: A senior making $18,000 would have to pay $3,500 before they receive any help. That is not the kind of benefit the American people are asking for whether they be senior citizens or younger people with parents. That is 20 percent of their income. If your income is $18,000, you pay $3,500 first? What they would say in New York is: Forget about it. What they would say to the rest of the country is: Please go back and try to do a little better.

Even a senior citizen with an income of $35,000—once you are at $35,000 and you are a senior citizen, hopefully your kids are out of the house and you are not doing that badly, although, again, in parts of New York, $35,000 does not stretch too far when you have an average rental payment of $1,000 a month or $800 a month. That eats a lot of it, and then you take taxes and other expenses. That person would have to pay $5,500, 16 percent of their income, before they got any help.

My guess is that 98 percent of all senior citizens at that level of income—hardly a very high level—would not qualify for this program at all. The number who pay that huge amount for prescription drugs—and that is the amount they would need before the program begins—is small.

I would not call this insurance. I would not call it Medicare. If it would become law, poor senior citizens would still be choosing between food on the table and the medicines they need to survive. That senior citizen who is making $9,000 and paying $1,500 for their much-needed prescription drugs is still choosing between food on the table and medicine.

Middle-class senior citizens who are willing to pay a little more in copayments and monthly payments would not get a benefit that they would find worthwhile at all. It would not affect most of them.

To all of my colleagues, this bill is more fiscally tight, stingier, if you will, than the House Republican bill. It is more inadequate than either of the two bills voted for in the Senate. I do not know a single organization of the elderly or the disabled that supports it, and I do not believe it deserves the support of the Senate.

The fight for a real Medicare prescription drug benefit does not end today. In fact, I argue that we made some progress today. Fifty-two votes for the Graham-Miller-Kennedy bill is a lot of progress, and, in fact, should we adjust the Budget Act next year, that 52 votes might be adequate to actually pass the bill. Once we forget these notions of spending money on things that virtually nobody wants, except a small rarefied few, we will be able to do it.

We made progress today. I am not despairing. I compliment the Senator from Georgia, as well as the Senator from Florida and the Senator from Massachusetts, who will be here shortly, for putting together a proposal that I think does much more of both: It is still fiscally within our means but really is broad and comprehensive and deals with people's needs.

To vote for Hagel-Ensign I think would be a cop-out. In fact, the argument was made by my friends—again, I salute the sincerity of their effort; I really do. This is an honest proposal and I thank them for that, but they admitted themselves: We will not do much after this.

I would rather go back to the drawing board and try to pass something that far better meets the American people's needs, such as the bill proffered by the Senators from Florida, Georgia, and Massachusetts. I urge my colleagues to defeat this amendment, and let's keep working on this issue until we get it right.

I yield the floor.

The PRESIDING OFFICER (Mr. MILLER). The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, I am not going to get into an argument with our dear friend from New York. I will say, I think in New York if you make $9,000 a year, you qualify for Medicaid. So you are completely covered.

I also have to say, if we are going to take the approach the Senator from New York takes, and that is ''how much are they willing to spend to help you,'' then we get into a debate not about what works, not about what is feasible, not about what we can afford, but who is willing to spend more money?

In truth, we have already been in that debate. I want to show my colleagues this, because this is frightening to me.

In 1999, just before he left office, President Clinton proposed a comprehensive drug benefit—let me start earlier. We had, through a legislative act of Congress, a bipartisan commission appointed with Senator BREAUX as chairman. I was on that commission. Part of what we did is we put together a proposal to modernize Medicare through the use of competitive marketplace forces.

For example, if you have a cane with four little legs on it and you buy it

through Medicare, the average Medicare cost is $40. The VA, which has never been thought of as the world's most efficient buyer, buys it for $15. The Breaux commission put together a proposal to modernize Medicare and to use some of those savings to help people get coverage for pharmaceuticals, and the way they got it was opting into a more cost-effective system.

That proposal actually saved money because reforms in Medicare save more money than providing the pharmaceuticals cost within this more competitive environment.

President Clinton, who had us all down to the White House, looked us in the eye and said: Don't let this process fail because of you. I was one of the members of this commission. President Clinton looked us right in the eye and said: Don't let it fail because of you. And then all four of his appointees voted no at the last minute. We needed 11 out of the 17 to make a recommendation to Congress, and we only got 10.

At that point, incredibly, providing pharmaceuticals not only did not cost money, it was part of a reform program where the savings we would have gotten with Medicare reform would have paid for the pharmaceutical benefit.

That is where the debate started, and we failed to act because of one vote on the bipartisan commission, when all four of the President's appointees voted no. In fact, they had a press conference at the White House denouncing the plan before we had the vote.

At that point, at the end of his administration, President Clinton said: We can have a comprehensive benefit for $168 billion. That was in 1999 just as President Clinton was ending his term.

Then Congress in 2000 had a proposal. Former Senator Robb from Virginia was the author of that proposal, and it cost $242 billion. If you went back and looked at that debate, everybody who was for that plan said: We can solve this problem. If you will just give us $242 billion, we can solve the problem.

Then you will remember the budget debate we had last year, the Baucus amendment. I could quote 20 Democrat Senators who said: We can provide all the benefits we need for $311 billion.

I could quote Senator BAUCUS, I could quote the distinguished majority leader, but it is never fair using people's words against them. I do not do it, but I could.

In the budget debate last year, $311 billion would have done everything we wanted to do. This year in the budget we said: No, that is not enough. That is being tight fisted with the elderly. We do not want $311 billion. In the budget we said $500 billion. The budget did not pass, but that is what the budget had.

Now we come to the floor with a proposal that says: We cannot spend $500 billion; that is being tight fisted with our seniors. How dare we to have thought of $311 billion? What was wrong with Senator Robb's tightness at $242 billion? Was Bill Clinton a person who did not love the elderly at $168 billion? What a heartless man he was. Today, we said: No, it is going to take $600 billion—not $311 billion but $600 billion.

Mr. SCHUMER. Will my colleague yield?

Mr. GRAMM. Let me finish this point, and I will be happy to yield.

Mr. SCHUMER. I thank the Senator.

Mr. GRAMM. The $600 billion would not pay for a real program. It starts in 2005. It ends in 2010. So if one does not live until 2005, they get no benefits; if they live past 2010, they get no benefits—and it still cost $600 billion.

Now, where do we think we are going? Where does all of this end? We are asking people to look and see who cares the most. And you can measure that by how much money they are willing to spend.

Where does this end? Will it not go on forever? I am going to yield to the Senator, but let me make this point to sort of bring it together.

Forget this red in the chart. That was about this bill that I was talking about when I made the chart. Just look at the yellow on this chart. I want to try to impress this one figure on people's minds. Today, Medicare, which has an unfunded liability in present value terms of $17 trillion—when you discount it above the present value of the revenues we are going to collect, today it is taking 2 percent of the economy. If we do not pass any drug benefit and we just leave Medicare as it is, by 2030 it is going to take 4 percent of the economy. Today the payroll tax for Medicare and Social Security is 15.3 percent. If left unchanged, meaning we do not cut it and we do not increase it, the payroll tax will have to more than double by 2030 to over 30 cents out of every dollar earned by every worker to pay for Social Security and Medicare. That is without a prescription drug benefit.

Some people estimate that if the bill had been adopted that we sustained a point of order against today, this would go not from 2 percent of the economy to 4 percent but from 2 percent to 6 percent. We would literally be looking at over 40 cents out of every dollar earned by every worker to pay for Social Security and Medicare.

I understand all of these people who want these benefits are writing these letters saying we do not love them enough—that $170 billion is not enough. They say these people who want to spend $600 billion love us more. Of course, they are going to love us even more next year with $900 billion. There will be lots of love next year.

The point is, does anybody care if young workers 28 years from today are paying 40 cents out of every dollar they earn on Medicare and Social Security? How much love can we afford? That, I think, is a critical point.

So I beg my colleagues, let us not get in the business where we measure a program simply by how much it costs.

Others I am sure want to speak, but I am going to talk about how this program gets you a lot for every dollar you spend. I am happy to yield.

Mr. SCHUMER. I thank my colleague.

First, our colleague from Texas has been on the floor a whole lot lately on all of the various issues which we have been debating. He has always been a great warrior and a great debater, but since he announced his retirement, he is a happier warrior. Every argument he makes, he has a twinkle in his eye. I compliment him for that. It is a pleasure to listen to him, as much as I disagree with him. I do not know if this would happen to the rest of us if we also announced we would not be here, we would be much happier in our arguments, but I want to make three points and ask them to form the question.

First, I ask my colleague from Texas if he knew that the Medicare level in New York is $599, which is $7,200 a year. I ask him if he knew that.

Mr. GRAMM. If I were from New York, I would be trying to change that.

Mr. SCHUMER. Well, we will, maybe with the help of the Senator from Texas. In any case, that person in the example does not qualify.

The second question I ask my colleague is this. I like his chart. It sort of fits my argument because that last number is $600 billion. As I understand it, if we did not make the estate tax repeal permanent, something my colleague from Texas has fought very long and hard over, that would be about $670 billion, as I understand it. That is how much it would cost over the same 10-year period. So we are not talking about the ability of the Government to pay this; we are talking about size of government. That is one of the great debates we have. But it is not that my colleague says we cannot afford it; rather, he is using it for different purposes.

At least to me, when I go from one end of my State to the other, the number of people who ask for estate tax repeal is much smaller than the number who ask for a comprehensive prescription drug plan for Medicare.

So I ask my colleague, aside from the ideological and philosophical argument about size of government and all of that—on which we have had nice debates on both the floor and in our various committees that we share—but certainly within the contemplation of my good friend from Texas, if we did not take that money for estate tax reduction, we could put it into this program; am I right about that? This is a simple value choice.

Mr. GRAMM. I am going to answer that point. Was there a third point?

Mr. SCHUMER. Yes. The third point is this: When we compared the programs, the $168 billion, the $242 billion, and the $311 billion, that was apples and oranges, as I understand it. The benefit I remember from the Robb program that my friend from Texas pointed out did not have the same level of benefit, the same generosity of benefit, as the plan proffered by the Senators

from Florida, Georgia, and Massachusetts. So we are really comparing apples and oranges.

It is not that anybody thought the original plans did everything, it was just the amount of money they were willing to spend, and in fact, as I recall it, the Robb plan was sort of objective because people thought for the amount of money it cost compared to the amount of benefit, it was not quite worth it, at least in political terms, using politics in the finer sense in terms of people's value choices.

Those are my three questions to my colleague, and I welcome the answers he will give with the same twinkle in his eye.

Mr. GRAMM. Let me begin with No. 3 first. We are comparing apples and apples. In 2001, in the political bidding war we were in then, $311 billion represented a sufficient number of apples to engage successfully in the bidding contest. Today, it is $600 billion and heading up. My point is that, beginning with the chairman of the Finance Committee and the majority leader, we had Members saying last year that $311 billion would provide a wonderful program. The problem is, this year it is $600 billion, and that is a wonderful program. And it is not apples and oranges, it is a lot more apples.

Secondly, I think where my colleague is leading on the death tax thing is kind of a circular argument. If you are willing to take away people's money, the only limit you get as to how much you can spend on Medicare or anything else is the amount of money that can be extracted without destroying the productivity of society.

The point I had made earlier was that you are already committed under the existing program to take 30 cents out of every dollar everybody earns to pay for Social Security and Medicare. If you adopted your program, by some estimates you would be paying 40 cents out of every dollar that people earn, and the question is: Is that something that the economy can bear, and is that fair to young people?

In terms of the death tax, we have a very different view of the death tax. Nobody in my family ever paid any death tax, and nobody ever bequeathed anybody anything because they did not have anything. But when somebody works a lifetime to build up a farm or a family business, the view of the Senator is that that belongs to the Government and my view is it belongs to the people who build it up. They build it up for their family, and it is not right for us to force their family to sell off their business or sell off their farm or sell off their life's work to give the Government 55 cents out of every dollar they earn.

It is a perfectly legitimate position to say they ought to have to do that, but it is not something of which I am supportive. I think it is fundamentally wrong.

There are other people who want to speak.

Mr. SCHUMER. I am not yielding but thanking him for the answers.

Mr. GRAMM. Let me also say one thing that has happened about which I am worried. Many of my Democrat colleagues, knowing that this tax cut that we adopted is temporary—because of this quirk in the budget, unless something changes it goes away in 10 years—almost seem determined to spend and spend and spend until we have to take the tax cut away.

I remind my colleagues, throughout American history the highest sustainable tax rate that we have been able to sustain over long periods of time was taking 19 cents, on average, of every dollar created in the economy. When we adopted the tax cut last year, the Government was taking 22 cents out of every dollar produced in the economy. That was a record high that only had one year higher. That was 1944 at the peek of the war effort. I hope people do not believe we should go back to a 22-percent tax burden.

The final point I make, the Senator acts as if death taxes would pay for Medicare. We all know Medicare is funded by payroll taxes. If you are working in some factory somewhere—I don't imagine you are watching this debate, but if you are and say you are taking a coffee break and this is the only thing they have on in the factory—don't think that some rich guy is going to be forced to sell off his farm to pay for your Medicare. You are going to have to pay for it with higher payroll taxes. Don't be confused.

Now, I have talked longer than I had intended. Let me make a couple of points. First, I read a quote, from John C. Rother, policy director of AARP. In recognizing that the two big plans would be defeated, he said: Another possibility is for Medicare to provide catastrophic coverage for prescription drug expenses over a certain threshold.

And he notes also that we could have a Government-authorized discount card.

Now, let me make my points about this bill and stop. First, I had virtually nothing to do with writing this bill. Two Senators have been principal authors of it. I recognized, in simply looking at it, that it was the best plan around. They came up with it.

Why is it the best plan around? First, it is within budget. Now, it is hardly some insignificant amount of money. Somewhere between $140 and $170 billion is what this costs. That is a lot of money.

What it does is provides the most help to people who fall into two categories: A, you don't have very much income; and B, you have high drug bills. I submit those are the people who need the help the most.

The problem with the other two proposals—let me make my criticism bipartisan—the problem with the other two proposals is that they spend 80 percent of their money helping people who don't need help. When you take the view that the Government ought to have a program that pays at least 25 percent of the drug bill for Bill Gates and Ross Perot—that it is not a universal program unless they are covered—you are going to end up spending huge amounts of money paying for people who don't need the help. You end up paying for the roughly two-thirds of people who already have health insurance for pharmaceuticals, because you substitute the taxpayer for the private insurance policy they already have as part of their retirement program.

The point I am trying to make is you are spending 80 cents on people who either almost have the benefit or don't need it to get 20 cents on the target to people who do need it.

The advantage of the Hagel-Ensign bill is that it puts every dollar on the target. This is what it says. Again, you can spend more money; God knows you can spend more money. But just listen to what it does. Let me take a retired couple. If their income is $23,000, they would have to pay roughly $100 a month in drug bills themselves, but at slightly above $100 a month this program kicks in and they get full payment except, possibly, a very small, little copayment per prescription.

Now, our colleague from New York said a huge number of seniors, 80 percent I think he said, would reject this program. I don't believe it. My mama's drug bill is $400 a month. She does not want help in 2005. She does not know if she will be alive in 2005. She wants help now.

The advantage of this program is that it provides help right now. What it would mean in her case is she would have to pay a little over $100 a month and now she is paying $400 a month.

Now, if your income goes up, then the deductible goes up. For example, if you are making $46,000 a year, your deductible is $3,500. If you are retired, most retirees who make $46,000 a year own their own home. What this bill says is, if your expenses on pharmaceuticals get up really high, the Government is going to come in and help you. If you make $69,000, you have to spend $5,500 to get the payment by the Government. So it is tied to your income.

And for Bill Gates and people who are very wealthy, they have to spend 20 percent of their income on pharmaceuticals. Bill Gates will never get a benefit and he shouldn't. He doesn't need it, and he doesn't want it. He might not even take it.

That is not the only help you get, by the way, because immediately this program would let private companies contract through Medicare to represent Medicare beneficiaries in negotiating for their pharmaceuticals. So each of these companies would compete in buying the drugs you buy. You would buy from whoever could sell them to you the cheapest, and it is estimated that they would save you somewhere between 25 percent and 40 percent of the cost of your drug bill.

In my mama's case, this would mean spending much less than $400 a month—

it is estimated that these companies, because they have more buying power, would get the best price. She goes to the same pharmacy because it is the one convenient to her house. These companies could go all over the country to find her drugs and buy them the cheapest. They could save her $100 on average just simply by being competitive.

Remember I told you about the cane with four legs on it—Dr. FRIST, you have seen them—lots of people have them in hospitals. Medicare pays $40 for that cane on average. The VA buys that cane for $15 because they go out and engage in competitive bidding. These companies would do the same thing. Then, anything above $100 per month, the Federal Government would pay.

If you said to my mother and anybody else's mother: Would you rather have the Government pay the whole thing? The answer would be yes. She would rather the Government pay the whole thing. But the point is, this is a reasonable, responsible program that would help real people.

Finally, Senator ENSIGN has presented three or four times—you can never do it enough—cases of people who have real high drug bills, and remarkably he has shown that his program is cheaper for them than these very expensive programs. Before somebody runs down here to the floor to answer me and says: How is it possible? We spend $600 billion and Senator ENSIGN spends $170 billion and you are saying it is cheaper? You are saying it is cheaper under Senator ENSIGN's program. How can that be when he doesn't spend as much money?

The answer is very simple. He doesn't cover everybody. If you do not have high pharmaceutical bills—and in any given year a substantial number of seniors do not—and if you do not have moderate income, he helps you get competitive purchase of your drugs, which saves you between 25 percent and 40 percent. But the Government does not pay if you do not fall in this category of people. You don't get help under those circumstances.

Now you say everybody should get help. The point is, this bill helps the people who need the help the most. This is a good proposal.

I remind my colleagues, we are at an impasse here. There are some people already talking about spending more money to break the logjam. The logical thing to do now, if we want to act this year, is to take this proposal and adopt it. That will help people who need the help most and help them now. Then we can come back next year. We can look at the budget situation, we can see where we are, and in the process we can supplement this if we want to.

Let me give you one example because Senator ENSIGN has done it better than I could possibly do it. This is somebody who lives in Nevada. He calls her Betty Smith. She is 66 years old. She has an income of $15,000 per year. She is being treated for a whole bunch of things.

Her drug bill is $8,000 a year. My mother's drug bill is $4,600 a year and, thank God, she doesn't have these kinds of problems. So it is easy to believe an $8,000 bill.

Here is the point. Look at the Hagel-Ensign bill under exactly this situation. Your income is $15,500 and you are being treated for breast cancer and you are taking all these drugs and you have a $8,000 bill, so you are spending over half of your income on drugs. This is literally somebody. We all talk about this cliche of people being forced to choose between medicine and food. I hope her children are helping her. If they aren't, they ought to be. But she would literally—if she didn't have any children, didn't have anybody helping her—she would literally be choosing between eating and drugs.

Now, here are the three bills. Two of them we voted on, and one we are about to vote on. The point that Senator ENSIGN has made is that under the bill that costs $600 billion and covers everybody, this lady would have to pay $3,180 a year. Under the tripartisan bill, she would have to pay $2,570 a year. But under the Hagel-Ensign bill, she would pay $2,152. In other words, for a lady who is very sick and who has a very moderate income, she would be better off under this plan.

But for people who say how is that possible when it only spends $170 billion, the way it is possible is it is focused to help exactly people like this lady. It does not take the view that we have to provide the Government program for everybody. It just helps people who need the help. And it provides this system of competitive purchase for everybody.

So, I urge my colleagues, do not get into this business about saying this cannot be as good as that because that costs so much more money. Some of the best things in life are not necessarily the most expensive. Remember, we are going to have to pay for it. Not ''we'' being Members of the Senate. We are not going to pay for it. We don't pay for anything. We are going to be covered by the Government insurance program when we get out of here. But that blue collar worker on that assembly line is going to have to pay for it.

I congratulate my colleagues. This bill ought to be adopted. There is a budget point of order against it but not because it is over budget. It is because we wrote in the budget that the bill had to come out of the Finance Committee. The Finance Committee refused to report a bill, so no bill could come out of the Finance Committee. So every bill had a budget point of order. If it had gone through the Finance Committee, no point of order would have lied against this bill. However, if the Graham-Kennedy bill had gone through the Finance Committee, two points of order would still have lied against the it, a section 302 and a section 311 point of order, as well as the tripartisan bill.

But this bill is not subject to a point of order because it spends too much money. It is subject to a point of order because the Finance Committee was not allowed to do its job.

So I hope people will look at this and decide we can help a lot of people, and we can do it right now. The purchasing discounts would start immediately. We do not have to wait until 2005. And this is something we can afford. We could come back and do more next year if we had the money.

I appreciate my colleagues listening, and I commend this program to them.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BROWNBACK. Mr. President, I ask the sponsor of the amendment to yield to me 10 minutes to debate the issue.

Mr. HAGEL. I yield to the Senator from Kansas 10 minutes off our time, Mr. President.

Mr. NELSON of Florida. Might I inquire of the Chair how much time is remaining on this side?

The PRESIDING OFFICER. Sixteen and a half minutes.

Mr. NELSON of Florida. Mr. President, I would like to be recognized at the appropriate time.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. BROWNBACK. Mr. President, I thank my colleague from Nebraska for allowing me the time and for his proposal. I think it is an outstanding proposal and one that we can do and one that we can afford and one that can provide benefits to some people who really need this help and need it now. It is something I think we could build on in the future.

Remember now, we are talking about a group of people who do not have pharmaceutical benefits and need them, people with low income but above Medicaid; low income, and this is taking a big portion of their income. They have to have these pharmaceutical drug benefits. They need it. Here is a proposal where we can do it.

If I can just make an observation at the outset: This process cries to go back to the Finance Committee and come out of the Finance Committee. This has not been taken through the Finance Committee. It clearly should have been. This is the largest—this will be the largest new entitlement program that I will have voted on since I have been in the Congress, either the House or the Senate, by far. I think at the end of the day, when the dollars are tallied up, you are looking at a multi-trillion-dollar program because once we start a benefit, we do not stop it. This is something that we will start, and will do, and it is going to continue for a number of years. It is something we need to do.

But if you are going to start, at the end of the day, a trillion-dollar program in all probability, you need to take it through the right process. It needs to come through the committee that looks at the numbers and figures out how to pay for it.

To just pass a benefit and say we are going to do it, and we will figure out how to pay for it after the bills come due, is the height of irresponsibility on our part.

I have two charts. I do not want to overburden everyone with lines on a chart, but I want to point out, this is where we are today with these various proposals. This black line represents the total income for Medicare. I call this chart ''The Great Medicare Accounting Scandal'' because I do not think we are accounting for the real cost of these programs.

We are being critical of people—and rightfully so—in corporate America for not accounting for real costs and for sliding things around saying: Well, OK, we will capitalize this, but it should have been a direct expenditure and expense. We are criticizing them—and rightfully so—for doing that.

What are we doing here? What are we doing here on our accounting? The black line is the amount of money we have coming into Medicare. The red line is the Graham-Kennedy benefit proposal. You can see, in year 1 of the benefit, in the year 2005, the expenditures are more than the income we have coming in from Medicare. In the first year out of the box, you are spending more money than you have coming in in Medicare. That does not count the accumulation that you are going to have up until 2010, when the program, theoretically, ends. But, of course, it does not.

We do not terminate benefit programs. It is going to continue past 2010, into 2011, which is the first year the baby boomers start retiring. So you have this group of soon-to-be seniors—72 million baby boomers—in America. Count myself amongst them. That is kind of the big lump in the python coming through, the pig in the python, in the demographic charts in the United States, starting in 2011, where the program is supposed to end in 2010. Of course, it isn't going to happen.

On this chart, where would this red line be in the year 2011, when you start getting this large group of retirees coming into the system? It is going to be much higher and be an accounting scandal for us.

So how are you going to pay for this? You are either going to cut benefits, which I do not think we are going to do, you are going to raise payroll taxes, which I would think would be the wrong thing to do—we already load so much on people working in the system—or are you going to try to take this from somewhere else in the system, or raise the deficit? Probably you are going to do all of those things, other than cutting benefits. But we are not talking about that in this system right now.

Look here, on this chart, at the various other proposals that we have.

The purple line shows the total expenditures today, without a benefit. The Hagel-Ensign proposal is shown by the green line.

Of the proposals that are coming forward—and I think we need to have a prescription drug benefit—this is the most responsible one that we can handle and that we can do. And we, clearly, should do something.

The process cries out for us, right now, to do something now and not just to have something for campaigns. Here is the Democrat proposal. Here is the Republican proposal. But you cannot take those as prescription drugs. That is not income to you. You cannot eat promises. That is what we have sitting out there now. And that is where it seems the debate is heading, unless we can take it back to the Finance Committee and have a legitimate process, one where we would come out with a benefit that people can afford and need to have today.

This one has been a very disappointing discussion, to me, in the sense that there is a clear compromise that sits out there that is available to do, and we could cobble together different proposals of any of these bills and figure out how to make it work, and get a bipartisan proposal that we would all support, that would include a prescription drug benefit.

That sits out there to be had. That can take place. Instead, we are just saying, no, we are going to take it through this different process. We are going to bypass the Finance Committee on the most expensive entitlement program that I will have voted on as a Member of this body. We are going to bypass the normal process. We will just have a political debate on it that I do not think is edifying for the body and is not the right way to go.

On the particular proposal, the Hagel-Ensign proposal, of which I am pleased to support, I also note that it is supported by AARP. Unlike my colleague from New York, who said the AARP does not support it, in today's New York Times, John Rother, policy director of AARP, said this:

> Another possibility is for Medicare to provide catastrophic coverage for prescription drug expenses over a certain threshold, perhaps $4,000 to $6,000 a year, with no premium. This could be combined with additional help for low-income beneficiaries and a government-authorized drug discount card.

That is not my speech supporting Hagel-Ensign. That is from the policy director of AARP in the New York Times today. He is saying: Look, you have the parties. Each have a proposal. They are at a standoff on this proposal. What could we get done so we can move this forward for the benefit of seniors in America? And he describes the Hagel-Ensign proposal. That is what we should do.

That is the type of proposal we need to move forward. It would be an appropriate proposal for us to move forward, so we can provide a benefit, we can get it done now, and provide it to people who need it now. They do not need promises. They need action by us. And they could have the action. This is something we need to do, and we need to do it this way today.

This chart shows the various lines depicting where the assets in the proposals go. You can see the current projected Medicare trust fund assets, and also the projected Medicare trust fund assets under Graham-Kennedy. You can see where we are taking this proposal. This line is going south, fast, if you get a benefit that you cannot afford.

I ask a rhetorical question of all my colleagues: Would we rather encounter the first wave of baby boomer retirees with $660 billion in the Medicare trust fund or would we rather encounter retirees having spent all but $250 billion? That is what these lines point out.

We know we have the baby boomer generation hitting in 2011. They start jumping into the retirement pool in 2011. We want to face them with some money built up at that point in time and still have a prescription drug benefit like what is in Hagel-Ensign, or even the tripartisan bill. We can get there with more assets in the bank and still provide today a prescription drug benefit for those who need it today. And they need it today.

I really think we should set our Republican and Democrat caps aside and say we can provide this to people who need it today. For the 27 percent of the public who do not have a prescription drug benefit of some type, who are in a low-income category, who need this, we provide a discount drug card or discount card, such as in the Hagel-Ensign proposal. We do that today and still save some money for when the baby boomers start retiring in 2011.

I hope we will all look at that and say that is the right thing to do, to provide that benefit. It is the responsible thing to do. And as we look to our future, it is the right thing for workers coming up in this system so that they are not stuck with this huge lug on their shoulders when the baby boomers retire.

The PRESIDING OFFICER. The Senator has spoken for 10 minutes.

Mr. BROWNBACK. Thank you, Mr. President, very much. And I thank my colleague from Nebraska for yielding time to me.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, I rise to speak in opposition to the amendment. I want the Senator from Nebraska to know of my personal affection and respect for him. There are certain people in a body to whom you just naturally gravitate and you naturally like, and he is certainly one of them.

I rise in opposition, not because he does not have an excellent, substantive proposal, but I would offer my objection as has been articulated by the AARP today in a letter to Senator HAGEL in which they state:

In addition to our substantive objections, we are concerned that by offering this scaled-back proposal today, you would effectively derail bipartisan discussion and compromise on more meaningful comprehensive approaches.

That is what I want to discuss today. What this Nation is begging for is a comprehensive approach, not a piecemeal approach. What the senior citizens of this Nation are yearning for is that we modernize Medicare to provide a prescription drug benefit.

If any of us were designing a Medicare system, which is a health insurance system for senior citizens, funded by the Federal Government, if we were devising it today in the year 2002 instead of the year 1965, when it was enacted, would we include prescription drug benefits? The answer to that is, obviously, yes.

Medicare was set up in 1965 when the condition of health care was centered around acute care in hospitals. But with the miracles of modern medicine, with the advent of prescription drugs that can increase the quality of our lives, that can take care of chronic ailments and that, indeed, add to what we would say, in the street vernacular, is preventive maintenance, then, clearly, if we were designing a health insurance system funded by the Federal Government for senior citizens today it would clearly include prescription drugs.

That is the question that is before this body. But because of the rules of the Senate, we have to get 60 votes in order to pass anything here which, with competing plans, makes it very difficult.

Although I think the Senator from Nebraska has some excellent ideas, it is injected in this debate at the wrong time because in the words of the AARP, as articulated in their letter today:

> We are concerned that by offering this scaled-back proposal today, you would effectively derail bipartisan discussion and compromise on more meaningful, comprehensive approaches.

We have to keep trying. We have just been unable to get the 60 votes on two different substantive approaches to prescription drugs in the votes that occurred earlier today. We have to keep trying to forge a compromise. The compromise is not this scaled-down version.

I wish to speak about the substantive alternatives that are here. One of the alternatives, as suggested by what has been voted out of the other body, the House of Representatives, utilizes the private sector and private sector insurance companies in which they offer the prescription drug benefit.

I had a little bit of experience as the elected insurance commissioner of Florida for 6 years before coming here. I point out that you can get some glimpse of the enthusiasm of insurance companies to offer this prescription drug benefit if you look to the States.

For example, 4 years ago, the State of Nevada passed a prescription drug benefit. It was to be offered by private insurance companies. Within 2 years after the passage of that law, not one insurance company had come forth to offer that prescription drug benefit.

On the basis of that experience, that is certainly not what we want to be offering to senior citizens of our country on something that is so important to them, a benefit that would be illusory, that would not be there. That is why we ought, in whatever compromise we strike, to come closer to the Graham-Miller approach, which is a substantial reworking of Medicare, and the prescription drug benefit becomes a part of Medicare. Then it is my hope, once we can find that illusive consensus, we can go on and add additional improvements.

The health care providers of this country are hurting because they are not getting reimbursed for their Medicare procedures at a rate that is commensurate with what they should be reimbursed. One of the items we are going to discuss—and hopefully we would be able to take this base bill and amend it—is an increase of those Medicare reimbursements so that we are taking care of the Medicare beneficiaries, the senior citizens, and we are also helping those who are providing the services, the health care providers, by increasing their Medicare reimbursement.

When we do that, I hope we will also look at some of the practices that because doctors are getting squeezed, in large part squeezed by insurance companies, sometimes regular insurance companies, some called HMOs, which are insurance companies, and because doctors are getting squeezed, they are trying to find ways to keep their income up.

Lo and behold, down in my State of Florida, there is a group of doctors now saying to all of their patients: We are not going to see you anymore unless you pay us an entrance fee of $1,500 per patient per year. But by the way, we still want to take your Medicare reimbursement.

That is simply the beginning of the end for Medicare, because the logical extension of that is that only those who are wealthy enough to afford that entrance fee—in the case of Florida, $3,000 per year per couple—are going to get the access to the doctor they want, that doctor who is being reimbursed by the Federal Government for the services performed for those senior citizens.

That is wrong. It should be changed. It ought to be illegal and yet the Department of HHS has said it is not illegal. So we are going to have to change the law so that a doctor cannot receive reimbursement from Medicare if they are saying to those patients: I will not see you unless you pay me $1,500 a year as an entrance fee into concierge care.

I hope we strike the major compromise, that it is closer to the Graham-Miller bill, that we address Medicare reimbursements because the doctors and other health care providers need it, and that we add the amendment I just talked about which would prevent doctors from limiting patients to seeing them unless they pay an entrance fee while at the same time getting their Medicare reimbursement.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HAGEL. Mr. President, could the Chair tell me how much time this side has remaining?

The PRESIDING OFFICER. Twelve minutes fifty seconds.

Mr. HAGEL. And how much time does the other side have remaining?

The PRESIDING OFFICER. Five minutes fifty-seven seconds.

Mr. HAGEL. I thank the Chair.

Mr. President, I allocate 5 minutes of our remaining time to the Senator from Oklahoma.

Mr. INHOFE. Mr. President, I know time is now precious and we are down to a few minutes. I will skip a lot of things I was going to say since there has been a lot of redundancy.

My good friend from New York was on the floor and was talking about the relative significance of the inheritance tax and how it wasn't really all that meaningful. I am sure the occupant of the chair would agree because he was one of the rare Democrats who stood up and said we should repeal that unfair tax on money that has already been spent. Also, with the farm crisis we have had out West in my State, I have yet to find one person out there who wasn't more concerned about losing his farm because of the very unfair death tax than even the farm bill. But that is not what we are here to talk about.

I think something the Senator from Texas, Mr. GRAMM, said has to be repeated over and over; that is, this Hagel-Ensign bill is a lot less expensive and does a better job, but there is one major reason. We have a saying out in Oklahoma that ''if it ain't broke, don't fix it.'' That is exactly what the situation is.

We have a lot of people who don't need additional coverage now. If they don't need it, why provide it? Why get into some very large program?

Now, we have had two programs that have been rejected today. The first would not do for seniors what it said it would do, and it would have cost a lot more than we can afford, and it would not have included a lot of the drugs the seniors need. That program, as well as costing too much and not covering enough medications, would sunset in 2010. That means in 2010, people who have been relying on the Medicare prescription drug benefit would have had their coverage taken away. We know better than that.

I remember one of the best speeches that should be required reading for all young people, called ''A Rendezvous With Destiny,'' by Ronald Reagan. He said:

> The closest thing to immortality on the face of this earth is a Government benefit or program once started.

We all know that is the way it would work out and we would end up with some very large, spiraling cost program that we could not get rid of. It is not responsible, reasonable, and it is

not the best we can do for seniors. I am glad it did not pass.

Then we were given a chance to consider a second option, the tripartisan plan. I thought it was too expensive, but I supported it. It is very much like what the House passed. It is something we can go to conference on and have something effective come out of it. Once a person's drug costs reach a higher fixed limit, the Government would have paid 90 percent of the additional cost. Many colleagues supported it, as I did; but it was defeated.

Now we have a chance to give seniors a real prescription drug benefit. This legislation is a responsible, long-term, comprehensive plan which truly takes into account the needs and the situation of individual seniors. Several fellow cosponsors have already spoken to the specifics of the plan, such as low premiums, low overall costs on catastrophic coverage. I will tell you what it means to the people who sent us here.

Senator GRAMM talked about some individuals without identifying them. I will identify the people. The Hendersons are from Okmulgee County, a short distance from where I live in Oklahoma. I told them I was going to use their case. They wrote me to tell me about their struggle with prescription drugs. They had a unique problem—one was a heart problem and one was a cancer problem. The Hendersons have a yearly household income of $24,000 and they spend $9,000 of that on prescription drugs in a single year. The Hendersons' income falls between the 200 percent and 400 percent above the national poverty level. That national poverty level for couples is $11,940 a year.

Under our bill, an out-of-pocket limit on the cost of prescription drugs for people with a similar income to the Hendersons is set at $3,500. If they were between 100 and 200 percent of poverty, that would come down to $1,500. But in the case of the Hendersons, they would have to pay that maximum, and then a copay of 10 percent of the cost of these drugs. Calculate that out. While the remaining cost of the Hendersons' drugs is $5,500, their copays would be no more than $550, and under this bill the Hendersons would pay a total of $4,050 a year for prescription drugs, when they are now paying $9,000 a year. This bill cuts their drug costs by more than half.

The Hendersons, under the Democrat plan, would have faced uncertainty on three fronts: First of all, uncertainty about which drugs were covered, since only two drugs in each therapeutic class would be covered; secondly, uncertainty about how much the prescriptions would cost since the $10, $40, and $60 copayments in the plan were virtually done away with through amendments; and, three, uncertainty about how long their benefits would last even if it didn't sunset. They would not know this. Uncertainty is there.

I believe the Hagel plan is real assistance, and I strongly support it. I believe this is the alternative that is left and the most responsible one.

I thank the Chair.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Michigan is recognized.

Ms. STABENOW. Madam President, I yield myself 4 minutes.

Madam President, first of all, I want to speak to my colleague from Oklahoma. My mother grew up in Oklahoma, and I have a great affinity for that State. I have a lot of relatives there.

But I was quite surprised to hear the comment that ''if it ain't broke, don't fix it,'' when we are referring to Medicare. When we look at the Medicare system and the inability to cover prescription drugs for our seniors, when we look at the explosion in the price of the prescription drugs, I would say it is very tough to find a system that is more broken than our inability today to provide low-cost prescription drugs, whether it be through Medicare or whether it be a small business or a farmer trying to get coverage for their family. This system is broken. That is why we are here. It needs to be fixed.

I rise in opposition to the Hagel amendment. I appreciate the desire of my colleagues to find an alternative, but I certainly am concerned that this does not begin to address what it is that seniors in this country are needing or asking them to do. There seems to have been a lot of confusion about where AARP is regarding this issue. So I will read a letter sent to the author of the amendment on July 23—today—which says:

DEAR SENATOR HAGEL: Enacting a comprehensive prescription drug benefit in Medicare this year remains the top priority for AARP. Our members are counting on the Senate to pass a meaningful drug benefit that is available and affordable to all beneficiaries. Our members were promised in the last election that a comprehensive drug benefit would be a priority, and we are counting on you to make good on that promise this year.

We appreciate the intent of your bill, S. 2736, the ''Medicare Rx Drug Discount and Security Act of 2002,'' to provide a prescription drug discount card and stop-loss protection to Medicare beneficiaries. However, in addition to our substantive objections, we are concerned that by offering this scaled-back proposal today, you would effectively derail bipartisan discussion and compromise on more meaningful comprehensive approaches. We believe Congress should focus its efforts on enactment of a more comprehensive drug benefit this year.

In addition to the timing of your proposal, AARP has concerns about the approach taken in your bill, including:

Catastrophic coverage—While AARP has not opposed income-relating premiums, income-relating the Medicare benefit changes the nature of the program. This would set an extremely dangerous precedent in Medicare. Further, the stop-loss levels set in the bill do not provide enough protection for lower income beneficiaries. A low-income couple could spend 25 percent of their income just for drugs before this plan offered assistance. Thirdly, there are a number of issues involved in using tax returns to determine program eligibility levels, and we believe other options should be explored.

Discount card—While AARP supports the use of a discount card program as a building block for a Medicare prescription drug benefit, your proposal lacks the necessary specifications to guaranty the level of discount, what level of discount would be passed to beneficiaries, and the degree to consumer protections required of plans.

Given these concerns, AARP opposes your amendment. We remain fully committed to developing a comprehensive drug benefit for all Medicare beneficiaries and we look forward to working with you on legislation that our members can support.

This is signed by the executive director and CEO of AARP. I simply wanted to enter that into the RECORD to make it clear that AARP joins us in opposition to the amendment.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. HAGEL. Madam President, I ask unanimous consent that Senators FRIST and NICKLES be added as cosponsors of amendment No. 4315. I yield the remainder of our time to the distinguished Senator from Tennessee.

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

Mr. FRIST. Madam President, how much time remains on our side?

The PRESIDING OFFICER. Six minutes twenty-four seconds.

Mr. FRIST. And the time on the other side?

The PRESIDING OFFICER. One minute.

Mr. FRIST. Madam President, will you notify me when I have 1 minute remaining.

I rise in support of the Hagel-Ensign Medicare Prescription Drug Discount and Security Act of 2002. I do so after a long day of debate, discussion, and votes on bills which attempt to reach out with affordable prescription drug coverage for our seniors.

Over the course of the day's debate, we have touched upon what matters most to seniors. That is what I want to address in the next 3 or 4 minutes.

What do seniors who are listening today—38 million Medicare potential recipients who are seniors today and another 5 or 6 million individuals with disabilities—what do they want regarding prescription drug coverage? I think it is three things. The first issue is that seniors want security. They want peace of mind. When you are 65, 70, 75, 80 years of age, the most frightening thought is that in those final years of your life you develop something—whether it is heart disease, chronic lung disease, emphysema, or lymphoma—and all of a sudden you face high prescription drug costs which are skyrocketing. We know this is an issue—we have been talking about that all week long. In essence, paying for prescription drugs bankrupts you in terms of what you can afford and, even worse than that, what your children may be able to afford. The beauty of this particular bill is that it addresses that peace of mind, that security.

The second issue I hear as I talk to seniors as I travel around Tennessee,

and it has been discussed a lot on the floor today, is that, with regard to prescription drugs, seniors want help now. They listen to the debate, and both of the bills discussed earlier today have some very good, substantive issues to them, are comprehensive, and each have pluses and minuses. But the defect that both bills have that the Hagel-Ensign bill does not have is this bill takes effect, in essence, right now. That is what seniors want.

Seniors who are listening may think: Why talk about a bill taking place in 2006 or 2005? I do not even know if I am going to be around 3 or 2 years from now. What they really want is help now. Those who need it want it now. The message they tell me is to do it now. Again, the Hagel-Ensign bill takes effect next year, not 2 years and not 3 years from now.

The third factor this bill does is it addresses prescription drugs in a responsible way. We are not in a world today or in a country today where you can just throw unlimited money and say it will be taken care of by the next generation or by my family 5 years from now. This is especially true when we have a doubling of the number of seniors, the demographic change, the move of the baby boomers coming online in 2008 and 2010. Seniors tell me, whatever you do, do it responsibly. Do it in a way that is just not over a 3-year period, 4-year period and it disappears, you take the benefit away or raise taxes exorbitantly. Do it in a way that can be sustained over time. Do it responsibly.

That is what the Hagel-Ensign bill does. One of the most beautiful aspects of this bill is that we can do it now, and we can do it responsibly. We talk big figures. The dollar figure was $160 billion. It is a lot of money, but it is not the $800 billion or the $1 trillion or even the $370 billion of the tripartisan plan. It takes effect now, giving peace of mind in capping how much money a senior is going to have to pay out of pocket if there is a catastrophe or if a senior develops a disease which requires the miracle medications that are out there today, and it does it in a responsible way.

How does the bill work? We have been through the details. The first issue I mentioned was peace of mind, security, and savings. Instead of what seniors are doing now—going to a pharmacy, placing a prescription on the table, and paying a retail price that nobody in this body, most employer-sponsored plans do not have to—they will be able to go in to a pharmacy with a card that they put on the table and take advantage of mass negotiations.

The PRESIDING OFFICER. The Senator has 1 minute remaining.

Mr. FRIST. I thank the Chair.

Madam President, seniors can take this card in and get discounts, resulting in savings to seniors right now.

Catastrophic coverage gives security, peace of mind. Using marketplace tools is important as we look ahead because it takes advantage of the marketplace in negotiating discounts that are not available today.

Madam President, I close with the statement that I believe the Hagel-Ensign bill brings to a head much of the discussion today in that it reaches out and gives seniors the security they want. It does it now. It does it in a way that is responsible. It is affordable for seniors, affordable for taxpayers, and is permanent.

Madam President, I yield the floor.

Ms. STABENOW. Madam President, can you give us an indication of the time remaining to each side?

The PRESIDING OFFICER. The Senator from Michigan controls 1 minute. The Senator from Nebraska controls 5 seconds.

Ms. STABENOW. Does the Senator from Nebraska wish to take his 5 seconds?

Mr. HAGEL. I want the Senator from Michigan to have my 5 seconds.

Ms. STABENOW. I was looking forward to what the Senator might say in 5 seconds.

Mr. HAGEL. Madam President, the Senator from Michigan has a more difficult case to make. She needs more time.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Madam President, I will simply say in closing that AARP, representing seniors, and other senior organizations across this country do not believe this, in fact, is a good deal. There is no question they want action now, but it has to be real and meaningful.

Discount cards are available now. In many cases, they do not work at all or they are very limited. It is important we be responsible.

I would argue there is a broader responsibility in the Senate. When we debate whether or not the tax cut geared to the wealthiest individuals in the country will be extended another 10 years, we are debating an amount of money that is more than four times any comprehensive Medicare plan that we will have before us.

This is a question of priorities. It is a question of what we believe, as Americans, should be our values and how we act on those in terms of our priorities, and I argue that doing the right thing with the real Medicare benefit is what our seniors are asking for and it is what they deserve. I urge my colleagues to vote no on the Hagel amendment.

The PRESIDING OFFICER. All time has expired.

The Senator from West Virginia.

A TRUE COMMITMENT TO HOMELAND SECURITY

Mr. BYRD. Madam President, the Senate will soon have before it the fiscal year 2002 supplemental appropriations conference report. This legislation provides for the defense of this Nation, both at home and abroad.

Specifically, the bill provides $14.4 billion for the Department of Defense. It allocates $5.5 billion to New York to complete the promise made to provide $20 billion to help recover from the terrorist attacks on September 11. Another $1 billion is for Pell grants, $417 million for veterans' medical care, $400 million for election reform grants, and $2.1 billion for foreign affairs.

The bill also provides $205 million for Amtrak. Amtrak is an integral piece of the Nation's transportation network. For many rural communities, Amtrak represents the only public transportation connection to the rest of the Nation. But without the funding contained in this bill, that connection is in danger of being severed. Because of growing financial pressures, Amtrak needs an infusion of funding soon or else it faces bankruptcy. The $205 million included in this supplemental appropriations bill will stave off bankruptcy and give the passenger railroad, which is under new management, time to craft sound plans for the future.

Most importantly, this bill provides $6.7 billion for homeland security, including $3.85 billion for the Transportation Security Administration. That is why this funding bill is so important. This funding will take steps now—without delay—to plug the holes in our Nation's defenses here at home. Congress has not hesitated when it comes to funding homeland security efforts. In two supplemental bills—the one approved shortly after the attacks and the one before the Senate today—Congress has invested $15 billion to protect Americans from another terrorist attack and to better respond should, God forbid, another attack occur.

The funding initiatives shaped by Congress have helped to hire more border patrol agents, increase the scrutiny of cargo shipments at our seaports, and accelerate the purchase of vaccines against smallpox. We have funded critical training and equipment purchases for local police, fire, and medical personnel. We have helped to train doctors and local health departments to detect and treat a biological or chemical weapons attack.

The money allocated in December has helped to hire more than 2,200 INS border agents and Customs inspectors on the northern and southern borders. The INS is now implementing a system for tracking foreign students in this country—a system funded in the first supplemental bill. The Nation's police, fire and medical personnel are getting better training and equipment for detecting and responding to potential biological, chemical or nuclear attacks. The FBI is hiring hundreds of new agents. 750 more food inspectors and investigators are being hired. The number of ports with Food and Drug Administration investigators is being doubled. 324 additional protective personnel are being hired to protect our

nuclear weapons complex, and additional resources are being spent on efforts to destroy or secure nuclear materials overseas.

The legislation that will soon be before the Senate today will accomplish even more. It will accelerate the purchase of bomb-detecting machines at airports and provide much-needed resources at the local level. The funding will strengthen port and border security; tighten protections at our nuclear facilities; and better ensure the safety of food and drinking water supplies.

The legislation provides $701 million for first responder programs, $343 million above the President's request. This conference report, which will be voted on tomorrow morning, includes $150 million for firefighters, with the funds going directly to the local fire departments. In the spring, when the firefighter grants that Congress allocated in the $40 billion supplemental where made available, more than 18,000 fire departments across the country applied for assistance totaling more than $3 billion. Yet only $360 million was available to meet the demand. The administration did not request any additional funding for this program. However, the need is clear. Our first responders want to be prepared to respond to attack; Congress and the President need to provide the necessary resources so those first responders will be ready.

And in this supplemental bill, State and local governments will receive $100 million to improve interoperability of communications equipment for fire, police, and emergency medical technicians. The inability of local police and dire departments to communicate with each other when responding to the World Trade Center attack has been identified as a major Achilles' heel in a defense of our homeland. The funding in this legislation will help to eliminate that inability and to develop uniform standards for interoperable State and local law enforcement, firefighting and emergency medical communications equipment. The administration requested no funding for this important need.

Another $54 million, $22 million above the President's request, will strengthen the Federal Emergency Management Agency's search and rescue teams. Currently, there are 28 FEMA search and rescue teams around the country that can be deployed to major disasters to assist local first responders in search and rescue operations. This funding will be used to upgrade equipment and training for responding to events involving a biological, chemical, radiation or nuclear attack.

One of the major weaknesses in our homeland security is the virtually nonexistent protections at the Nation's ports. Cargo containers are piled up by the thousands at ports, depots, and huge outdoor warehouses. American ports are home to oil refiners, chemical plants, and nuclear facilities. A hijacked vessel that crashes into a port could be used to ignite volatile fuels or gases and produce an explosion that equals one caused by hundreds, maybe thousands of tons of dynamite. American ports receive 16,000 cargo containers per day and 6 million containers each year, but less than five percent of those containers are inspected. That means a terrorist has at least a 95 percent chance of sneaking weapons of mass destruction into the United States. That is not acceptable.

Congress, through this supplemental legislation, provides $739 million for port security programs, $465 million above the President's request. This conference report includes $125 million for port security grants through the Transportation Security Administration. Last fall, Congress approved $93 million of unrequested funds for port security grants. DOT received $692 million of applications for the $93 million we provided. The administration did not request additional funding for this purpose.

Another $528 million in this bill is for the Coast Guard for port and maritime security, $273 million above the President's request. Increased funds would be used to expedite vulnerability assessments at our Nation's ports, rather than follow the administration's slower plan to do the assessments over the next 5 years. The money would add two new maritime safety and security teams; purchase a total of 6 homeland security response boats; and expand aviation assets as well as the shore facilities to support them. Another $39 million would help the Customs Service to target and inspect suspect shipping containers at overseas ports before they reach American ports. The administration requested no funds for these activities.

Another major concern is the security of the Nation's nuclear facilities. The U.S. Department of Energy needs funds for this effort, but the Office of Management and Budget chose not to forward the Department's request to Congress. This legislation recognizes the need, heeds the warnings, and provides $235 million to improve security of the nuclear weapons stockpile, national nuclear labs, and nuclear weapons plants. Funds are included to establish a ''911'' system for local first responders to call when confronted with nuclear hazards, enhanced funding for the National Center for Combating Terrorism, expansion of radiological search teams, and establishment of a National Capital Area Response Team at Andrews Air Force Base.

Just a few weeks ago, the White House warned of a possible terrorist attack on the Nation's banking system. It was a vague threat, but the potential for a terrorist organization to use computers and technology to short-circuit our financial system is clear. That is why this conference report includes $147 million—$128 million above the administration's request—for cyber security to help deal with the threat to Federal and private information systems.

Our long and porous land borders represent a daunting challenge in terms of homeland security. The Immigration and Naturalization Service and the Customs Service are already hiring more than 2,200 agents and inspectors with the funding Congress allocated in December. This legislation on which we will vote tomorrow, takes the next step, providing $120 million for border security, including $32 million for Immigration and Naturalization Service construction to improve facilities on our Nation's borders and $25 million for better equipment.

When it comes to security at the Nation's airports, no one should doubt Congress' commitment. I note that, earlier today, the U.S. Secretary of Transportation testified at a hearing and charged that Congress is hamstringing his new Transportation Security Administration. Secretary Mineta has complained about a lack of flexibility in Congressional funding. Before the Transportation Secretary takes shots at Congress, I wish he would consider the facts. I hope that he will. This legislation provides $3.85 billion for the Transportation's Security Administration. The conference report provides $471 million for unrequested airport security efforts, including $150 million to ensure that all small and medium airports have funds to implement the FAA's new airport security guidelines and that large airports have some additional funding to meet those requirements. $225 million is provided above the President's request for explosives detection equipment and $42 million is provided to improve the security of the FAA air traffic control system. In light of the recent tragedies at the Los Angeles International Airport, when a man walked to an airline ticket counter and started shooting, Congress provides $17 million to improve airport terminal security. In addition, $15 million is provided for improved air to ground communications for the air marshals. If there is a problem on a plane, the security personnel on the ground need to know about it.

The Transportation Secretary has charged that less flexibility translates into less security at our airports. Well, last fall, when Congress approved the $40 billion emergency supplemental, we gave the administration flexibility. The President had the authority to allocate $20 billion and he gave $1.3 billion to the Transportation Security Administration. But did that flexibility lead to efficient government? Not necessarily. The Transportation Secretary, while pointing a finger at Congress, ignores the fact that his hand-picked Under Secretary of Transportation Security promptly spent $418,000 to refurbish his personal office in what I am told is a beautiful mahogany. That must be one of the most stunning offices in the entire Department of Transportation. I would suggest that the Secretary's finger pointing be flexible, and that he turn his finger to his own department. Try that,

Mr. Secretary. He cannot in good conscience charge Congress with the inefficient operations of the Transportation Security Administration when is own personnel have wasted money and opportunity, missed their own internal deadlines for improving airport security, and failed to provide adequate budget information to Congress. Instead of looking for someone to blame for failures, the Transportation Secretary should be working internally to fashion a much more efficient and responsive Transportation Security Administration.

Another area of focus for this Congress is nuclear non-proliferation. We have heard a great deal of discussion about the potential for a ''dirty bomb''—a small nuclear device no larger than a briefcase that, if exploded, can contaminate a broad area with radiation for many years. The best way to stop a dirty bomb is to minimize the opportunity for terrorists to get their hands on nuclear material. This supplemental bill includes $100 million to protect fissile material abroad, purchase radiation detectors, and establish international standards for securing fissile material.

The Department of Defense will receive, through this legislation, $14.4 billion for its activities around the world. There can be no doubt as to the commitment of Congress to the men and women in the Armed Forces. We will always ensure that they have the resources and equipment necessary to fulfill their mission to protect American interests throughout the world.

However, the Secretary of Defense, in the Administration's supplemental request, asked for authorities that are currently invested in other Cabinet secretaries and in the Congress. The Defense Secretary asked for the authority to spend $100 million in foreign countries as he sees fit. Congress said no. The Defense Secretary asked for the authority to pay bounties for the death of those he deems to be terrorists. Congress said no. The Defense Secretary asked for the authority to spend $30 million to indigenous groups around the world who arguably are assisting in the war on terrorism. Congress said no.

The Framers of the Constitution crafted a delicate balance between the legislative, executive, and judicial branches of the Federal Government. These new authorities for the Secretary of Defense would jeopardize that balance. Congress should not give this Secretary—or any other Secretary—extraordinary authority for the sole purpose of making the Secretary's job easier.

If the President signs this bill, he will have 30 days to decide whether to designate over $5.1 billion as an emergency. If he does not make the emergency designations, the funds cannot be spent. Within the $5.1 billion, there is nearly $2.5 billion for homeland security. If the President does not make the emergency designation, he will block nearly $2.5 billion in homeland security investments, many of which I have just outlined. Firefighters. Police officers. Port security. Border security. Airport security. Search and rescue teams. Food safety. Drinking water safety. All these and more are involved. I hope that the President will join with Congress in this bipartisan approach to homeland security. I hope that he will declare these items to be an emergency, and make these important investments immediately to protect the American people from terrorist attacks.

In addition, if the President decides not to make the emergency designation, he also will block funding for the National Guard and Reserves. He will block funding for election reform. He will block funding for combating AIDS, tuberculosis, and malaria overseas. He will block flood prevention and mitigation; embassy security; aid to Israel and disaster assistance to Palestinians; wildfire suppression; emergency highway repairs; and veterans health care.

These critical appropriations for the American people have been delayed for months, sometimes as a result of administration intervention. The time has come for its speedy passage and the President's signature.

The Senate Appropriations Committee held 5 days of hearings on this bill and benefited greatly by hearing testimony from our Nation's first-responders, terrorism experts, mayors, Governors and Cabinet officials—from seven departments and from the Director of FEMA. We have produced a fair and balanced bill that fills many of the gaps in our homeland defense that were identified in our hearings.

I want to thank, once again, my friend and the Ranking Member of the Appropriations Committee, the Senior Senator from Alaska, Senator TED STEVENS, for his cooperation, for his leadership along the way in the conduct of the hearings, the markup of the bill, in the debate on the floor. I also want to thank our House counterparts, Appropriations Committee Chairman C.W. ''BILL'' YOUNG and Ranking Member DAVID OBEY for their cooperation and commitment to completing action on the legislation. I would be recreant if I did not thank the staffs who have worked so hard to finish this bill. On the Republican side, I thank Steve Cortese and Andy Givens and all of the professional and subcommittee staffs. On the Democratic side, I thank the Committee Staff Director, Terry Sauvain, my Deputy Staff Director Charles Kieffer, Edie Stanley, and Nancy Olkewicz, and all of the professional and subcommittee staffs for their long, long, long hours and days and weekends. Their tireless efforts have resulted in legislation, this legislation that we will vote on tomorrow, legislation that will help to protect American lives.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, before the President pro tempore of the Senate leaves the floor, I would like to say on behalf of the people of Nevada and the country how much we appreciate the work he did on homeland security.

Knowing the Congress has gone to the effort—and the Senator from West Virginia held hearings and called in Cabinet members to find out what was needed by each entity—and then the disappointment was, as far as I am concerned, when we got the supplemental request from the President, these matters were not found.

I say to the Senator from West Virginia, based on information obtained about how this should be obtained, by having congressional oversight hearings to determine what was needed, and then move forward together so people in West Virginia, Washington, and around the rest of the country are going to receive as a result of the action that will be taken by the Senate tomorrow, I hope there are no games played.

When the bill goes to the President, I hope he doesn't play around and try to send us a message about vetoing the bill.

This is so important for the country. We would not have this legislation but for the Senator from West Virginia. Of course, I have to include Senator STEVENS, who was very deliberate and sat through those hearings, as did the Senator from West Virginia. This is a bipartisan bill. A large chunk of it is based on the needs of this country for homeland security.

Mr. BYRD. Madam President, I thank the very distinguished Democratic whip for his observations.

Senator REID is a member of the Appropriations Committee in the Senate. So he partook of the action on this bill all along the way. He was present in the hearings that this Appropriations Committee held early in the year on this bill. I believe it was April.

This bill is not the first occasion in which the Senate Appropriations Committee has taken the lead in acting to strengthen our homeland security. This committee led the way last year.

The Appropriations Committee in the Senate appropriated $4 billion above the President's request last year. Of course, I know we are accused of spending money, but that is the money we are spending for the security of the American people for their homeland, their homes, their schools, their churches, and their children. That is the money we are spending. Last year we exceeded the President's request for homeland security by $4 billion. That was done in a bipartisan fashion. It wasn't done just by Democrats on the committee. But the Republican members of that committee joined all the way. The President threatened last year to veto that bill.

Does the Senator remember that? The President said last year he would veto that bill because it contained $4 billion more than he requested last year.

This year that bill came to the floor with the solid support of the Republicans and Democrats on that committee. It was unanimously supported. It increased the homeland security part above the President's request by $3 billion.

As we have gone through the process—it was a long, dragged-out effort when it came to working with the other body on the conference. We finally had to yield and come down from the $3 billion to $1.4 billion in additional money over the President's request for homeland security.

Again, all the way, I am proud to say, we have a bipartisan group in that committee that walks step by step and shoulder to shoulder to my colleague, Senator STEVENS, and I. We don't have any quarrels. We don't have any differences. We don't have any partisan discussions. We don't have any partisan bickering, nor do the members on the committee.

The distinguished Senator from Utah, Mr. BENNETT, is a member of that committee. I served with his father. I believe his father sat right here. I believe his father sat right there in that chair when the son, in whom his father was well pleased, was around these premises and knew a great deal about the Congress and worked in the Congress. He worked in his precincts.

We don't have any middle aisle in our committee. It was a joint effort on the part of Republicans and Democrats in close ranks and voting to support moneys for the security of the American people. These are moneys that are in this conference report.

When it comes to homeland defense, this Appropriations Committee has been right out front. I am very proud of the way we have been able to do our work and work together. It has been a long time since this committee started on this bill. I guess the budget was sent up here last February. It has been all that long time.

Here we are in July with the conference report that we will be voting on tomorrow morning.

I thank the distinguished Senator.

I yield the floor.

CHANGES TO THE 2002 APPROPRIATIONS COMMITTEE ALLOCATIONS AND THE BUDGETARY AGGREGATES

Mr. CONRAD. Mr. President, section 314 of the Congressional Budget Act, as amended, requires that chairman of the Senate Budget Committee to adjust the budgetary aggregates and the allocation for the Appropriations Committee by the amount of appropriations designated as emergency spending pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended. The conference report to H.R. 4775, the 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States, provides $29.886 billion in designated emergency funding 2002 for a variety of activities, including homeland security and the war on terrorism, which is estimated to result in $7.783 billion in outlays in 2002.

Pursuant to section 302 of the Congressional Budget Act, I hereby revise the 2002 allocation provided to the Senate Appropriations Committee in the concurrent budget resolution in the following amounts.

TABLE 1.—REVISED ALLOCATION FOR APPROPRIATIONS COMMITTEE, 2002

[In millions of dollars]

	Budget authority	Outlays
Current Allocation:		
General Purpose Discretionary	704,240	692,717
Highways	0	28,489
Mass Transit	0	5,275
Conservation	1,760	1,473
Mandatory	358,567	350,837
Total	1,064,567	1,078,791
Adjustments:		
General Purpose Discretionary	29,886	7,783
Highways	0	0
Mass Transit	0	0
Conservation	0	0
Mandatory	0	0
Total	29,886	7,783
Revised Allocation:		
General Purpose Discretionary	734,126	700,500
Highways	0	28,489
Mass Transit	0	5,275
Conservation	1,760	1,473
Mandatory	358,567	350,837
Total	1,094,453	1,086,574

Pursuant to section 311 of the Congressional Budget Act, I hereby revise the 2002 budget aggregates included in the concurrent budget resolution in the following amounts.

TABLE 2.—REVISED BUDGET AGGREGATES, 2002

[In millions of dollars]

	Budget authority	Outlays
Current allocation: Budget Resolution	1,680,564	1,645,999
Adjustments: Emergency Spending	29,886	7,783
Revised allocation: Budget Resolution	1,710,450	1,653,782

Prepared by SBC Majority staff on 7–23–02.

The PRESIDING OFFICER. The Senator from Nevada.

UNANIMOUS CONSENT REQUEST—H.R. 3210

Mr. REID. Madam President, when I today read Congress Daily, as I often do, I was stunned. I was stunned as a result of what the President said in his radio address.

I have to acknowledge that I didn't wait around and listen to it Saturday. But I read about it here.

Let me read what the President said on Saturday. I say this with total sincerity. I am so disappointed in the President. I am sure others think that what he has done is hypocrisy. I will not use that word.

I am just terribly disappointed in the President.

This is what he said. The headline is:

BUSH URGES CONGRESS TO SEND HIM TERRORIST REINSURANCE BILL.

President Bush made another plug for enactment of a terrorism reinsurance bill, noting in his radio address over the weekend, ''Until Congress sends a bill to my desk, some buildings will not be able to get coverage against terrorist attacks, and many new buildings will not be built at all. Commercial development is stalling, and workers are missing out on those jobs. This year alone, the lack of terrorism insurance has killed or delayed more than $8 billion in commercial property financing. Congress should pass a terrorism insurance bill without unnecessary measures.''

Can you imagine giving an address to the American people about Congress needing to do something on terrorism insurance?

Rather than wasting time on the radio address, why doesn't he call the Republican leadership in the Senate and ask: Why don't you let us go to conference?

Almost everything we have done with this terrorism insurance, we have had to fight the minority every step of the way. We fought to get it on the floor. We tried to do it even last year, right after the events of September 11, and we were stopped from doing so.

I have been on this floor maybe 10 or 12 times offering a unanimous consent request that we be allowed to go forward with the conference.

Just to remind everybody, we were told by the leadership that all we needed to do is change the ratio. Senator DASCHLE—and he has that right—decided the ratio should be 3 to 2. We were told: Make it 4 to 3, and we will go right to conference. That was weeks ago. We changed: OK, if that is what you want, then we will be happy to do that. We changed it to 4 to 3.

Then we are told: Well, there are two people in the minority who want that third spot, and they can't work that out.

So, as a result of that, as the President has indicated, there is no question about it, there is work being held up in Nevada and all over the country because they cannot get terrorism insurance. We cannot go to conference because you will not let us.

Last week, we were told: Give us 24 hours to resolve this. I have said here, for this unanimous consent agreement that I have been seeking for several days: I will put it in my desk and do it again. No more. No more. This is the last. As far as I am concerned, terrorism insurance is dead.

The industry, obviously, does not care enough to put enough pressure on the minority so that we can go to conference. If the role were reversed, and we, the Democrats, were holding up the appointing of conferees on a terrorism insurance bill, our phones would be ringing. We would have petitions. We would have demonstrations. But because it is the insurance industry, which is a little closer to the minority than we are, nothing happens. Day after day after day goes on, and I guess they expect me and Senator DASCHLE to come and offer this unanimous consent request.

No more. They can do it. In the meantime, terrorism insurance is dead. Nothing is going to happen. The House is going out Thursday.

So, as far as I am concerned, this bill is dead. I am not putting the unanimous consent request in my desk anymore; I am putting it in the garbage can. And we will wait and see what happens.

I think it is too bad. But maybe there has been something that has happened in the last few hours that will change their minds. Maybe my statement now will change their minds.

So I ask unanimous consent—I better take it out of the garbage so I can read it; and then I will put it right back, as soon as I finish—that the Senate proceed to the immediate consideration of Calendar No. 252, H.R. 3210, the House-passed terrorism insurance bill; that all after the enacting clause be stricken, and the text of S. 2600, as passed in the Senate, be inserted in lieu thereof, the bill, as thus amended, be read a third time, passed, and the motion to reconsider be laid upon the table; that the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate, with the ratio of 4 to 3, all without intervening action or debate.

The PRESIDING OFFICER (Mr. DAYTON). Is there objection?

The Senator from Utah.

Mr. BENNETT. Mr. President, reserving the right to object, let me say to my friend from Nevada that his words are well-taken. His passion is understood. At least as far as I am concerned, his determination to get this bill through is fully shared.

However, on behalf of the ranking member of the Banking Committee, Senator GRAMM, and reserving his rights, as I am sure the Senator from Nevada has from time to time reserved the rights of some of his colleagues, I must object.

The PRESIDING OFFICER. Objection is heard.

UNANIMOUS CONSENT REQUEST—H.R. 3694

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 381, H.R. 3694, and that the Jeffords-Reid-Smith-Inhofe amendment, which is at the desk, be considered and agreed to, the bill, as amended, be read three times, passed, and the motion to reconsider be laid upon the table, without any intervening action or debate.

The PRESIDING OFFICER. Is there objection?

The Senator from Utah.

Mr. BENNETT. Mr. President, I am told that the amendment is still under review on this side of the aisle; therefore, I must again object.

The PRESIDING OFFICER. Objection has been heard.

Mr. REID. Mr. President, I thank the Senator from Utah. He is absolutely correct. I, on an occasion or two, have represented Senators here, doing things that sometimes I did not personally agree with. But I do hope that we can move forward on both matters.

I was serious about everything that I said on the terrorism insurance bill. On the matter dealing with highway funding, it is very important we get this done for a lot of different reasons. One reason is to prepare for the bill that is coming up next year, of which everyone has an interest. It is the bill we do every 5 or 6 years to fund highway projects around the country. It is money that collected during the 5-year period from the gas taxes. We need to make sure we have the ability to meet as many of the demands of the country as we can.

So I appreciate the Senator working on his side to get that cleared.

I have another unanimous consent request.

UNANIMOUS CONSENT AGREEMENT—H.R. 4775

Mr. REID. Mr. President, I ask unanimous consent that the previous order with respect to the conference report accompanying H.R. 4775, the supplemental appropriations bill, be modified to provide that the debate time commence at the conclusion of the debate with respect to the Hagel amendment to S. 812; with the debate time on the conference report remaining as provided for under the previous order; that upon the use of the time, without further intervening action or debate, the Senate proceed to vote on adoption of the conference report; that upon disposition of the conference report, there be 5 minutes for debate prior to a vote in relation to the Hagel amendment, with the time equally divided and controlled between Senators Hagel and Kennedy or their designees, provided further that the previous provisions relating to the Hagel amendment remain in effect.

The PRESIDING OFFICER. Is there objection?

Mr. BENNETT. Mr. President, I am happy to say on this occasion there is none.

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

Mr. REID. Mr. President, debate will begin on the Hagel amendment at 11 a.m. Under the previous order, there will be 2 hours of debate. At 1 p.m., the Senate will take up the supplemental conference report with 30 minutes of debate. The first vote tomorrow will be at 1:30, approximately, to be followed by a vote with respect to the Hagel amendment. There will be two votes then at 1:30 tomorrow.

I appreciate everyone working with us. We will be able to get a lot of work done in committees. The Appropriations Committee—Senator BYRD's committee—is reporting out, I think, four appropriations bills tomorrow morning.

We have a lot to do. This will allow us to do that without being broken up for votes.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent the Senate now proceed to a period of morning business with Senators allowed to speak therein for a period not to exceed 5 minutes each.

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

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred in November 2000 in Bloomington, MN. Cecil John Reiners, 57, attacked a Hispanic man for speaking Spanish at work. Witnesses told police that Reiners, the business owner, was upset when a 23 year-old employee was speaking Spanish with two others at a break table. Reiners went to the warehouse with a wood post and severely beat the victim, who was treated for severe skull fractures and clots at the hospital. ''All I wanted was for that Mexican to leave my property,'' Reiners said. Mr. Reiners was later convicted of felony first-degree assault in connection with the incident.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

CIVILIZATION NEED NOT DIE

Mr. MURKOWSKI. Mr. President, in the more than 10 months since the attacks of September 11, 2001, all of us have been trying to bring context and understanding to the new world challenges we are confronting. It is at times such as this that the Senate needs wisdom and clarity to bring such context to our times.

Often in the past, the Senate turned to one of its most distinguished colleagues for vision and wisdom. That person, Daniel Patrick Moynihan, understood history and the actors and actions that make history.

Recently, I came across the Harvard University commencement speech that our former colleague, Senator Moynihan, gave this year, on the 58th anniversary of D-Day. I think all of my colleagues will benefit from reading Pat's remarkable speech, for it gives historical context to the times in which we are living.

I, for one, miss hearing Pat's insights into life. All of us who served with Pat

are better Senators because of the wisdom he imparted to all of us.

I ask unanimous consent that former Senator Pat Moynihan's Harvard commencement speech be printed in the RECORD.

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

COMMENCEMENT ADDRESS, JUNE 6TH, 2002

(By Daniel Patrick Moynihan)

A while back it came as something of a start to find in The New Yorker a reference to an article I had written, and I quote, ''In the middle of the last century.'' Yet persons my age have been thinking back to those times and how, in the end, things turned out so well and so badly. Millions of us returned from the assorted services to find the economic growth that had come with the Second World War had not ended with the peace. The Depression had not resumed. It is not perhaps remembered, but it was widely thought it would.

It would be difficult indeed to summon up the optimism that came with this great surprise. My beloved colleague Nathan Glazer and the revered David Riesman wrote that America was ''the land of the second chance'' and so indeed it seemed. We had surmounted the depression; the war. We could realistically think of a world of stability, peace—above all, a world of law.

Looking back, it is clear we were not nearly so fortunate. Great leaders preserved—and in measure extended—democracy. But totalitarianism had not been defeated. To the contrary, by 1948 totalitarians controlled most of Eurasia. As we now learn, 11 days after Nagasaki the Soviets established a special committee to create an equivalent weapon. Their first atomic bomb was acquired through espionage, but their hydrogen bomb was their own doing. Now the Cold War was on. From the summer of 1914, the world had been at war, with interludes no more. It finally seemed to end with the collapse of the Soviet Union and the changes in China. But now . . .

But now we have to ask if it is once again the summer of 1914.

Small acts of terror in the Middle East, in South Asia, could lead to cataclysm, as they did in Sarajevo. And for which great powers, mindful or not, have been preparing.

The eras are overlapping.

As the United States reacts to the mass murder of 9/11 and prepares for more, it would do well to consider how much terror India endured in the second half of the last century. And its response. It happens I was our man in New Delhi in 1974 when India detonated its first nuclear device. I was sent in to see Prime Minister Indira Gandhi with a statement as much as anything of regret. For there was nothing to be done; it was going to happen. The second most populous nation on earth was not going to leave itself disarmed and disregarded, as non-nuclear powers appeared to be. But leaving, I asked to speak as a friend of India and not as an official. In twenty years time, I opined, there would be a Moghul general in command in Islamabad, and he would have nuclear weapons and would demand Kashmir back, perhaps the Punjab.

The Prime Minister said nothing; I dare to think she half agreed. In time, she would be murdered in her own garden; next, her son and successor was murdered by a suicide bomber. This, while nuclear weapons accumulated which are now poised.

Standing at Trinity Site at Los Alamos, J. Robert Oppenheimer pondered an ancient Sanskrit text in which Lord Shiva declares, ''I am become Death, the shatterer of worlds.'' Was he right?

At the very least we can come to terms with the limits of our capacity to foresee events.

It happens I had been a Senate observer to the START negotiations in Geneva, and was on the Foreign Relations Committee when the treaty, having been signed, was sent to us for ratification. In a moment of mischief I remarked to our superb negotiators that we had sent them to Geneva to negotiate a treaty with the Soviet Union, but the document before us was a treaty with four countries, only two of which I could confidently locate on a map. I was told they had exchanged letters in Lisbon [the Lisbon Protocol, May 23, 1992]. I said that sounded like a Humphrey Bogart movie.

The hard fact is that American intelligence had not the least anticipated the implosion of the Soviet Union. I cite Stansfield Turner, former director of the CIA in Foreign Affairs, 1991. ''We should not gloss over the enormity of this failure to forecast the magnitude of the Soviet crisis . . . The corporate view missed by a mile.''

Russia now faces a near-permanent crisis. By mid-century its population could well decline to as few as 80 million persons. Immigrants will press in; one dares not think what will have happened to the nuclear materials scattered across 11 time zones.

Admiral Turner's 1991 article was entitled ''Intelligence for a New World Order.'' Two years later Samuel Huntington outlined what that new world order—or disorder—would be in an article in the same journal entitled ''The Clash of Civilizations.'' His subsequent book of that title is a defining text of our time.

Huntington perceives a world of seven or eight major conflicting cultures, the West, Russia, China, India, and Islam. Add Japan, South America, Africa. Most incorporate a major nation-state which typically leads its fellows.

The Cold War on balance suppressed conflict. But the end of the Cold War has brought not universal peace but widespread violence. Some of this has been merely residual proxy conflicts dating back to the earlier era. Some plain ethnic conflict. But the new horrors occur on the fault lines, as Huntington has it, between the different cultures.

For argument's sake one could propose that Marxism was the last nearly successful effort to Westernize the rest of the world. In 1975, I stood in Tiananmen Square, the center of the Middle Kingdom. In an otherwise empty space, there were two towering masts. At the top of one were giant portraits of two hirsute 19th century German gentlemen, Messrs. Marx and Engels. The other displayed a somewhat Mongol-looking Stalin and Mao. That wasn't going to last, and of course, it didn't.

Hence Huntington: ''The central problem in the relations between the West and the rest is . . . the discordance between the West's—particularly America's—efforts to promote universal Western culture and its declining ability to do so.''

Again there seems to be no end of ethnic conflict within civilizations. But it is to the clash of civilizations we must look with a measure of dread. The Bulletin of the Atomic Scientists recently noted that ''The crisis between India and Pakistan, touched off by a December 13th terrorist attack on the Indian Parliament marks the closest two states have come to nuclear war since the Cuban Missile Crisis.'' By 1991, the minute-hand on their doomsday clock had dropped back to 17 minutes to midnight. It has since been moved forward three times and is again seven minutes to midnight, just where it started in 1947.

The terrorist attacks on the United States of last September 11 were not nuclear, but they will be. Again to cite Huntington, ''At some point . . . a few terrorists will be able to produce massive violence and massive destruction. Separately, terrorism and nuclear weapons are the weapons of the non-Western weak. If and when they are combined, the non-Western weak will be strong.''

This was written in 1996. The first mass murder by terrorists came last September. Just last month the vice president informed Tim Russert that ''the prospects of a future attack . . . are almost certain. Not a matter of if, but when.'' Secretary Rumsfeld has added that the attack will be nuclear.

We are indeed at war and we must act accordingly, with equal measures of audacity and precaution.

As regards precaution, note how readily the clash of civilizations could spread to our own homeland. The Bureau of the Census lists some 68 separate ancestries in the American population. (Military gravestones provide for emblems of 36 religions.) All the major civilizations. Not since 1910 have we had so high a proportion of immigrants. As of 2000, one in five school-age children have at least one foreign-born parent.

This, as ever, has had bounteous rewards. The problem comes when immigrants and their descendants bring with them—and even intensify—the clashes they left behind. Nothing new, but newly ominous. Last month in Washington an enormous march filled Pennsylvania Avenue on the way to the Capitol grounds. The marchers, in the main, were there to support the Palestinian cause. Fair enough. But every five feet or so there would be a sign proclaiming ''Zionism equals Racism'' or a placard with a swastika alongside a Star of David. Which is anything but fair, which is poisonous ad has no place in our discourse.

This hateful equation first appeared in a two-part series in Pravda in Moscow in 1971. Part of Cold War ''agit prop.'' It has since spread into a murderous attack on the right of the State of Israel to exist—the right of Jews to exist!—a world in which a hateful Soviet lies has mutated into a new and vicious anti-Semitism. Again, that is the world we live in, but it is all the more chilling when it fills Pennsylvania Avenue.

It is a testament to our First Amendment freedoms that we permit such displays, however obnoxious to our fundamental ideals. But in the wake of 9/11, we confront the fear that such heinous speech can be a precursor to violence, not least here at home, that threatens our existence.

To be sure, we must do what is necessary to meet the threat. We need to better understand what the dangers are. We need to explore how better to organize the agencies of government to detect and prevent calamitous action.

But at the same time, we need take care that whatever we do is consistent with our basic constitutional design. What we do must be commensurate with the threat in ways that do not needlessly undermine the very liberties we seek to protect.

The concern is suspicion and fear within. Does the Park Service really need to photograph every visitor to the Lincoln Memorial? They don't, but they will. It is already done at the Statue of Liberty. In Washington, agencies compete in techniques of intrusion and exclusion. Identity cards and X-ray machines and all the clutter, plus a new life for secrecy. Some necessary; some discouraging. Mary Graham warns of the stultifying effects of secrecy on inquiry. Secrecy, as George Will writes, ''renders societies susceptible to epidemics of suspicion.''

We are witnessing such an outbreak in Washington just now. Great clamor as to what the different agencies knew in advance of the 9/11 attack; when the President was

briefed; what was he told. These are legitimate questions, but there is a prior issue, which is the disposition of closed systems not to share information. By the late 1940s the Army Signal Corps had decoded enough KGB traffic to have a firm grip on the Soviet espionage in the United States and their American agents. No one needed to know about this more than the President of the United States. But Truman was not told. By order, mind, of Omar Bradley, Chairman of the Joint Chiefs of Staff. Now as then there is police work to be done. But so many forms of secrecy are self-defeating. In 1988, the CIA formally estimated the Gross Domestic Product of East Germany to be higher than West Germany. We should calculate such risks.

The ''What-ifs'' are intriguing. What if the United States had recognized Soviet weakness earlier and, accordingly, kept its own budget in order, so that upon the breakup of the Soviet Union a momentous economic aid program could have been commenced? What is we had better calculated the forces of the future so that we could have avoided going directly from the ''end'' of the cold War to a new Balkan war—a classic clash of civilizations—leaving little attention and far fewer resources for the shattered Soviet empire?

Because we have that second chance Riesman and Glazer wrote about. A chance to define our principles and stay true to them. The more then, to keep our system open as much as possible, without purposes plain and accessible, so long as we continue to understand what the 20th century has surely taught, which is that open societies have enemies, too. Indeed, they are the greatest threat to closed societies, and, accordingly, the first object of their enmity.

We are committed, as the Constitution states, to ''the Law of Nations,'' but that law as properly understood. Many have come to think that international law prohibits the use of force. To the contrary, like domestic law, it legitimates the use of force to uphold law in a manner that is itself proportional and lawful.

Democracy may not prove to be a universal norm. But decency would do. Our present conflict, as the President says over and again, is not with Islam, but with a malignant growth within Islam defying the teaching of the Q'uran that the struggle to the path of God forbids the deliberate killing of noncombatants. Just how and when Islam will rid itself of current heresies is something no one cay say. But not soon. Christianity has been through such hersey—and more than once. Other clashes will follow.

Certainly we must not let ourselves be seen as rushing about the world looking for arguments. There are now American armed forces in some 40 countries overseas. Some would say too many. Nor should we let ourselves be seen as ignoring allies, disillusioning friends, thinking only of ourselves in the most narrow terms. That is not how we survived the 20th century.

Nor will it serve in the 21st.

Last February, some 60 academics of the widest range of political persuasion and religious belief, a number from here at Harvard, including Huntington, published a manifesto: ''What We're Fighting For: A Letter from America.''

It has attracted some attention here; perhaps more abroad, which was our purpose. Our references are wide, Socrates, St. Augustine, Franciscus de Victoria, John Paul II, Martin Luther King, Jr., Alexander Solzhenitsyn, the Universal Declaration of Human Rights.

We affirmed ''five fundamental truths that pertain to all people without distinction,'' beginning ''all human beings are born free and equal in dignity and rights.''

We allow for our own shortcomings as a nation, sins, arrogance, failings. But we assert we are no less bound by moral obligation. And finally, . . . reason and careful moral reflection . . . teach us that there are times when the first and most important reply to evil is to stop it.

But there is more. Forty-seven year ago, on this occasion, General George C. Marshall summoned our nation to restore the countries whose mad regimes had brought the world such horror. It was an act of statesmanship and vision without equal in history. History summons us once more in different ways, but with even greater urgency. Civilization need not die. At this moment, only the United States can save it. As we fight the war against evil, we must also wage peace, guided by the lesson of the Marshall Plan—vision and generosity can help make the world a safer place.

Thank you.

ADDITIONAL STATEMENTS

SUSAN G. KOMEN BREAST CANCER FOUNDATION

• Mrs. HUTCHISON. Mr. President, I am pleased to pay tribute to the Susan G. Komen Breast Cancer Foundation, which is celebrating its 20th anniversary. The organization literally grew from a shoebox full of names in Dallas, TX, to the Nation's largest private source of funding for breast cancer research and community-based outreach programs.

Our current U.S. Ambassador to the Republic of Hungary, the Hon. Nancy Brinker, is the founder of the Komen Foundation. As a founding member of the organization, I can recall the very first meeting we held in Nancy's living room. She is a woman of conviction, with talent and energy to match. While it is too soon to tell, I believe the establishment and launching of the Komen Foundation will be Nancy Brinker's most remarkable legacy to humankind.

When her older sister Suzy died of breast cancer at the age of 36, Nancy set out to keep the promise she had made to Suzy: to do everything in her power to eradicate breast cancer as a life-threatening disease. Today, 20 years after the Komen Foundation's inception, we recognize the ''Power of Promise'' Nancy made that day.

I am proud to have worked for the Komen Foundation in the Senate, and mark today's celebration by noting the truly great things people can do when they answer a call, see a need, and set out to make things different.

Twenty years ago, breast cancer was a term rarely spoken in public, and a subject that almost never appeared in newspapers or magazines. There were no self-help books and those who survived the disease did not readily share their stories. What is worse, breast cancer was viewed as a certain death sentence. Few treatment options existed at the time, and those that did were drastic and disfiguring.

At its inception, the Komen Foundation began to educate people and help them recognize the seriousness of breast cancer in our society. People began giving of themselves as volunteers and as financial donors so that research into new breast cancer treatments, screening, and educational outreach efforts could be funded.

The Komen Foundation boasts over 100 affiliate groups in cities across the U.S., three European affiliates and a cadre of 75,000 dedicated volunteers, many of whom are survivors. In the past two decades, the Foundation has raised more than $450 million for research, education, screening and treatment programs—many of which reach into traditionally medically underserved areas. The Komen Race for the Cure had over 112 races this year with 1.2 million runners and walkers participating. Each race event is an occasion of hope and survivor pride for participants and their supporters.

On the 20th Anniversary of the Komen Foundation, let us all renew our promise in the fight against breast cancer so that one day we will have something miraculous to celebrate: the end of breast cancer as a life-threatening disease.•

CONGRATULATING MONTANA WRESTLERS

• Mr. BAUCUS. Mr. President, today I rise to congratulate the outstanding wrestlers from my home State of Montana who won the Amateur Athletic Union Grand Nationals Wrestling Championships in Shreveport, LA, this past June. This was the first year in which Montana has sent an organized team to the competition, and on behalf of all Montanans, I want to say how proud we are of these athletes and their historic success.

In order to win the title, Team Montana, competed in Greco-Roman, Freestyle and Sombo disciplines, which are the three international disciplines of wrestling. Led by Stan Moran of Wolf Point, MT, the team was composed of athletes 5–35 years old, including World Champion Josh Charette; World Silver medalist Rob Charette; and World Bronze medalist Stan Moran, Jr. This is Josh Charette's third consecutive World Open Championship. Josh is currently representing Montana at the Olympic Training Center in the Judo discipline, where he is preparing for the 2004 Olympic Games in Athens.

Athough these outstanding athletes are in the spotlight, I also want to take a moment to comment on the strength of the wrestling community in Montana. Whether it is this recent success at the AUU Grand Nationals Wrestling Championships or the success of Montana State University—Northern's wrestling program, Montana's entire wrestling community has a record that it can be very proud of. I know that such success comes only with focus and determination, and I want to commend the families, coaches, and wrestlers who have fostered an environment of excellence.

Again, I applaud these Montana wrestlers for their hard work and dedication to their respective disciplines. I wish them continued success in all their endeavors.●

GREAT LAKES SCIENCE CENTER

● Mr. LEVIN. Mr. President, I am proud to congratulate the Great Lakes Science Center on 75 years of service to Michigan and the Great Lakes region. This center provides the scientific information needed for restoring, enhancing, managing, and protecting wildlife and their habitat in the Great Lakes, Despite the importance of the Great Lakes, too few resources are devoted to researching and monitoring the ecosystem health. However, the Great Lakes Science Center has been at work for nearly eight decades—through the rise and fall of numerous species like lake trout, alewife, white fish, and sturgeon.

After the collapse of the cisco fishery in Lake Erie in 1925, the Great Lakes Science Center, which was then called the Great Lakes Biological Laboratory, was created to study the causes of this collapse. Though the fisheries in the Great Lakes continued to suffer, it was not until 1950 that biological research was truly supported. At that time the Great Lakes were experiencing one of the worst disasters possible—the invasion of sea lamprey. The sea lamprey, which moved into the Great Lakes through the Welland Canal and spread throughout the Great Lakes, destroyed the lake trout and lake whitefish commercial fisheries. After testing over 4,000 chemicals, the Great Lakes Science Center found the compound that is still being used today to destroy the lamprey.

In 1965, the center moved to its newly constructed headquarters on the North Campus of the University of Michigan at Ann Arbor. The center has been active in all areas of Great Lakes research including algal blooms, invasive species, near-shore habitat, fishery genetics and DDT levels in fish. The work of the dedicated staff has helped bring back the sturgeon and lake trout.

Today, the Great Lakes Science Center has 107 staff members, 5 field stations, 1 vessel base, and 3 vessel base-field station combinations throughout the Great Lakes. I am proud of the long and distinguished history of the Great Lakes Science Center, and I wish all of the researchers at the Science Center great success for the next 75 years.●

MESSAGE FROM THE HOUSE

At 2:15 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2990. An act to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize additional projects under that Act, and for other purposes.

H.R. 3048. An act to resolve the claims of Cook Inlet Region, Inc., to lands adjacent to the Russian River in the State of Alaska.

H.R. 3258. An act to amend the Federal Lands Policy and Management Act of 1976 and the Mineral Leasing Act to clarify the method by which the Secretary of the Interior and the Secretary of Agriculture determine the fair market value of rights-of-way granted, issued, or renewed under these Acts.

H.R. 3401. An act to provide for the conveyance of Forest Service facilities and lands comprising the Five Mile Regional Learning Center in the State of California to the Clovis Unified School District, to authorize a new special use permit regarding the continued use of unconveyed lands comprising the Center, and for other purposes.

H.R. 3645. An act to amend title 38, United States Code, to provide for improved procurement practices by the Department of Veterans Affairs in procuring health-care items.

H.R. 3892. An act to amend title 28, United States Code, to make certain modifications in the judicial discipline procedures, and for other purposes.

H.R. 3917. An act to authorize a national memorial to commemorate the passengers and crew of Flight 93 who, on September 11, 2001, courageously gave their lives thereby thwarting a planned attack on our Nation's Capital, and for other purposes.

H.R. 3969. An act to enhance United States public diplomacy, to reorganize United States international broadcasting, and for other purposes.

H.R. 4558. An act to extend the Irish Peace Process Cultural and Training Program.

H.R. 4870. An act to make certain adjustments to the boundaries of the Mount Naomi Wilderness Area, and for other purposes.

H.R. 4903. An act to ensure the continuity for the design of the 5-cent coin, establishing the coin Design Advisory Committee, and for other purposes.

H.R. 4940. An act to amend title 38, United States Code, to enact into law eligibility requirements for burial in Arlington National Cemetery, and for other purposes.

H.R. 5055. An act to authorize the placement in Arlington National Cemetery of a memorial honoring the World War II veterans who fought in the Battle of the Bulge.

H.R. 5318. An act to posthumously award congressional gold medals to government workers and others who responded to the attack on the World Trade Center and the Pentagon and perished and to people aboard United Airlines flight 93 who helped resist the hijackers and caused the plane to crash, to require the Secretary of the Treasury to mint coins in commemoration of the Spirit of America, recognizing the tragic events of September 11, 2001, and for other purposes.

H.R. 5145. An act to designate the facility of the United States Postal Service located at 3135 First Avenue North in St. Petersburg, Florida, as the ''William C. Cramer Post Office Building''.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 352. Concurrent resolution expressing the sense of Congress that Federal land management agencies should fully support the ''Collaborative 10-year Strategy for Reducing Wildland Fire Risks to Communities and the Environment'' as prepared by the Western Governor's Association, the Department of Agriculture, the Department of the Interior, and other stakeholders, to reduce the overabundance of forest fuels that place national resources at high risk of catastrophic wildfire, and prepare a national assessment of prescribed burning practices to minimize risks of escape.

H. Con. Res. 385. Concurrent resolution expressing the sense of the Congress that the Secretary of Health and Human Services should conduct or support research on certain tests to screen for ovarian cancer, and Federal health care programs and group and individual health plans should cover the tests if demonstrated to be effective, and for other purposes.

H. Con. Res. 439. Concurrent resolution honoring Corinne ''Lindy'' Claiborne Boggs on the occasion of the 25th anniversary of the founding of the Congressional Women's Caucus.

The message further announced that the House has agreed to the amendment of the Senate to the bill, H.R. 3487, to amend the Public Health Service Act with respect to health professions programs regarding the field of nursing.

The message also announced that the House has passed the following joint resolution, with amendments, in which it requests the concurrence of the Senate:

S.J. Res. 13. A joint resolution conferring honorary citizenship of the United States on Paul Yves Roch Gilbert du Motier, also known as the Marquis de Lafayette.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 2990. An act to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize additional projects under that Act, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 3048. An act to resolve the claims of Cook Inlet Region, Inc., to lands adjacent to the Russian River in the State of Alaska; to the Committee on Energy and Natural Resources.

H.R. 3258. An act to amend the Federal Lands Policy and Management Act of 1976 and the Mineral Leasing Act to clarify the method by which the Secretary of the Interior and the Secretary of Agriculture determine the fair market value of rights-of-way granted, issued, or renewed under these Acts; to the Committee on Energy and Natural Resources.

H.R. 4301. An act to provide for the conveyance of Forest Service facilities and lands comprising the Five Mile Regional Learning Center in the State of California to the Clovis Unified School District, to authorize a new special use permit regarding the continued use of unconveyed lands comprising the Center, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 3645. An act to amend title 38, United States Code, to provide for improved procurement practices by the Department of Veterans Affairs in procuring health-care items; to the Committee on Veterans' Affairs.

H.R. 3892. An act to amend title 28, United States Code, to make certain modifications in the judicial discipline procedures, and for other purposes; to the Committee on the Judiciary.

H.R. 3917. An act to authorize a national memorial to commemorate the passengers and crew of Flight 93 who, on September 11, 2001, courageously gave their lives thereby thwarting a planned attack on our Nation's Capital, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 3969. An act to enhance United States public diplomacy, to reorganize United States international broadcasting, and for

other purposes; to the Committee on Foreign Relations.

H.R. 4558. An act to extend the Irish Peace Process Cultural and Training Program; to the Committee on Foreign Relations.

H.R. 4870. An act to make certain adjustments to the boundaries of the Mount Naomi Wilderness Area, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 4903. An act to ensure the continuity for the design of the 5-cent coin, establishing the Coin Design Advisory Committee, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 4940. An act to amend title 38, United States Code, to enact into law eligibility requirements for burial in Arlington National Cemetery, and for other purposes; to the Committee on Veterans' Affairs.

H.R. 5055. An act to authorize the placement in Arlington National Cemetery of a memorial honoring the World War II veterans who fought in the Battle of the Bulge; to the Committee on Veterans' Affairs.

H.R. 5138. An act to posthumously award congressional gold medals to government workers and others who responded to the attacks on the World Trade Center and the Pentagon and perished and to people aboard United Airlines Flight 93 who helped resist the hijackers and caused the plane to crash, to require the Secretary of the Treasury to mint coins in commemoration of the Spirit of America, recognizing the tragic events of September 11, 2001, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 5145. An act to designate the facility of the United States Postal Service located at 3135 First Avenue North in St. Petersburg, Florida, as the ''William C. Cramer Post Office Building''; to the Committee on Governmental Affairs.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 352. Concurrent resolution expressing the sense of Congress that Federal land management agencies should fully support the ''Collaborative 10-year Strategy for Reducing Wildland Fire Risks to Communities and the Environment'' as prepared by the Western Governor's Association, the Department of Agriculture, the Department of the Interior, and other stakeholders, to reduce the overabundance of forest fuels that place national resources at high risk of catastrophic wildfire, and prepare a national assessment of prescribed burning practices to minimizes risks of escape; to the Committee on Agriculture, Nutrition, and Forestry.

H. Con. Res. 385. Concurrent resolution expressing the sense of the Congress that the Secretary of Health and Human Services should conduct or support research on certain tests to screen for ovarian cancer, and Federal health care programs and group and individual health plans should cover the tests if demonstrated to be effective, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BYRD, from the Committee on Appropriations:

Special Report entitled ''Further Revised Allocation to Subcommittees of Budget Totals for Fiscal Year 2002'' (Rept. No. 107–217).

By Mr. KENNEDY, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 2489: A bill to amend the Public Health Service Act to establish a program to assist family caregivers in accessing affordable and high-quality respite care, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HOLLINGS for the Committee on Commerce, Science, and Transportation.

*Steven Robert Blust, of Florida, to be a Federal Maritime Commissioner for a term expiring June 30, 2006.

*Kathie L. Olsen, of Oregon, to be an Associate Director of the Office of Science and Technology Policy.

*Richard M. Russell, of Virginia, to be an Associate Director of the Office of Science and Technology Policy.

*Frederick D. Gregory, of Maryland, to be Deputy Administrator of the National Aeronautics and Space Administration.

*Jonathan Steven Adelstein, of South Dakota, to be a Member of the Federal Communications Commission for the remainder of the term expiring June 30, 2003.

Mr. HOLLINGS. Mr. President, for the Committee on Commerce, Science, and Transportation I report favorably the following nomination list which was printed in the RECORD on the date indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that this nomination lie at the Secretary's desk for the information of Senators.

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

*Coast Guard nominations beginning George H. Teuton and ending Blake L. Novak, which nominations were received by the Senate and appeared in the Congressional Record on July 18, 2002.

(*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. ALLEN:

S. 2772. A bill to ensure continuity for the design of the 5-cent coin, establishing the Coin Design Advisory Committee, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BINGAMAN (for himself, Mr. DOMENICI, and Mr. BROWNBACK):

S. 2773. A bill to authorize the Secretary of the Interior to cooperate with the High Plains Aquifer States in conducting a hydrogeologic characterization, mapping, modeling and monitoring program for the high Plains Aquifer and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ROBERTS (for himself, Mr. ALLARD, Mr. MILLER, Mr. CRAIG, and Mr. CRAPO):

S. 2774. A bill to transfer to the Secretary of Homeland Security the functions of the Secretary of Agriculture relative to agricultural import and entry inspection activities; to the Committee on Agriculture, Nutrition, and Forestry.

By Mrs. CLINTON:

S. 2775. A bill to amend title XVI of the Social Security Act to provide that annuities paid by States to blind veterans shall be disregarded in determining supplemental security income benefits; to the Committee on Finance.

By Mr. BINGAMAN:

S. 2776. A bill to provide for the protection of archaeological sites in the Galisteo Basin in New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MILLER:

S. Con. Res. 130. A concurrent resolution expressing the sense of Congress that the Federal Mediation and Conciliation Service should exert its best efforts to cause the Major League Baseball Players Association and the owners of the teams of Major League Baseball to enter into a contract to continue to play professional baseball games without engaging in a strike, a lockout, or any coercive conduct that interferes with the playing of scheduled professional baseball games; to the Committee on Health, Education, Labor, and Pensions.

ADDITIONAL COSPONSORS

S. 2

At the request of Mr. ALLARD, his name was added as a cosponsor of S. 2, a bill to amend title XVIII of the Social Security Act to provide for a medicare voluntary prescription drug delivery program under the medicare program, to modernize the medicare program, and for other purposes.

S. 346

At the request of Mr. MURKOWSKI, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 346, a bill to amend chapter 3 of title 28, United States Code, to divide the Ninth Judicial Circuit of the United States into two circuits, and for other purposes.

S. 446

At the request of Mr. CRAPO, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 446, a bill to preserve the authority of States over water within their boundaries, to delegate to States the authority of Congress to regulate water, and for other purposes.

S. 812

At the request of Mr. SCHUMER, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 812, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

S. 1020

At the request of Mr. HARKIN, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1020, a bill to amend title XVIII of the Social Security Act to improve the provision of items and services provided to medicare beneficiaries residing in rural areas.

S. 1339

At the request of Mr. CAMPBELL, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. 1339, a bill to amend the Bring Them Home Alive Act of 2000 to provide an asylum program with regard to American Persian Gulf War POW/MIAs, and for other purposes.

S. 1867

At the request of Mr. LIEBERMAN, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 1867, a bill to establish the National Commission on Terrorist Attacks Upon the United States, and for other purposes.

S. 2047

At the request of Mr. BREAUX, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 2047, a bill to amend the Internal Revenue Code of 1986 to allow distilled spirits wholesalers a credit against income tax for their cost of carrying Federal excise taxes prior to the sale of the product bearing the tax.

S. 2250

At the request of Mr. CORZINE, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 2250, a bill to amend title 10, United States Code, to reduce the age for receipt of military retired pay for nonregular service from 60 to 55.

S. 2394

At the request of Mrs. CLINTON, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 2394, a bill to amend the Federal Food, Drug, and Cosmetic Act to require labeling containing information applicable to pediatric patients.

S. 2480

At the request of Mr. KYL, his name was added as a cosponsor of S. 2480, a bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from state laws prohibiting the carrying of concealed handguns.

At the request of Mr. LEAHY, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 2480, supra.

S. 2512

At the request of Mr. HARKIN, the names of the Senator from New York (Mrs. CLINTON) and the Senator from Missouri (Mrs. CARNAHAN) were added as cosponsors of S. 2512, a bill to provide grants for training court reporters and closed captioners to meet requirements for realtime writers under the Telecommunications Act of 1996, and for other purposes.

S. 2554

At the request of Mr. SMITH of New Hampshire, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 2554, a bill to amend title 49, United States Code, to establish a program for Federal flight deck officers, and for other purposes.

S. 2562

At the request of Mr. REID, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 2562, a bill to expand research regarding inflammatory bowel disease, and for other purposes.

S. 2574

At the request of Mr. BROWNBACK, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 2574, a bill to amend the Clear Creek County, Colorado, Public Lands Transfer Act of 1993 to provide additional time for Clear Creek County to dispose of certain lands transferred to the county under the Act.

S. 2608

At the request of Mr. HOLLINGS, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 2608, a bill to amend the Coastal Zone Management Act of 1972 to authorize the acquisition of coastal areas in order better to ensure their protection from conversion or development.

S. 2615

At the request of Mr. MURKOWSKI, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 2615, a bill to amend title XVII of the Social Security Act to provide for improvements in access to services in rural hospitals and critical access hospitals.

S. 2663

At the request of Mr. BREAUX, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 2663, a bill to permit the designation of Israeli-Turkish qualifying industrial zones.

S. 2674

At the request of Mr. BROWNBACK, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 2674, a bill to improve access to health care medically underserved areas.

S. 2729

At the request of Mr. GRASSLEY, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 2729, a bill to amend title XVIII of the Social Security Act to provide for a medicare voluntary prescription drug delivery program under the medicare program, to modernize the medicare program, and for other purposes.

S. 2734

At the request of Mr. KERRY, the names of the Senator from Iowa (Mr. HARKIN), the Senator from Nevada (Mr. REID), the Senator from Nevada (Mr. ENSIGN), the Senator from Missouri (Mr. BOND) and the Senator from North Carolina (Mr. HELMS) were added as cosponsors of S. 2734, a bill to provide emergency assistance to non-farm small business concerns that have suffered economic harm from the devastating effects of drought.

S. 2736

At the request of Mr. ALLARD, his name was added as a cosponsor of S. 2736, a bill to amend title XVIII of the Social Security Act to provide medicare beneficiaries with a drug discount card that ensures access to affordable outpatient prescription drugs.

S. 2761

At the request of Mr. FEINGOLD, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 2761, a bill to amend the Internal Revenue Code of 1986 to provide that reimbursements for costs of using passenger automobiles for charitable and other organizations are excluded from gross income, and for other proposes.

S. RES. 239

At the request of Mr. ALLEN, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. Res. 239, a resolution recognizing the lack of historical recognition of the gallant exploits of the officers and crew of the S.S. Henry Bacon, a Liberty ship that was sunk February 23, 1945, in the waning days of World War II.

S. RES. 242

At the request of Mr. THURMOND, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from Wyoming (Mr. ENZI) were added as cosponsors of S. Res. 242, a resolution designating August 16, 2002, as ''National Airborne Day''.

S. RES. 293

At the request of Mrs. HUTCHISON, her name was added as a cosponsor of S. Res. 293, a resolution designating the week of November 10 through November 16, 2002, as ''National Veterans Awareness Week'' to emphasize the need to develop educational programs regarding the contributions of veterans to the country.

S. CON. RES. 119

At the request of Mr. BURNS, the name of the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of S. Con. Res. 119, a concurrent resolution honoring the United States Marines killed in action during World War II while participating in the 1942 raid on Makin Atoll in the Gilbert Islands and expressing the sense of Congress that a site in Arlington National Cemetery, near the Space Shuttle Challenger Memorial at the corner of Memorial and Farragut Drives, should be provided for a suitable monument to the Marine Raiders.

S. CON. RES. 121

At the request of Mr. HUTCHINSON, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. Con. Res. 121, a concurrent resolution expressing the sense of Congress that there should be established a National Health Center Week for the week beginning on August 18, 2002, to raise awareness of health services provided by community , migrant, public housing, and homeless health centers.

AMENDMENT NO. 4304

At the request of Mr. ALLARD, the name of the Senator from Colorado (Mr. CAMPBELL) was added as a cosponsor of amendment No. 4304 intended to be proposed to S. 812, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

AMENDMENT NO. 4309

At the request of Mr. DAYTON, his name was added as a cosponsor of amendment No. 4309 proposed to S. 812, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

AMENDMENT NO. 4310

At the request of Mr. ALLARD, his name was added as a cosponsor of amendment No. 4310 proposed to S. 812, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BINGAMAN (for himself, Mr. DOMENICI, and Mr. BROWNBACK):

S. 2773. A bill to authorize the Secretary of the Interior to cooperate with the High Plains Aquifer States in conducting a hydrogeologic characterization, mapping, modeling and monitoring program for the High Plains Aquifer and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, I rise today to introduce a bill that has significance for the entire Great Plains region of our Nation. The High Plains Aquifer, which is comprised in large part by the Ogallala Aquifer, extends under eight states: Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming. It is experiencing alarming declines in its water levels. This aquifer is the source of water for farmers and communities throughout the Great Plains region. The legislation I am introducing today is intended to ensure that sound and objective science is available with respect to the hydrology and geology of the High Plains Aquifer.

This bill, the ''High Plains Aquifer Hydrogeologic Characterization, Mapping, Modeling and Monitoring Act,'' would direct the Secretary of the Interior to develop and carry out a comprehensive hydrogeologic characterization, mapping, modeling and monitoring program for the High Plains Aquifer. The Secretary is directed to work in conjunction with the eight High Plains Aquifer States in carrying out this program. The U.S. Geological Survey and the States will work in cooperation to further the goals of this program, with half of the available funds directed to the State component of the program.

I have appreciated the input and assistance of many in the High Plains Aquifer States in putting this legislation together. Last session, I introduced two bills relating to the High Plains Aquifer. One of these bills, S. 1537 would have established a mapping and monitoring program for the High Plains Aquifer. The bill I am introducing today revises and refines that program based on input from several of the State geologists and water management agency officials who would be involved in implementing the program. Their assistance has been invaluable. As we conduct hearings on this legislation, I hope to receive further comment from them on the legislation, and I look forward to continuing to work with them as we proceed with this important legislation.

The second bill that I introduced last session, S. 1538, proposed that the Secretary of Agriculture provide incentive payments through the Farm Program to producers who were willing to conserve water by converting to less water-intensive crops or to dryland farming. In addition, the bill would have provided assistance to producers to make their irrigation systems more water efficient. I am pleased that the recently-enacted Farm Security and Rural Investment Act of 2002 establishes a ground and surface water conservation program which incorporates several of the concepts contained in S. 1538. It is to be funded in the amount of $25 million for fiscal year 2002, $45 million for fiscal year 2003, and $60 million for each of fiscal years 2004 through 2007.

The Conference Report for the 2002 Farm Bill makes clear that ''highest priority'' is to be accorded the High Plains region in the funding and implementation of this program. I expect that the new program will yield substantial benefits to the High Plains region in addressing ground water depletion by providing cost-share payments, incentive payments, and loans to producers to improve irrigation systems, enhance irrigation efficiencies, convert to the production of less water-intensive crops or dryland farming, improve water storage through measures such as water banking and groundwater recharge, mitigate the effects of drought, and institute other measures as determined by the Secretary.

A reliable source of groundwater is essential to the well-being and livelihoods of people in the Great Plains region. Local towns and rural areas are dependent on the use of groundwater for drinking water, ranching, farming, and other commercial uses. Yet many areas overlaying the Ogallala Aquifer have experienced a dramatic depletion of this groundwater resource. The problem we are confronting is that the aquifer is not sustainable, and it is being depleted rapidly. This threatens the way of life of all who live on the High Plains. The bill I am introducing today would help ensure that the relevant science needed to address this problem is available so that we will have a better understanding of the resources of the High Plains Aquifer. I ask that my colleagues join me in supporting this legislation.

I ask unanimous consent that the text of the bill and the section-by-section be printed in the RECORD.

I also ask unanimous consent that a letter from the State Geologist of Kansas, written on behalf of the State geological surveys of the eight High Plains Aquifer States, endorsing the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2773

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''High Plains Aquifer Hydrogeologic Characterization, Mapping, Modeling and Monitoring Act''.

SEC. 2. DEFINITIONS.

For the purposes of this Act:

(1) ASSOCIATION.—The term ''Association'' means the Association of American State Geologists.

(2) DIRECTOR.—The term ''Director'' means the Director of the United States Geological Survey.

(3) FEDERAL COMPONENT.—The term ''Federal component'' means the Federal component of the High Plains Aquifer Comprehensive Hydrogeologic Characterization, Mapping, Modeling and Monitoring Program described in section 3(c).

(4) HIGH PLAINS AQUIFER.—The term ''High Plains Aquifer'' is the groundwater reserve depicted as Figure 1 in the United States Geological Survey Professional Paper 1400–B, title ''Geohydrology of the High Plains Aquifer in Parts of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming.''

(5) HIGH PLAINS AQUIFER STATES.—The term ''High Plains Aquifer States'' means the States of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas and Wyoming.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(7) STATE COMPONENT.—The term ''State component'' means the State component of the High Plains Aquifer Comprehensive Hydrogeologic Characterization, Mapping, Modeling and Monitoring Program described in section 3(d).

SEC. 3. ESTABLISHMENT

(a) PROGRAM.—The Secretary, working through the United States Geological Survey, and in cooperation with the State geological surveys and the water management agencies of the High Plains Aquifer States, shall establish and carry out the High Plains Aquifer Comprehensive Hydrogeolgoic Characterization, Mapping, Modeling and Monitoring Program, for the purposes of the characterization, mapping, modeling, and monitoring of the High Plains Aquifer. The program shall undertake on a county-by-county level or at the largest scales and most detailed levels determined to be appropriate on a state-by-state and regional basis: (1) mapping of the hydrogeological configuration of the High Plains Aquifer; and (2) with respect to the High Plains Aquifer, analyses of the current and past rates at which groundwater is being withdrawn and recharged, the net rate of decrease or increase in High Plains Aquifer storage, the factors controlling the rate of horizontal and vertical migration of water within the High Plains Aquifer, and the current and past rate of loss of saturated thickness within the High Plains Aquifer. The program shall also develop, as needed, regional data bases and groundwater flow models.

(b) FUNDING.—The Secretary shall make available fifty percent of the funds available pursuant to this Act for use in carrying out the State component of the program, as provided for by subsection (d),

(c) FEDERAL PROGRAM COMPONENT.—

(1) PRIORITIES.—The program shall include a Federal component, developed in consultation with the Federal Review Panel provided for by subsection (e), which shall have as its priorities—

(A) coordinating Federal, State, and local, data, maps, and models into an integrated physical characterization of the High Plains Aquifer;

(B) supporting State and local activities with scientific and technical specialists; and

(C) undertaking activities and providing technical capabilities not available at the State and local levels.

(2) INTERDISCIPLINARY STUDIES.—The Federal component shall include interdisciplinary studies that add value to hydrogeologic characterization, mapping, modeling and monitoring for the High Plains Aquifer.

(d) STATE PROGRAM COMPONENT.—

(1) PRIORITIES.—The program shall include a State component which shall have as its priorities hydrogeologic characterization, mapping, modeling, and monitoring activities in areas of the High Plains Aquifer that will assist in addressing issues relating to groundwater depletion and resource assessment of the Aquifer. Priorities under the State component shall be based upon the recommendations of State panels representing a broad range of users of hydrogeologic data and information, which shall be appointed by the Governor of the State or the Governor's designee.

(2) AWARDS.—Twenty percent of the Federal funds available under the State component shall be equally divided among the State geological surveys of the High Plains Aquifer States to carry out the purposes of the program provided for by this Act. The remaining funds under the state component shall be competitively awarded to State or local agencies or entities in the High Plains Aquifer States, including State geological surveys, State water management agencies, institutions of higher education, or consortia of such agencies or entities. Such funds shall be awarded by the Director only for proposals that have been recommended by the State panels referred to in subsection (d)(1), subjected to independent peer review, and given final recommendation by the Federal Review Panel established under subsection (e). Proposals for multi-state activities must be recommended by the State panel of at least one of the affected States.

(e) FEDERAL REVIEW PANEL.—

(1) ESTABLISHMENT.—There shall be established a Federal Review Panel to evaluate the proposals submitted for funding under the State component under subsection (d)(2) and to recommend approvals and levels of funding. In addition, the Federal Review Panel shall review and coordinate the Federal component priorities under subsection (c)(1), Federal interdisciplinary studies under subsection (c)(2), and the State component priorities under subsection (d)(1).

(2) COMPOSITION AND SUPPORT.—Not later than three months after the date of enactment of this Act, the Secretary shall appoint to the Federal Review Panel: (1) two representatives of the Untied States Geological Survey, at least one of which shall be a hydrologist or hydrogeologist; and (2) three representatives of the geological surveys and water management agencies of the High Plains Aquifer States from lists of nominees provided by the Association and the Western States Water Council, so that there is representation of both the State geological surveys and the State water management agencies. Appointment to the Panel shall be for a term of three years. The Director shall provide technical and administrative support to the Federal Review Panel. Expenses for the Federal Review Panel shall be paid from funds available under the Federal component of the program.

(f) LIMITATION.—The United States Geological Survey shall not use any of the Federal funds to be made available under the State component for any fiscal year to pay indirect, servicing, or program management charges. Recipients of awards granted under subsection (d)(2) shall not use more than eighteen percent of the Federal award amount for any fiscal year for indirect, servicing, or program management charges.

SEC. 4. PLAN.

The Secretary, acting through the Director, shall, with the participation and review of the Association, the Western States Water Council, the Federal Review Panel, and the State panels, prepare a plan for the High Plains Aquifer Hydrogeologic Characterization, Mapping, Modeling and Monitoring Program. The plan shall address overall priorities for the program and a management structure and program operations, including the role and responsibilities of the United States Geological Survey and the States in the program, and mechanisms for identifying priorities for the Federal component and the State component.

SEC. 5. REPORTING REQUIREMENTS.

(a) REPORT ON PROGRAM IMPLEMENTATION.—One year after the date of enactment of this Act, and every two years thereafter through fiscal year 2011, the Secretary shall submit a report on the status of implementation of the program established by this Act to the Committee on Energy and Natural Resources of the Senate, the Committee on Resources of the House of Representatives, and the Governors of the High Plains Aquifer States.

(b) REPORT ON HIGH PLAINS AQUIFER.—One year after the date of enactment of this Act and every year thereafter through fiscal year 2011, the Secretary shall submit a report to the Committee on Energy and Natural Resources of the Senate, the Committee on Resources of the House of Representatives, and the Governors of the High Plains Aquifer States on the status of the High Plains Aquifer, including aquifer recharge rates, extraction rates, saturated thickness, and water table levels.

(c) ROLE OF FEDERAL REVIEW PANEL.—The Federal Review Panel shall be given an opportunity to review and comment on the reports required by this section.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2011 to carry out this Act.

SECTION-BY-SECTION HIGH PLAINS AQUIFER HYDROGEOLOGIC CHARACTERIZATION, MAPPING, MODELING AND MONITORING ACT

SEC. 1. SHORT TITLE

SEC. 2. DEFINITIONS

Defines the High Plains Aquifer States as the States of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas and Wyoming.

SEC. 3. ESTABLISHMENT

(a) Program. Directs the Secretary of the Interior, working through the U.S. Geological Survey, in cooperation with the State geological surveys and the water management agencies of the High Plains Aquifer States, to establish and carry out the High Plains Aquifer Comprehensive Hydrogeologic Characterization, Mapping, Modeling and Monitoring Program. The program is to undertake on a county-by-county level or at the most detailed level that is appropriate, mapping of the hydrogeological configuration of the High Plains Aquifer and analyses of several aspects of the hydrology and hydrogeology of the Aquifer, as specified.

(b) Funding. Requires the Secretary to make available fifty percent of the funds available pursuant to the Act for use in carrying out the State component of the program.

(c) Federal Program Component.

(1) Priorities. The program is to include a Federal component, developed in consultation with the Federal Review Panel, which shall have as priorities coordinating data, maps and models into an integrated physical characterization of the High Plains Aquifer, supporting State and local activities with scientific and technical specialists, and undertaking activities not available at State and local levels.

(2) Interdisciplinary Studies. The Federal component is to include interdisciplinary studies.

(d) State Program Component.

(1) Priorities. The program is to include a State component which shall have as priorities characterization, mapping, modeling, and monitoring activities that will assist in addressing issues relating to groundwater depletion and resource assessment of the Aquifer. Priorities are to be based on recommendations of State panels representing a broad range of users of data and information, which shall be appointed by the Governor of the State or the Governor's designee.

(2) Awards. Twenty percent of the funds available in the State component shall be equally divided among the State geological surveys of the High Plains Aquifer States. The remaining amounts shall be competitively awarded by the Director of the U.S. Geological Survey to State or local agencies or entities in the High Plains Aquifer States for proposals that have been recommended by the State panels, subject to independent peer review, and given final recommendation by the Federal Review Panel.

(e) Federal Review Panel.

(1) Establishment. Establishes a Federal Review Panel to evaluate proposals submitted for funding under the State component, to review and coordinate Federal component priorities, Federal interdisciplinary studies, and State component priorities.

(2) Composition and Support. The Secretary of the Interior is to appoint to the Federal Review Panel two representatives of the U.S. Geological Survey (at least one of which shall be a hydrologist or a hydrogeologist) and three representatives of the geological surveys and water management agencies of the High Plains Aquifer States from lists of nominees provided by the Association of American State Geologists and the Western States Water Council. There is to be representation of both the State geological surveys and the State water management agencies.

(f) Limitation.

The U.S. Geological Survey is not to use any of the Federal funds made available for the State components to pay indirect, servicing or program charges. Recipients of awards granted under subsection (d)(2) shall not use more than eighteen percent of the Federal award amount for indirect, servicing, or program management charges.

SEC. 4. PLAN

The Secretary, with the participation and review of the Association of American State Geologists, the Western States Water Council, the Federal Review Panel and the State panels, is directed to prepare a plan for the program.

SEC. 5. REPORTING REQUIREMENTS

(a) Report on Program Implementation. The Secretary is to submit a report one year after the date of enactment of this Act and every two years thereafter, on the status of implementation of the program to the Committee on Energy and Natural Resources of the Senate, the Committee on Resources of the House, and the Governors of the High Plains Aquifer States.

(b) Report on High Plains Aquifer. One year after the date of enactment the Act and

every year thereafter, the Secretary is to submit a report to the Committee on Energy and Natural Resources of the Senate, the Committee on Resources of the House, and the Governors of the High Plains Aquifer States, on the status of the High Plains Aquifer.

(c) Role of Federal Review Panel. The Federal Review Panel will be given an opportunity to review and comment on the reports.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated such sums as may be necessary to carry out the Act for fiscal years 2003 through 2011.

KANSAS GEOLOGICAL SURVEY,
OFFICE OF THE DIRECTOR,
Lawrence, KS, July 18, 2002.

Hon. JEFF BINGAMAN,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR BINGAMAN: I am writing on behalf of the geological surveys of the eight High Plains states to endorse your proposed legislation. ''High Plains Aquifer Hydrogeologic Characterization, Mapping, Modeling, and Monitoring Act.''

This act will authorize scientific and technical analyses critical to extending and conserving the life of the nation's single largest groundwater resource. It is particularly noteworthy that the act is written to facilitate and ensure cooperation and collaboration among all of the affected geological surveys, state water agencies, and the local water user communities.

The High Plains aquifer is a complex system of geologic materials that vary vertically and across the region in its thickness, water storage and transport capacity, and ability to be recharged. Eight state geological surveys and the U.S. Geological Survey formed the High Plains Aquifer Coalition two years ago to advance the understanding of the subsurface distribution, character, and nature of the High Plains Aquifer that comprises the geologic deposits in the eight-state Mid-continent region. The distribution, withdrawal, and recharge of groundwater, and the interaction with surface waters are profoundly affected by the geology and the natural environment of the High Plains Aquifer in all eight states—New Mexico, Texas, Oklahoma, Colorado, Kansas, Nebraska, South Dakota, and Wyoming. The geological surveys, in consultation with the state and local water agencies and groups, have agreed on the need for comprehensive understanding of the subsurface configuration and hydrogeology of the High Plains Aquifer. This information is needed to provide state, regional, and national policymakers with the earth-science information required to make informed decisions regarding urban and agricultural land use, the protection of aquifers and surface waters, and the environmental well being of the citizens of this geologically unique region.

Water contained in the High Plains Aquifer must be considered a finite resource and thus warrants a different management approach than that used for more robust or readily recharged aquifers. Your proposed legislation addresses this issue in an effective and logical manner, and we believe it will receive broad support.

The ''High Plains Aquifer Characterization, Mapping, Modeling, and Monitoring Act'' is a necessary first step in a comprehensive program to adequately address issues of conservation, education, and agricultural economics in the High Plains Aquifer. We applaud your vision and leadership in introducing this legislation.

Sincerely,

M. LEE ALLISON,
STATE GEOLOGIST AND DIRECTOR,
Kansas Geological Survey Coordinator, High Plains Aquifer Coalition.

By Mr. BINGAMAN:

S. 2776. A bill to provide for the protection of archaeological sites in the Galisteo Basin in New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, I am pleased today to introduce legislation to protect several important archaeological sites in the Galisteo Basin in New Mexico. This bill identifies approximately two dozen sites in northern New Mexico which contain the ruins of pueblos dating back almost 900 years. When Coronado and other Spanish conquistadores first entered what is now New Mexico in 1541, they encountered a thriving Pueblo culture with its own unique tradition of religion, architecture and art, which was influenced through an extensive trade system. We know that these sites remain occupied up through the Pueblo revolt in 1680. After that, the sites were deserted, although we still don't know why they were abandoned, after over 700 years of continuous use.

Through these sites, we now have the opportunity to learn more not only about the history and culture of these Pueblos, but also about the first interaction between European and Native American cultures. The Cochiti Pueblo, in particular, is culturally and historically tied to these sites, which have tremendous historical and religious significance to the Pueblo. I am grateful for the continued support of the Pueblo de Cochiti for this legislation. This bill has strong local support, including the Santa Fe Board of County Commissioners, the City of Santa Fe, and the Archdiocese of Santa Fe. I would also like to thank the Archaeological Conservancy for its efforts over the past several years to identify and protect many of these sites, and in helping with this legislation.

Many of these archaeological sites are on Federal land administered by the Bureau of Land Management. BLM archaeologists have already provided extensive background research on many of these sites, and I was pleased that the agency supported a similar bill I introduced in the previous Congress.

Many of the archaeological sites identified in the bill are on non-Federal land. I would like to emphasize that the bill only authorizes voluntary participation, and there is no restriction or other limitation imposed on these lands. Because this is a sensitive issue, I have added language to this year's bill to explicitly state that the Secretary of the Interior has no authority to administer sites on non-Federal lands except to the extent provided for in a cooperative agreement entered into between the Secretary and the landowner. Similarly, the Secretary's authority to acquire lands is limited to willing sellers only.

In the three years since I first introduced this proposal, many irreplaceable archaeological resources have been lost, whether by vandalism, erosion, or other means. Enactment of the Galisteo Basin Archaeological Sites Protection Act will allow us to take the first steps necessary to protect these resources and to allow for improved public understanding and interpretation of these sites.

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. 2776

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

SECTION 1. SHORT TITLE.

Tis Act may be cited as the ''Galisteo Basin Archaeological Sites Protection Act''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the Galisteo Basin and surrounding area of New Mexico is the location of many well preserved prehistoric and historic archaeological resources of Native American and Spanish colonial cultures;

(2) these resources include the largest ruins of Pueblo Indian settlements in the United States, spectacular examples of Native American rock art, and ruins of Spanish colonial settlements; and

(3) these resources are being threatened by natural causes, urban development, vandalism, and uncontrolled excavations.

(b) PURPOSE.—The purpose of this Act is to provide for the preservation, protection, and interpretation of the nationally significant archaeological resources in the Galisteo Basin in New Mexico.

SEC. 3. ESTABLISHMENT OF GALISTEO BASIN ARCHAEOLOGICAL PROTECTION SITES.

(a) IN GENERAL.—The following archaeological sites located in the Galisteo Basin in the State of New Mexico, totaling approximately 4,591 acres, are hereby designated as Galisteo Basin Archaeological Protection Sites:

Name	Acres
Arroyo Hondo Pueblo	21
Burnt Corn Pueblo	110
Chamisa Locita Pueblo	16
Comanche Gap Petroglyphs.	764
Espinoso Ridge Site	160
La Cienega Pueblo & Petroglyphs.	126
La Cienega Pithouse Village.	179
La Cieneguilla Petroglyphs/Camino Real Site.	531
La Cieneguilla Pueblo	11
Lamy Pueblo	30
Lamy Junction Site	80
Las Huertas	44
Pa'ako Pueblo	29
Petroglyph Hill	130
Pueblo Blanco	878
Pueblo Colorado	120
Pueblo Galisteo/Las Madres.	133
Pueblo Largo	60
Pueblo She	120
Rote Chert Quarry	5
San Cristobal Pueblo	520
San Lazaro Pueblo	360
San Marcos Pueblo	152
Upper Arroyo Hondo Pueblo.	12
Total Acreage	4,591

(c) AVAILABILITY OF MAPS.—The archaeological protection sites listed in subsection (b) are generally depicted on a series of 19 maps entitled ''Galisteo Basin Archaeological Protection Sites'' and dated July, 2002. The Secretary shall keep the maps on file and available for public inspection in appropriate offices in New Mexico of the Bureau of Land Management and the National Park Service.

(d) BOUNDARY ADJUSTMENTS.—The Secretary may make minor boundary adjustments to the archaeological protection sites by publishing notice thereof in the Federal Register.

SEC. 4. ADDITIONAL SITES.

(a) IN GENERAL.—The Secretary of the Interior (in this Act referred to as ''Secretary'') shall—

(1) continue to search for additional Native American and Spanish colonial sites in the Galisteo Basin area of New Mexico; and

(2) submit to Congress, within three years after the date funds become available and thereafter as needed, recommendations for additions to, deletions from, and modifications of the boundaries of the list of archaeological protection sites in section 3 of this Act.

(b) ADDITIONS ONLY BY STATUTE.—Additions to or deletions from the list in section 3 shall be made only by an Act of Congress.

SEC. 5. ADMINISTRATION.

(a) IN GENERAL.—(1) The Secretary shall administer archaeological protection sites located on Federal land in accordance with the provisions of this Act, the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.), and other applicable laws in a manner that will protect, preserve, and maintain the archaeological resources and provide for research thereon.

(2) The Secretary shall have no authority to administer archaeological protection sites which are on non-Federal lands except to the extent provided for in a cooperative agreement entered into between the Secretary and the landowner.

(3) Nothing in this Act shall be construed to extend the authorities of the Archaeological Resources Protection Act of 1979 or the Native American Graves Protection and Repatriation Act to private lands which are designated as an archaeological protection site.

(b) MANAGEMENT PLAN.—

(1) IN GENERAL.—Within three complete fiscal years after the date funds are made available, the Secretary shall prepare and transmit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives, a general management plan for the identification, research, protection, and public interpretation of—

(A) the archaeological protection sites located on Federal land; and

(B) for sites on State or private lands for which the Secretary has entered into cooperative agreements pursuant to section 6 of this Act.

(2) CONSULTATION.—The general management plan shall be developed by the Secretary in consultation with the Governor of New Mexico, the New Mexico State Land Commissioner, affected Native American pueblos, and other interested parties.

SEC. 6. COOPERATIVE AGREEMENTS.

The Secretary is authorized to enter into cooperative agreements with owners of non-Federal lands with regard to an archaeological protection site, or portion thereof, located on their property. The purpose of such an agreement shall be to enable to the Secretary to assist with the protection, preservation, maintenance, and administration of the archaeological resources and associated lands. Where appropriate, a cooperative agreement may also provide for public interpretation of the site.

SEC. 7. ACQUISITIONS.

(a) IN GENERAL.—The Secretary is authorized to acquire lands and interests therein within the boundaries of the archaeological protection sites, including access thereto, by donation, by purchase with donated or appropriated funds, or by exchange.

(b) CONSENT OF OWNER REQUIRED.—The Secretary may only acquire lands or interests therein within the consent of the owner thereof.

(c) STATE LANDS.—The Secretary may acquire lands or interests therein owned by the State of New Mexico or a political subdivision thereof only by donation or exchange, except that State trust lands may only be acquired by exchange.

SEC. 8. WITHDRAWAL.

Subject to valid existing rights, all Federal lands within the archaeological protection sites are hereby withdrawn—

(1) from all forms of entry, appropriation, or disposal under the public land laws and all amendments thereto;

(2) from location, entry, and patent under the mining law and all amendments thereto; and

(3) from disposition under all laws relating to mineral and geothermal leasing, and all amendments thereto.

SEC. 9. SAVINGS PROVISIONS.

Nothing in this Act shall be construed—

(1) to authorize the regulation of privately owned lands within an area designated as an archaeological protection site;

(2) to modify, enlarge, or diminish any authority of Federal, State, or local governments to regulate any use of privately owned lands; or

(3) to modify, enlarge, or diminish any authority of Federal, State, tribal, or local governments to manage or regulate any use of land as provided for by law or regulation.

(4) to restrict or limit a tribe from protecting cultural or religious sites on tribal lands.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this Act.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENTE CONCURRENT RESOLUTION 130—EXPRESSING THE SENSE OF CONGRESS THAT THE FEDERAL MEDIATION AND CONCILIATION SERVICE SHOULD EXERT ITS BEST EFFORTS TO CAUSE THE MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION AND THE OWNERS OF THE TEAMS OF MAJOR LEAGUE BASEBALL TO ENTER INTO A CONTRACT TO CONTINUE TO PLAY PROFESSIONAL BASEBALL GAMES WITHOUT ENGAGING IN A STRIKE, A LOCKOUT OR ANY COERCIVE CONDUCT THAT INTERFERES WITH THE PLAYING OF SCHEDULED PROFESSIONAL BASEBALL GAMES

Mr. MILLER submitted the following concurrent resolution; which was referred to the Committee on Health, Education, Labor, and Pensions.

S. CON RES. 130

Whereas major league baseball is a national institution and is commonly referred to as ''the national pastime'';

Whereas major league baseball and its players played a critical role in restoring America's spirit following the tragic events of September 11, 2001;

Whereas major league baseball players are role models to millions of young Americans; and

Whereas while the financial issues involved in this current labor negotiation are significant, they pale in comparison to the damage that will be caused by a strike or work stoppage: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that the Federal Mediation and Conciliation Service, on its own motion and in accordance with section 203(b) of the Labor Management Relations Act, 1947 (29 U.S.C. 173(b)), should immediately—

(1) proffer its services to the Major League Baseball Players Association and the owners of the teams of Major League Baseball to resolve labor contract disputes relating to entering into a collective bargaining agreement; and

(2) use its best efforts to bring the parties to agree to such contract without engaging in a strike, a lockout, or any other coercion that interferes with the playing of scheduled professional baseball games.

Mr. MILLER. Mr. President, today I share with my colleagues a resolution that calls on the Federal Mediation and Conciliation Service to exert its best efforts to cause the Major League Baseball Players Association and the owners of the teams of Major League Baseball to enter into a contract to continue to play professional baseball games without engaging in any coercive conduct that interferes with the playing of scheduled professional baseball games.

Folks don't agree on much around this place. But, I think we can all agree that baseball as we've known it, is in deep trouble.

Billion dollar owners and multi-million dollar players refusing to come together and do what's right for the game.

Steroid use rampant, according to an article in Sports Illustrated.

And the best Senator DORGAN could get out of a June hearing from the Players Association Executive Director was for him to say ''We'll have a frank and open discussion'' on the topic.

But the big problem is that the player's labor contract expired last year and the negotiations on a new deal are going nowhere.

There have been eight different labor agreements and each time there was a work stoppage.

The last time the owners and players tried to renew their contract back in 1994, it took a 232-day shutdown of the game, including canceling the World Series for the first time in 90 years, to finally get an agreement.

Hall of Famer and U.S. Senator JIM BUNNING has an op-ed piece in this morning's New York Times. He writes, ''The last strike nearly killed the game. I am afraid the next one will.''

There are many problems. Only five out of thirty teams made a profit last season. That means 25 ended up in the red. The extreme ran from the Yankees collecting $217.8 million and the Montreal Expos $9.8 million.

The average player today, the average player, makes more than $2 million a year.

Ever since Abner Doubleday invented the game, a game is played until one team wins. That was part of the enchantment of the game: theoretically it could go on forever. Unless, that is, a commissioner calls it off and goes to dinner.

Ever since baseball was declared as entertainment instead of a business in a 1922 Supreme Court decision that gave the owners exemptions from laws against collusion and other monopolistic activities, we have probably been headed to this day. These anti-trust exemptions give owners tremendous power and any proposals to change it, like Rep. JOHN CONYERS tried to do not too long ago, have gone nowhere.

And, we're not proposing that today, I'm not even sure I'm for that. I happen to think that it would kill the minor leagues.

And right now, these 160 teams are playing some of the purest baseball being played today.

So what do we do? Here's how I see it.

What would any of us do if we saw a loved one, someone you grew up with and loved like a member of your family, with a pistol in his hand, loaded with the safety off and aimed at their temple?

What if you had only a few seconds before that close personal friend blew his brains out? I'd try to stop him. And I think you would too. I'd lurch for the pistol and try to take it away from him by whatever force necessary. I'd do just about anything to save his life.

I could go on with this analogy, but I think you get the picture.

For sixty summers I've followed the game of baseball. I live for the early days of February when the catchers and pitchers report for spring training.

And when the World Series ends in the late fall, I might as well be hibernating in a cave during the winter, or serving in the Senate, because my life is so empty.

But, I digress. Back to saving the life of that good friend about to blow his brains out.

That's what this resolution attempts to do.

Its purpose is to inject the Federal Government, with all its persuasive powers, into this dispute. Hopefully, with the end result of preventing the baseball players from striking and shutting down major league baseball.

I want to save this game for those who love it as I do and for those who will come after us. I do not want to see our national pastime become our national once-upon-a-time.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4313. Mr. DEWINE submitted an amendment intended to be proposed by him to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table.

SA 4314. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 4309 proposed by Mr. GRAHAM (for himself, Mr. MILLER, Mr. KENNEDY, and Mr. CORZINE) to the bill (S. 812) supra; which was ordered to lie on the table.

SA 4315. Mr. HAGEL (for himself, Mr. ENSIGN, Mr. LUGAR, Mr. GRAMM, Mr. INHOFE, Mr. SANTORUM, Mr. GREGG, Mr. FRIST, and Mr. NICKLES) proposed an amendment to amendment SA 4299 proposed by Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Mr. HARKIN)) to the bill (S. 812) supra.

TEXT OF AMENDMENTS

SA 4313. Mr. DEWINE submitted an amendment intended to be proposed by him to the bill S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE ____—IMMUNOSUPPRESSIVE DRUG COVERAGE

SEC. ____01. SHORT TITLE.

This title may be cited as the ''Immunosuppressive Drug Coverage Act of 2002''.

SEC. ____02. PROVISION OF APPROPRIATE COVERAGE OF IMMUNOSUPPRESSIVE DRUGS UNDER THE MEDICARE PROGRAM.

(a) CONTINUED ENTITLEMENT TO IMMUNOSUPPRESSIVE DRUGS FOR KIDNEY TRANSPLANT RECIPIENTS.—

(1) IN GENERAL.—Section 226A(b)(2) of the Social Security Act (42 U.S.C. 426–1(b)(2)) is amended by inserting ''(except for coverage of immunosuppressive drugs under section 1861(s)(2)(J))'' after ''shall end''.

(2) APPLICATION.—In the case of an individual whose eligibility for benefits under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) has ended except for the coverage of immunosuppressive drugs by reason of the amendment made by paragraph (1), the following rules shall apply:

(A) The individual shall be deemed to be enrolled in part B of the original medicare fee-for-service program under title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.) for purposes of receiving coverage of such drugs.

(B) The individual shall be responsible for the full part B premium under section 1839 of such Act (42 U.S.C. 1395r) in order to receive such coverage.

(C) The provision of such drugs shall be subject to the application of—

(i) the part B deductible under section 1833(b) of such Act (42 U.S.C. 13951(b)); and

(ii) the coinsurance amount applicable for such drugs (as determined under such part B).

(D) If the individual is an inpatient of a hospital or other entity, the individual is entitled to receive coverage of such drugs under such part B.

(3) ESTABLISHMENT OF PROCEDURES IN ORDER TO IMPLEMENT COVERAGE.—The Secretary of Health and Human Services shall establish procedures for—

(A) identifying beneficiaries that are entitled to coverage of immunosuppressive drugs by reason of the amendment made by paragraph (1); and

(B) distinguishing such beneficiaries from beneficiaries that are enrolled under part B of title XVIII of the Social Security Act for the complete package of benefits under such part.

(4) TECHNICAL AMENDMENT.—Subsection (c) of section 226A (42 U.S.C. 426–1), as added by section 201(a)(3)(D)(ii) of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103–296; 108 Stat. 1497), is redesignated as subsection (d).

(b) EXTENSION OF SECONDARY PAYER REQUIREMENTS FOR ESRD BENEFICIARIES.—Section 1862(b)(1)(C) of the Social Security Act (42 U.S.C. 1395y(b)(1)(C)) is amended by adding at the end the following new sentence: ''With regard to immunosuppressive drugs furnished on or after the date of enactment of the Immunosuppressive Drugs Coverage Act of 2002, this subparagraph shall be applied without regard to any time limitation.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to drugs furnished on or after the date of enactment of this Act.

SEC. ____03. PLANS REQUIRED TO MAINTAIN COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.

(a) APPLICATION TO CERTAIN HEALTH INSURANCE COVERAGE.—

(1) IN GENERAL.—Subpart 2 of part A of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–4 et seq.) is amended by adding at the end the following:

''SEC. 2707. COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.

''A group health plan (and a health insurance issuer offering health insurance coverage in connection with a group health plan) shall provide coverage of immunosuppressive drugs that is at least as comprehensive as the coverage provided by such plan or issuer on the day before the date of enactment of the Immunosuppressive Drug Coverage Act of 2002, and such requirement shall be deemed to be incorporated into this section.''.

(2) CONFORMING AMENDMENT.—Section 2721(b)(2)(A) of the Public Health Service Act (42 U.S.C. 300gg–21(b)(2)(A)) is amended by inserting ''(other than section 2707)'' after ''requirements of such subparts''.

(b) APPLICATION TO GROUP HEALTH PLANS AND GROUP HEALTH INSURANCE COVERAGE UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended by adding at the end the following new section:

''SEC. 714. COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.

''A group health plan (and a health insurance issuer offering health insurance coverage in connection with a group health plan) shall provide coverage of immunosuppressive drugs that is at least as comprehensive as the coverage provided by such plan or issuer on the day before the date of enactment of the Immunosuppressive Drug Coverage Act of 2002, and such requirement shall be deemed to be incorporated into this section.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 732(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185(a)) is amended by striking ''section 711'' and inserting ''sections 711 and 714''.

(B) The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 713 the following new item:

''Sec. 714. Coverage of Immunosuppressive drugs.''.

(c) APPLICATION TO GROUP HEALTH PLANS UNDER THE INTERNAL REVENUE CODE OF 1986.—Subchapter B of chapter 100 of the Internal Revenue Code of 1986 is amended—

(1) in the table of sections, by inserting after the item relating to section 9812 the following new item:

''Sec. 9813. Coverage of immunosuppressive drugs.'';

and

(2) by inserting after section 9812 the following:

"SEC. 9813. COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.

''A group health plan shall provide coverage of immunosuppressive drugs that is at least as comprehensive as the coverage provided by such plan on the day before the date of enactment of the Immunosuppressive Drug Coverage Act of 2002, and such requirement shall be deemed to be incorporated into this section.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning on or after January 1, 2003.

SA 4314. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 4309 proposed by Mr. GRAHAM (for himself and Mr. MILLER, Mr. KENNEDY, and Mr. CORZINE) to the bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; which was ordered to lie on the table; as follows:

Strike paragraph (2) of section 1860K(c) of the Social Security Act (as proposed to be added by section 202(a) of the amendment) and insert the following:

''(2) BUDGET NEUTRALITY.—Notwithstanding any other provision of this Act, this title, and the amendments made by the Medicare Outpatient Prescription Drug Act of 2002, shall take effect on the date of enactment of an Act that raises Federal revenues or reduces Federal spending by an amount sufficient to offset the Federal budgetary cost of implementing this title.''.

SA 4315. Mr. HAGEL (for himself, Mr. ENSIGN, Mr. LUGAR, Mr. GRAMM, Mr. INHOFE, Mr. SANTORUM, Mr. GREGG, Mr. FRIST, and Mr. NICKLES) proposed an amendment to amendment SA 4299 proposed by Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Mr. HARKIN)) to the bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals; as follows:

Strike the last word, and insert the following:

TITLE ___—VOLUNTARY MEDICARE OUTPATIENT PRESCRIPTION DRUG DISCOUNT AND SECURITY PROGRAM

SEC. ___00. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the ''Medicare Rx Drug Discount and Security Act of 2002''.

(b) TABLE OF CONTENTS.—The table of contents of this title is as follows:

Sec. ___00. Short title; table of contents.
Sec. ___01. Voluntary Medicare Outpatient Prescription Drug Discount and Security Program.
''PART D—VOLUNTARY MEDICARE OUTPATIENT PRESCRIPTION DRUG DISCOUNT AND SECURITY PROGRAM
''Sec. 1860. Definitions.
''Sec. 1860A. Establishment of program.
''Sec. 1860B. Enrollment.
''Sec. 1860C. Providing enrollment and coverage information to beneficiaries.
''Sec. 1860D. Enrollee protections.
''Sec. 1860E. Annual enrollment fee.
''Sec. 1860F. Benefits under the program.
''Sec. 1860G. Requirements for entities to provide prescription drug coverage.
''Sec. 1860H. Payments to eligible entities for administering the catastrophic benefit.
''Sec. 1860I. Determination of income levels.
''Sec. 1860J. Appropriations.
''Sec. 1860K. Medicare Competition and Prescription Drug Advisory Board.''.
Sec. ___02. Administration of Voluntary Medicare Outpatient Prescription Drug Discount and Security Program.
Sec. ___03. Exclusion of part D costs from determination of part B monthly premium.
Sec. ___04. Medigap revisions.

SEC. ___01. VOLUNTARY MEDICARE OUTPATIENT PRESCRIPTION DRUG DISCOUNT AND SECURITY PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended—

(1) by redesignating part D as part E; and

(2) by inserting after part C the following new part:

''PART D—VOLUNTARY MEDICARE OUTPATIENT PRESCRIPTION DRUG DISCOUNT AND SECURITY PROGRAM

''DEFINITIONS

''SEC. 1860. In this part:

''(1) COVERED OUTPATIENT DRUG.—

''(A) IN GENERAL.—Except as provided in this paragraph, the term 'covered outpatient drug' means—

''(i) a drug that may be dispensed only upon a prescription and that is described in subparagraph (A)(i) or (A)(ii) of section 1927(k)(2); or

''(ii) a biological product described in clauses (i) through (iii) of subparagraph (B) of such section or insulin described in subparagraph (C) of such section,

and such term includes a vaccine licensed under section 351 of the Public Health Service Act and any use of a covered outpatient drug for a medically accepted indication (as defined in section 1927(k)(6)).

''(B) EXCLUSIONS.—

''(i) IN GENERAL.—Such term does not include drugs or classes of drugs, or their medical uses, which may be excluded from coverage or otherwise restricted under section 1927(d)(2), other than subparagraph (E) thereof (relating to smoking cessation agents), or under section 1927(d)(3).

''(ii) AVOIDANCE OF DUPLICATE COVERAGE.—A drug prescribed for an individual that would otherwise be a covered outpatient drug under this part shall not be so considered if payment for such drug is available under part A or B for an individual entitled to benefits under part A and enrolled under part B.

''(C) APPLICATION OF FORMULARY RESTRICTIONS.—A drug prescribed for an individual that would otherwise be a covered outpatient drug under this part shall not be so considered under a plan if the plan excludes the drug under a formulary and such exclusion is not successfully appealed under section 1860D(a)(4)(B).

''(D) APPLICATION OF GENERAL EXCLUSION PROVISIONS.—A prescription drug discount card plan or Medicare+Choice plan may exclude from qualified prescription drug coverage any covered outpatient drug—

''(i) for which payment would not be made if section 1862(a) applied to part D; or

''(ii) which are not prescribed in accordance with the plan or this part.

Such exclusions are determinations subject to reconsideration and appeal pursuant to section 1860D(a)(4).

''(2) ELIGIBLE BENEFICIARY.—The term 'eligible beneficiary' means an individual who is—

''(A) eligible for benefits under part A or enrolled under part B; and

''(B) not eligible for prescription drug coverage under a State plan under the medicaid program under title XIX.

''(3) ELIGIBLE ENTITY.—The term 'eligible entity' means any—

''(A) pharmaceutical benefit management company;

''(B) wholesale pharmacy delivery system;

''(C) retail pharmacy delivery system;

''(D) insurer (including any issuer of a medicare supplemental policy under section 1882);

''(E) Medicare+Choice organization;

''(F) State (in conjunction with a pharmaceutical benefit management company);

''(G) employer-sponsored plan;

''(H) other entity that the Secretary determines to be appropriate to provide benefits under this part; or

''(I) combination of the entities described in subparagraphs (A) through (H).

''(4) OUT-OF-POCKET EXPENSES.—The term 'out-of-pocket expenses' means only those expenses for covered outpatient drugs that are incurred by the eligible beneficiary using a card approved by the Secretary under this part that are paid by that beneficiary and for which the beneficiary is not reimbursed (through insurance or otherwise) by another person.

''(5) POVERTY LINE.—The term 'poverty line' means the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

''(6) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services.

''ESTABLISHMENT OF PROGRAM

''SEC. 1860A. (a) PROVISION OF BENEFIT.—The Secretary shall establish a Medicare Outpatient Prescription Drug Discount and Security Program under which the Secretary endorses prescription drug card plans offered by eligible entities in which eligible beneficiaries may voluntarily enroll and receive benefits under this part.

''(b) ENDORSEMENT OF PRESCRIPTION DRUG DISCOUNT CARD PLANS.—

''(1) IN GENERAL.—The Secretary shall endorse a prescription drug card plan offered by an eligible entity with a contract under this part if the eligible entity meets the requirements of this part with respect to that plan.

''(2) NATIONAL PLANS.—In addition to other types of plans, the Secretary may endorse national prescription drug plans under paragraph (1).

''(c) VOLUNTARY NATURE OF PROGRAM.—Nothing in this part shall be construed as requiring an eligible beneficiary to enroll in the program under this part.

''(d) FINANCING.—The costs of providing benefits under this part shall be payable from the Federal Supplementary Medical Insurance Trust Fund established under section 1841.

''ENROLLMENT

''SEC. 1860B. (a) ENROLLMENT UNDER PART D.—

''(1) ESTABLISHMENT OF PROCESS.—

''(A) IN GENERAL.—The Secretary shall establish a process through which an eligible beneficiary (including an eligible beneficiary enrolled in a Medicare+Choice plan offered by a Medicare+Choice organization) may make an election to enroll under this part. Except as otherwise provided in this subsection, such process shall be similar to the process for enrollment under part B under section 1837.

''(B) REQUIREMENT OF ENROLLMENT.—An eligible beneficiary must enroll under this part in order to be eligible to receive the benefits under this part.

''(2) ENROLLMENT PERIODS.—

''(A) IN GENERAL.—Except as provided in this paragraph, an eligible beneficiary may not enroll in the program under this part during any period after the beneficiary's initial enrollment period under part B (as determined under section 1837).

''(B) SPECIAL ENROLLMENT PERIOD.—In the case of eligible beneficiaries that have recently lost eligibility for prescription drug coverage under a State plan under the medicaid program under title XIX, the Secretary shall establish a special enrollment period in which such beneficiaries may enroll under this part.

''(C) OPEN ENROLLMENT PERIOD IN 2003 FOR CURRENT BENEFICIARIES.—The Secretary shall establish a period, which shall begin on the date on which the Secretary first begins to accept elections for enrollment under this part, during which any eligible beneficiary may—

''(i) enroll under this part; or

''(ii) enroll or reenroll under this part after having previously declined or terminated such enrollment.

''(3) PERIOD OF COVERAGE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an eligible beneficiary's coverage under the program under this part shall be effective for the period provided under section 1838, as if that section applied to the program under this part.

''(B) ENROLLMENT DURING OPEN AND SPECIAL ENROLLMENT.—An eligible beneficiary who enrolls under the program under this part under subparagraph (B) or (C) of paragraph (2) shall be entitled to the benefits under this part beginning on the first day of the month following the month in which such enrollment occurs.

''(4) PART D COVERAGE TERMINATED BY TERMINATION OF COVERAGE UNDER PARTS A AND B OR ELIGIBILITY FOR MEDICAL ASSISTANCE.—

''(A) IN GENERAL.—In addition to the causes of termination specified in section 1838, the Secretary shall terminate an individual's coverage under this part if the individual is—

''(i) no longer enrolled in part A or B; or

''(ii) eligible for prescription drug coverage under a State plan under the medicaid program under title XIX.

''(B) EFFECTIVE DATE.—The termination described in subparagraph (A) shall be effective on the effective date of—

''(i) the termination of coverage under part A or (if later) under part B; or

''(ii) the coverage under title XIX.

''(b) ENROLLMENT WITH ELIGIBLE ENTITY.—

''(1) PROCESS.—The Secretary shall establish a process through which an eligible beneficiary who is enrolled under this part shall make an annual election to enroll in a prescription drug card plan offered by an eligible entity that has been awarded a contract under this part and serves the geographic area in which the beneficiary resides.

''(2) ELECTION PERIODS.—

''(A) IN GENERAL.—Except as provided in this paragraph, the election periods under this subsection shall be the same as the coverage election periods under the Medicare+Choice program under section 1851(e), including—

''(i) annual coordinated election periods; and

''(ii) special election periods.

In applying the last sentence of section 1851(e)(4) (relating to discontinuance of a Medicare+Choice election during the first year of eligibility) under this subparagraph, in the case of an election described in such section in which the individual had elected or is provided qualified prescription drug coverage at the time of such first enrollment, the individual shall be permitted to enroll in a prescription drug card plan under this part at the time of the election of coverage under the original fee-for-service plan.

''(B) INITIAL ELECTION PERIODS.—

''(i) INDIVIDUALS CURRENTLY COVERED.—In the case of an individual who is entitled to benefits under part A or enrolled under part B as of November 1, 2003, there shall be an initial election period of 6 months beginning on that date.

''(ii) INDIVIDUAL COVERED IN FUTURE.—In the case of an individual who is first entitled to benefits under part A or enrolled under part B after such date, there shall be an initial election period which is the same as the initial enrollment period under section 1837(d).

''(C) ADDITIONAL SPECIAL ELECTION PERIODS.—The Administrator shall establish special election periods—

''(i) in cases of individuals who have and involuntarily lose prescription drug coverage described in paragraph (3);

''(ii) in cases described in section 1837(h) (relating to errors in enrollment), in the same manner as such section applies to part B; and

''(iii) in the case of an individual who meets such exceptional conditions (including conditions provided under section 1851(e)(4)(D)) as the Secretary may provide.

''(D) ENROLLMENT WITH ONE PLAN ONLY.—The rules established under subparagraph (B) shall ensure that an eligible beneficiary may only enroll in 1 prescription drug card plan offered by an eligible entity for a year.

''(3) MEDICARE+CHOICE ENROLLEES.—An eligible beneficiary who is enrolled under this part and enrolled in a Medicare+Choice plan offered by a Medicare+Choice organization must enroll in a prescription drug discount card plan offered by an eligible entity in order to receive benefits under this part. The beneficiary may elect to receive such benefits through the Medicare+Choice organization in which the beneficiary is enrolled if the organization has been awarded a contract under this part.

''(4) CONTINUOUS PRESCRIPTION DRUG COVERAGE.—An individual is considered for purposes of this part to be maintaining continuous prescription drug coverage on and after the date the individual first qualifies to elect prescription drug coverage under this part if the individual establishes that as of such date the individual is covered under any of the following prescription drug coverage and before the date that is the last day of the 63-day period that begins on the date of termination of the particular prescription drug coverage involved (regardless of whether the individual subsequently obtains any of the following prescription drug coverage):

''(A) COVERAGE UNDER PRESCRIPTION DRUG CARD PLAN OR MEDICARE+CHOICE PLAN.—Prescription drug coverage under a prescription drug card plan under this part or under a Medicare+Choice plan.

''(B) MEDICAID PRESCRIPTION DRUG COVERAGE.—Prescription drug coverage under a medicaid plan under title XIX, including through the Program of All-inclusive Care for the Elderly (PACE) under section 1934, through a social health maintenance organization (referred to in section 4104(c) of the Balanced Budget Act of 1997), or through a Medicare+Choice project that demonstrates the application of capitation payment rates for frail elderly medicare beneficiaries through the use of a interdisciplinary team and through the provision of primary care services to such beneficiaries by means of such a team at the nursing facility involved.

''(C) PRESCRIPTION DRUG COVERAGE UNDER GROUP HEALTH PLAN.—Any outpatient prescription drug coverage under a group health plan, including a health benefits plan under the Federal Employees Health Benefit Plan under chapter 89 of title 5, United States Code, and a qualified retiree prescription drug plan (as defined by the Secretary), but only if (subject to subparagraph (E)(ii)) the coverage provides benefits at least equivalent to the benefits under a prescription drug card plan under this part.

''(D) PRESCRIPTION DRUG COVERAGE UNDER CERTAIN MEDIGAP POLICIES.—Coverage under a medicare supplemental policy under section 1882 that provides benefits for prescription drugs (whether or not such coverage conforms to the standards for packages of benefits under section 1882(p)(1)) and if (subject to subparagraph (E)(ii)) the coverage provides benefits at least equivalent to the benefits under a prescription drug card plan under this part.

''(E) STATE PHARMACEUTICAL ASSISTANCE PROGRAM.—Coverage of prescription drugs under a State pharmaceutical assistance program, but only if (subject to subparagraph (E)(ii)) the coverage provides benefits at least equivalent to the benefits under a prescription drug card plan under this part.

''(F) VETERANS' COVERAGE OF PRESCRIPTION DRUGS.—Coverage of prescription drugs for veterans under chapter 17 of title 38, United States Code, but only if (subject to subparagraph (E)(ii)) the coverage provides benefits at least equivalent to the benefits under a prescription drug card plan under this part.

For purposes of carrying out this paragraph, the certifications of the type described in sections 2701(e) of the Public Health Service Act and in section 9801(e) of the Internal Revenue Code of 1986 shall also include a statement for the period of coverage of whether the individual involved had prescription drug coverage described in this paragraph.

''(5) COMPETITION.—Each eligible entity with a contract under this part shall compete for the enrollment of beneficiaries in a prescription drug card plan offered by the entity on the basis of discounts, formularies, pharmacy networks, and other services provided for under the contract.

''PROVIDING ENROLLMENT AND COVERAGE INFORMATION TO BENEFICIARIES

''SEC. 1860C. (a) ACTIVITIES.—The Secretary shall provide for activities under this part in the manner described in (and in coordination with) section 1851(d) to broadly disseminate information to eligible beneficiaries (and prospective eligible beneficiaries) regarding enrollment under this part and the prescription drug card plans offered by eligible entities with a contract under this part.

''(b) SPECIAL RULE FOR FIRST ENROLLMENT UNDER THE PROGRAM.—To the extent practicable, the activities described in subsection (a) shall ensure that eligible beneficiaries are provided with such information at least 60 days prior to the first enrollment period described in section 1860B(c).

''ENROLLEE PROTECTIONS

''SEC. 1860D. (a) REQUIREMENTS FOR ALL ELIGIBLE ENTITIES.—Each eligible entity shall meet the following requirements:

''(1) GUARANTEED ISSUANCE AND NONDISCRIMINATION.—

''(A) GUARANTEED ISSUANCE.—

''(i) IN GENERAL.—An eligible beneficiary who is eligible to enroll in a prescription drug card plan offered by an eligible entity under section 1860B(b) for prescription drug coverage under this part at a time during which elections are accepted under this part with respect to the coverage shall not be denied enrollment based on any health status-

related factor (described in section 2702(a)(1) of the Public Health Service Act) or any other factor.

''(ii) MEDICARE+CHOICE LIMITATIONS PERMITTED.—The provisions of paragraphs (2) and (3) (other than subparagraph (C)(i), relating to default enrollment) of section 1851(g) (relating to priority and limitation on termination of election) shall apply to eligible entities under this subsection.

''(B) NONDISCRIMINATION.—An eligible entity offering prescription drug coverage under this part shall not establish a service area in a manner that would discriminate based on health or economic status of potential enrollees.

''(2) GRIEVANCE MECHANISM, COVERAGE DETERMINATIONS, AND RECONSIDERATIONS.—

''(A) IN GENERAL.—With respect to the benefit under this part, each eligible entity offering a prescription drug card plan shall provide meaningful procedures for hearing and resolving grievances between the organization (including any entity or individual through which the eligible entity provides covered benefits) and enrollees with prescription drug card plans of the eligible entity under this part in accordance with section 1852(f).

''(B) APPLICATION OF COVERAGE DETERMINATION AND RECONSIDERATION PROVISIONS.—Each eligible entity shall meet the requirements of paragraphs (1) through (3) of section 1852(g) with respect to covered benefits under the prescription drug card plan it offers under this part in the same manner as such requirements apply to a Medicare+Choice organization with respect to benefits it offers under a Medicare+Choice plan under part C.

''(C) REQUEST FOR REVIEW OF TIERED FORMULARY DETERMINATIONS.—In the case of a prescription drug card plan offered by an eligible entity that provides for tiered cost-sharing for drugs included within a formulary and provides lower cost-sharing for preferred drugs included within the formulary, an individual who is enrolled in the plan may request coverage of a nonpreferred drug under the terms applicable for preferred drugs if the prescribing physician determines that the preferred drug for treatment of the same condition is not as effective for the individual or has adverse effects for the individual.

''(3) APPEALS.—

''(A) IN GENERAL.—Subject to subparagraph (B), each eligible entity offering a prescription drug card plan shall meet the requirements of paragraphs (4) and (5) of section 1852(g) with respect to drugs not included on any formulary in the same manner as such requirements apply to a Medicare+Choice organization with respect to benefits it offers under a Medicare+Choice plan under part C.

''(B) FORMULARY DETERMINATIONS.—An individual who is enrolled in a prescription drug card plan offered by an eligible entity may appeal to obtain coverage under this part for a covered outpatient drug that is not on a formulary of the eligible entity if the prescribing physician determines that the formulary drug for treatment of the same condition is not as effective for the individual or has adverse effects for the individual.

''(4) CONFIDENTIALITY AND ACCURACY OF ENROLLEE RECORDS.—Each eligible entity offering a prescription drug discount card plan shall meet the requirements of the Health Insurance Portability and Accountability Act of 1996.

''(b) DISCLOSURE OF INFORMATION.—

''(1) INFORMATION.—

''(A) GENERAL INFORMATION.—Each eligible entity with a contract under this part to provide a prescription drug discount card plan shall disclose, in a clear, accurate, and standardized form to each eligible beneficiary enrolled in a prescription drug discount card program offered by such entity under this part at the time of enrollment and at least annually thereafter, the information described in section 1852(c)(1) relating to such prescription drug coverage.

''(B) SPECIFIC INFORMATION.—In addition to the information described in subparagraph (A), each eligible entity with a contract under this part shall disclose the following:

''(i) How enrollees will have access to covered outpatient drugs, including access to such drugs through pharmacy networks.

''(ii) How any formulary used by the eligible entity functions.

''(iii) Information on grievance and appeals procedures.

''(iv) Information on enrollment fees and prices charged to the enrollee for covered outpatient drugs.

''(v) Any other information that the Secretary determines is necessary to promote informed choices by eligible beneficiaries among eligible entities.

''(2) DISCLOSURE UPON REQUEST OF GENERAL COVERAGE, UTILIZATION, AND GRIEVANCE INFORMATION.—Upon request of an eligible beneficiary, the eligible entity shall provide the information described in paragraph (3) to such beneficiary.

''(3) RESPONSE TO BENEFICIARY QUESTIONS.—Each eligible entity offering a prescription drug discount card plan under this part shall have a mechanism for providing specific information to enrollees upon request. The entity shall make available, through an Internet website and, upon request, in writing, information on specific changes in its formulary.

''(c) ELIGIBLE ENTITIES OFFERING A DISCOUNT CARD PROGRAM.—If an eligible entity offers a discount card program under this part, in addition to the requirements under subsection (a), the entity shall meet the following requirements:

''(1) ACCESS TO COVERED BENEFITS.—

''(A) ASSURING PHARMACY ACCESS.—

''(i) IN GENERAL.—The eligible entity offering the prescription drug discount card plan shall secure the participation in its network of a sufficient number of pharmacies that dispense (other than by mail order) drugs directly to patients to ensure convenient access (as determined by the Secretary and including adequate emergency access) for enrolled beneficiaries, in accordance with standards established under section 1860D(a)(2) that ensure such convenient access.

''(ii) USE OF POINT-OF-SERVICE SYSTEM.—Each eligible entity offering a prescription drug discount card plan shall establish an optional point-of-service method of operation under which—

''(I) the plan provides access to any or all pharmacies that are not participating pharmacies in its network; and

''(II) discounts under the plan may not be available.

The additional costs resulting from the inapplicability of discounts under subclause (II) shall not be counted as out-of-pocket expenses for purposes of section 1860F(b).

''(B) USE OF STANDARDIZED TECHNOLOGY.—

''(i) IN GENERAL.—Each eligible entity offering a prescription drug discount card plan shall issue (and reissue, as appropriate) such a card (or other technology) that may be used by an enrolled beneficiary to assure access to negotiated prices under section 1860F(a) for the purchase of prescription drugs for which coverage is not otherwise provided under the prescription drug discount card plan.

''(ii) STANDARDS.—The Secretary shall provide for the development of national standards relating to a standardized format for the card or other technology referred to in clause (i). Such standards shall be compatible with standards established under part C of title XI.

''(C) REQUIREMENTS ON DEVELOPMENT AND APPLICATION OF FORMULARIES.—If an eligible entity that offers a prescription drug discount card plan uses a formulary, the following requirements must be met:

''(i) PHARMACY AND THERAPEUTIC (P&T) COMMITTEE.—The eligible entity must establish a pharmacy and therapeutic committee that develops and reviews the formulary. Such committee shall include at least 1 physician and at least 1 pharmacist both with expertise in the care of elderly or disabled persons and a majority of its members shall consist of individuals who are a physician or a practicing pharmacist (or both).

''(ii) FORMULARY DEVELOPMENT.—In developing and reviewing the formulary, the committee shall base clinical decisions on the strength of scientific evidence and standards of practice, including assessing peer-reviewed medical literature, such as randomized clinical trials, pharmacoeconomic studies, outcomes research data, and such other information as the committee determines to be appropriate.

''(iii) INCLUSION OF DRUGS IN ALL THERAPEUTIC CATEGORIES.—The formulary must include drugs within each therapeutic category and class of covered outpatient drugs (although not necessarily for all drugs within such categories and classes).

''(iv) PROVIDER EDUCATION.—The committee shall establish policies and procedures to educate and inform health care providers concerning the formulary.

''(v) NOTICE BEFORE REMOVING DRUGS FROM FORMULARY.—Any removal of a drug from a formulary shall take effect only after appropriate notice is made available to beneficiaries and physicians.

''(vi) GRIEVANCES AND APPEALS RELATING TO APPLICATION OF FORMULARIES.—For provisions relating to grievances and appeals of coverage, see paragraphs (2) and (3) of section 1860D(a).

''(D) FRAUD, ABUSE, AND WASTE CONTROL.—The committee shall establish a program to control fraud, abuse, and waste.

''(2) COST AND UTILIZATION MANAGEMENT; QUALITY ASSURANCE; MEDICATION THERAPY MANAGEMENT PROGRAM.—

''(A) IN GENERAL.—Each eligible entity offering a prescription drug discount card plan may have in place with respect to covered outpatient drugs—

''(i) an effective cost and drug utilization management program, including medically appropriate incentives to use generic drugs and therapeutic interchange, when appropriate; and

''(ii) quality assurance measures and systems to reduce medical errors and adverse drug interactions, including a medication therapy management program described in subparagraph (B).

Nothing in this section shall be construed as impairing an eligible entity from applying cost management tools (including differential payments) under all methods of operation.

''(B) MEDICATION THERAPY MANAGEMENT PROGRAM.—

''(i) IN GENERAL.—A medication therapy management program described in this paragraph is a program of drug therapy management and medication administration that is designed to ensure, with respect to beneficiaries with chronic diseases (such as diabetes, asthma, hypertension, and congestive heart failure) or multiple prescriptions, that covered outpatient drugs under the prescription drug discount card plan are appropriately used to achieve therapeutic goals

and reduce the risk of adverse events, including adverse drug interactions.

''(ii) ELEMENTS.—Such program may include—

''(I) enhanced beneficiary understanding of such appropriate use through beneficiary education, counseling, and other appropriate means;

''(II) increased beneficiary adherence with prescription medication regimens through medication refill reminders, special packaging, and other appropriate means; and

''(III) detection of patterns of overuse and underuse of prescription drugs.

''(iii) DEVELOPMENT OF PROGRAM IN COOPERATION WITH LICENSED PHARMACISTS.—The program shall be developed in cooperation with licensed pharmacists and physicians.

''(iv) CONSIDERATIONS IN PHARMACY FEES.—Each eligible entity offering a prescription drug discount card plan that includes a medication therapy management program shall take into account, in establishing fees for pharmacists and others providing services under the medication therapy management program, the resources and time used in implementing the program.

''(C) TREATMENT OF ACCREDITATION.—Section 1852(e)(4) (relating to treatment of accreditation) shall apply to prescription drug discount card plans under this part with respect to the following requirements, in the same manner as they apply to Medicare+Choice plans under part C with respect to the requirements described in a clause of section 1852(e)(4)(B):

''(i) Paragraph (1) (including quality assurance), including any medication therapy management program under paragraph (2).

''(ii) Subsection (c)(1) (relating to access to covered benefits).

''(iii) Subsection (g) (relating to confidentiality and accuracy of enrollee records).

''(D) PUBLIC DISCLOSURE OF PHARMACEUTICAL PRICES FOR EQUIVALENT DRUGS.—Each eligible entity offering a prescription drug discount card plan shall provide that each pharmacy or other dispenser that arranges for the dispensing of a covered outpatient drug shall inform the beneficiary at the time of purchase of the drug of any differential between the price of the prescribed drug to the enrollee and the price of the lowest cost generic drug covered under the plan that is therapeutically equivalent and bioequivalent.

''ANNUAL ENROLLMENT FEE

''SEC. 1860E. (a) AMOUNT.—

''(1) IN GENERAL.—Except as provided in subsection (c), enrollment under the program under this part is conditioned upon payment of an annual enrollment fee of $25.

''(2) ANNUAL PERCENTAGE INCREASE.—

''(A) IN GENERAL.—In the case of any calendar year beginning after 2004, the dollar amount in paragraph (1) shall be increased by an amount equal to—

''(i) such dollar amount; multiplied by

''(ii) the inflation adjustment.

''(B) INFLATION ADJUSTMENT.—For purposes of subparagraph (A)(ii), the inflation adjustment for any calendar year is the percentage (if any) by which—

''(i) the average per capita aggregate expenditures for covered outpatient drugs in the United States for medicare beneficiaries, as determined by the Secretary for the 12-month period ending in July of the previous year; exceeds

''(ii) such aggregate expenditures for the 12-month period ending with July 2003.

''(C) ROUNDING.—If any increase determined under clause (ii) is not a multiple of $1, such increase shall be rounded to the nearest multiple of $1.

''(b) COLLECTION OF ANNUAL ENROLLMENT FEE.—

''(1) IN GENERAL.—Unless the eligible beneficiary makes an election under paragraph (2), the annual enrollment fee described in subsection (a) shall be collected and credited to the Federal Supplementary Medical Insurance Trust Fund in the same manner as the monthly premium determined under section 1839 is collected and credited to such Trust Fund under section 1840.

''(2) DIRECT PAYMENT.—An eligible beneficiary may elect to pay the annual enrollment fee directly or in any other manner approved by the Secretary. The Secretary shall establish procedures for making such an election.

''(c) WAIVER.—The Secretary shall waive the enrollment fee described in subsection (a) in the case of an eligible beneficiary whose income is below 200 percent of the poverty line.

''BENEFITS UNDER THE PROGRAM

''SEC. 1860F. (a) ACCESS TO NEGOTIATED PRICES.—

''(1) NEGOTIATED PRICES.—

''(A) IN GENERAL.—Subject to subparagraph (B), each prescription drug card plan offering a discount card program by an eligible entity with a contract under this part shall provide each eligible beneficiary enrolled in such plan with access to negotiated prices (including applicable discounts) for such prescription drugs as the eligible entity determines appropriate. Such discounts may include discounts for nonformulary drugs. If such a beneficiary becomes eligible for the catastrophic benefit under subsection (b), the negotiated prices (including applicable discounts) shall continue to be available to the beneficiary for those prescription drugs for which payment may not be made under section 1860H(b). For purposes of this subparagraph, the term 'prescription drugs' is not limited to covered outpatient drugs, but does not include any over-the-counter drug that is not a covered outpatient drug.

''(B) LIMITATIONS.—

''(i) FORMULARY RESTRICTIONS.—Insofar as an eligible entity with a contract under this part uses a formulary, the negotiated prices (including applicable discounts) for nonformulary drugs may differ.

''(ii) AVOIDANCE OF DUPLICATE COVERAGE.—The negotiated prices (including applicable discounts) for prescription drugs shall not be available for any drug prescribed for an eligible beneficiary if payment for the drug is available under part A or B (but such negotiated prices shall be available if payment under part A or B is not available because the beneficiary has not met the deductible or has exhausted benefits under part A or B).

''(2) DISCOUNT CARD.—The Secretary shall develop a uniform standard card format to be issued by each eligible entity offering a prescription drug discount card plan that shall be used by an enrolled beneficiary to ensure the access of such beneficiary to negotiated prices under paragraph (1).

''(3) ENSURING DISCOUNTS IN ALL AREAS.—The Secretary shall develop procedures that ensure that each eligible beneficiary that resides in an area where no prescription drug discount card plans are available is provided with access to negotiated prices for prescription drugs (including applicable discounts).

''(b) CATASTROPHIC BENEFIT.—

''(1) IN GENERAL.—Subject to paragraph (4) (relating to eligibility for the catastrophic benefit) and any formulary used by the prescription drug card program in which the eligible beneficiary is enrolled, the catastrophic benefit shall be administered as follows:

''(A) BENEFICIARIES WITH ANNUAL INCOMES BELOW 200 PERCENT OF THE POVERTY LINE.—In the case of an eligible beneficiary whose modified adjusted gross income (as defined in paragraph (4)(E)) is below 200 percent of the poverty line, the beneficiary shall not be responsible for making a payment for a covered outpatient drug provided under this part to the beneficiary in a year to the extent that the out-of-pocket expenses of the beneficiary for such drug exceed $1,500, unless the Secretary implements cost-sharing (as authorized under this part).

''(B) BENEFICIARIES WITH ANNUAL INCOMES BETWEEN 200 AND 400 PERCENT OF THE POVERTY LINE.—In the case of an eligible beneficiary whose modified adjusted gross income (as so defined) equals or exceeds 200 percent, but does not exceed 400 percent, of the poverty line, the beneficiary shall not be responsible for making a payment for a covered outpatient drug provided under this part to the beneficiary in a year to the extent that the out-of-pocket expenses of the beneficiary for such drug exceed $3,500, unless the Secretary implements cost-sharing (as authorized under this part).

''(C) BENEFICIARIES WITH ANNUAL INCOMES BETWEEN 400 AND 600 PERCENT OF THE POVERTY LINE.—In the case of an eligible beneficiary whose modified adjusted gross income (as so defined) equals or exceeds 400 percent, but does not exceed 600 percent, of the poverty line, the beneficiary shall not be responsible for making a payment for a covered outpatient drug provided under this part to the beneficiary in a year to the extent that the out-of-pocket expenses of the beneficiary for such drug exceed $5,500, unless the Secretary implements cost-sharing (as authorized under this part).

''(D) BENEFICIARIES WITH ANNUAL INCOMES THAT EXCEED 600 PERCENT OF THE POVERTY LINE.—In the case of an eligible beneficiary whose modified adjusted gross income (as so defined) equals or exceeds 600 percent of the poverty line, the beneficiary shall not be responsible for making a payment for a covered outpatient drug provided under this part to the beneficiary in a year to the extent that the out-of-pocket expenses of the beneficiary for such drug exceeds 20 percent of that beneficiary's income, unless the Secretary implements cost-sharing (as authorized under this part).

''(2) ANNUAL PERCENTAGE INCREASE.—

''(A) IN GENERAL.—In the case of any calendar year after 2004, the dollar amounts in paragraph (1) shall be increased by an amount equal to—

''(i) such dollar amount; multiplied by

''(ii) the inflation adjustment determined under section 1860E(a)(2)(B) for such calendar year.

''(B) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $1, such increase shall be rounded to the nearest multiple of $1.

''(3) ELIGIBLE ENTITY NOT AT RISK FOR CATASTROPHIC BENEFIT.—

''(A) IN GENERAL.—The Secretary, and not the eligible entity, shall be at risk for the provision of the catastrophic benefit under this subsection.

''(B) PROVISIONS RELATING TO PAYMENTS TO ELIGIBLE ENTITIES.—For provisions relating to payments to eligible entities for administering the catastrophic benefit under this subsection, see section 1860H.

''(C) PROCEDURES FOR DETERMINING MODIFIED ADJUSTED GROSS INCOME.—

''(i) IN GENERAL.—The Secretary shall establish procedures for determining the modified adjusted gross income of eligible beneficiaries enrolled under this part.

''(ii) CONSULTATION.—The Secretary shall consult with the Secretary of the Treasury in making the determinations described in clause (i).

''(iii) DISCLOSURE OF INFORMATION.—Notwithstanding section 6103(a) of the Internal Revenue Code of 1986, the Secretary of the

Treasury may, upon written request from the Secretary, disclose to officers and employees of the Centers for Medicare & Medicaid Services such return information as is necessary to make the determinations described in clause (i). Return information disclosed under the preceding sentence may be used by officers and employees of the Centers for Medicare & Medicaid Services only for the purposes of, and to the extent necessary, in making such determinations.

''(D) DEFINITION OF MODIFIED ADJUSTED GROSS INCOME.—In this paragraph, the term 'modified adjusted gross income' means adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986)—

''(i) determined without regard to sections 135, 911, 931, and 933 of such Code;

''(ii) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax under such Code; and

''(iii) increased by any amount received under title II or XVI.

''(4) ENSURING CATASTROPHIC BENEFIT IN ALL AREAS.—The Secretary shall develop procedures for the provision of the catastrophic benefit under this subsection to each eligible beneficiary that resides in an area where there are no prescription drug discount card plans offered that have been awarded a contract under this part.

''REQUIREMENTS FOR ENTITIES TO PROVIDE PRESCRIPTION DRUG COVERAGE

''SEC. 1860G. (a) ESTABLISHMENT OF BIDDING PROCESS.—The Secretary shall establish a process under which the Secretary accepts bids from eligible entities and awards contracts to the entities to provide the benefits under this part to eligible beneficiaries in an area.

''(b) SUBMISSION OF BIDS.—Each eligible entity desiring to enter into a contract under this part shall submit a bid to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

''(c) ADMINISTRATIVE FEE BID.—

''(1) SUBMISSION.—For the bid described in subsection (b), each entity shall submit to the Secretary information regarding administration of the discount card and catastrophic benefit under this part.

''(2) BID SUBMISSION REQUIREMENTS.—

''(A) ADMINISTRATIVE FEE BID SUBMISSION.—In submitting bids, the entities shall include separate costs for administering the discount card component, if applicable, and the catastrophic benefit. The entity shall submit the administrative fee bid in a form and manner specified by the Secretary, and shall include a statement of projected enrollment and a separate statement of the projected administrative costs for at least the following functions:

''(i) Enrollment, including income eligibility determination.

''(ii) Claims processing.

''(iii) Quality assurance, including drug utilization review.

''(iv) Beneficiary and pharmacy customer service.

''(v) Coordination of benefits.

''(vi) Fraud and abuse prevention.

''(B) NEGOTIATED ADMINISTRATIVE FEE BID AMOUNTS.—The Secretary has the authority to negotiate regarding the bid amounts submitted. The Secretary may reject a bid if the Secretary determines it is not supported by the administrative cost information provided in the bid as specified in subparagraph (A).

''(C) PAYMENT TO PLANS BASED ON ADMINISTRATIVE FEE BID AMOUNTS.—The Secretary shall use the bid amounts to calculate a benchmark amount consisting of the enrollment-weighted average of all bids for each function and each class of entity. The class of entity is either a regional or national entity, or such other classes as the Secretary may determine to be appropriate. The functions are the discount card and catastrophic components. If an eligible entity's combined bid for both functions is above the combined benchmark within the entity's class for the functions, the eligible entity shall collect additional necessary revenue through one or both of the following:

''(i) Additional fees charged to the beneficiary, not to exceed $25 annually.

''(ii) Use of rebate amounts from drug manufacturers to defray administrative costs.

''(d) CONTRACTS WITH THE SECRETARY.—

''(1) IN GENERAL.—The Secretary shall, consistent with the requirements of this part and the goal of containing medicare program costs, enter into at least 2 contracts in each area, unless only 1 bidding entity meets the terms and conditions specified by the Secretary under paragraph (2).

''(2) TERMS AND CONDITIONS.—The Secretary shall not enter into a contract with an eligible entity under this section unless the Secretary finds that the eligible entity is in compliance with such terms and conditions as the Secretary shall specify.

''(3) REQUIREMENTS FOR ELIGIBLE ENTITIES PROVIDING DISCOUNT CARD PROGRAM.—Except as provided in paragraph (4), in determining which of the eligible entities that submitted bids that meet the terms and conditions specified by the Secretary under paragraph (2) to enter into a contract, the Secretary shall consider whether the bid submitted by the entity meets at least the following requirements:

''(A) SAVINGS TO MEDICARE BENEFICIARIES.—The program passes on to medicare beneficiaries who enroll in the program discounts on prescription drugs, including discounts negotiated with manufacturers.

''(B) PROHIBITION ON APPLICATION ONLY TO MAIL ORDER.—The program applies to drugs that are available other than solely through mail order and provides convenient access to retail pharmacies.

''(C) LEVEL OF BENEFICIARY SERVICES.—The program provides pharmaceutical support services, such as education and services to prevent adverse drug interactions.

''(D) ADEQUACY OF INFORMATION.—The program makes available to medicare beneficiaries through the Internet and otherwise information, including information on enrollment fees, prices charged to beneficiaries, and services offered under the program, that the Secretary identifies as being necessary to provide for informed choice by beneficiaries among endorsed programs.

''(E) EXTENT OF DEMONSTRATED EXPERIENCE.—The entity operating the program has demonstrated experience and expertise in operating such a program or a similar program.

''(F) EXTENT OF QUALITY ASSURANCE.—The entity has in place adequate procedures for assuring quality service under the program.

''(G) OPERATION OF ASSISTANCE PROGRAM.—The entity meets such requirements relating to solvency, compliance with financial reporting requirements, audit compliance, and contractual guarantees as specified by the Secretary.

''(H) PRIVACY COMPLIANCE.—The entity implements policies and procedures to safeguard the use and disclosure of program beneficiaries' individually identifiable health information in a manner consistent with the Federal regulations (concerning the privacy of individually identifiable health information) promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996.

''(I) ADDITIONAL BENEFICIARY PROTECTIONS.—The program meets such additional requirements as the Secretary identifies to protect and promote the interest of medicare beneficiaries, including requirements that ensure that beneficiaries are not charged more than the lower of the negotiated retail price or the usual and customary price.

The prices negotiated by a prescription drug discount card program endorsed under this section shall (notwithstanding any other provision of law) not be taken into account for the purposes of establishing the best price under section 1927(c)(1)(C).

''(4) REQUIREMENTS FOR OTHER ELIGIBLE ENTITIES.—If an eligible entity is not offering the discount card plan then the entity must be licensed under State law to provide insurance benefits or shall meet the requirements of the Employee Retirement Income Security Act of 1974 that apply with respect to such plan. Such an entity shall not be required to meet the requirements of subsection (d)(3).

''(5) BENEFICIARY ACCESS TO SAVINGS AND REBATES.—The Secretary shall require eligible entities offering a discount card program to pass on savings and rebates negotiated with manufacturers to eligible beneficiaries enrolled with the entity.

''(6) NEGOTIATED AGREEMENTS WITH EMPLOYER-SPONSORED PLANS.—Notwithstanding any other provision of this part, the Secretary may negotiate agreements with employer-sponsored plans under which eligible beneficiaries are provided with a benefit for prescription drug coverage that is more generous than the benefit that would otherwise have been available under this part if such an agreement results in cost savings to the Federal Government.

''PAYMENTS TO ELIGIBLE ENTITIES FOR ADMINISTERING THE CATASTROPHIC BENEFIT

''SEC. 1860H. (a) IN GENERAL.—The Secretary may establish procedures for making payments to an eligible entity under a contract entered into under this part for—

''(1) no less than 90 percent of the costs of providing covered outpatient prescription drugs to beneficiaries eligible for the benefit under this part in accordance with subsection (b); and

''(2) costs incurred by the entity in administering the catastrophic benefit in accordance with section 1860G.

''(b) PAYMENT FOR COVERED OUTPATIENT PRESCRIPTION DRUGS.—

''(1) IN GENERAL.—Except as provided in subsection (c) and subject to paragraph (2), the Secretary may only pay an eligible entity for covered outpatient drugs furnished by the eligible entity to an eligible beneficiary enrolled with such entity under this part that is eligible for the catastrophic benefit under section 1860F(b).

''(2) LIMITATIONS.—

''(A) FORMULARY RESTRICTIONS.—Insofar as an eligible entity with a contract under this part uses a formulary, the Secretary may not make any payment for a covered outpatient drug that is not included in such formulary, except to the extent provided under section 1860D(a)(4)(B).

''(B) NEGOTIATED PRICES.—The Secretary may not pay an amount for a covered outpatient drug furnished to an eligible beneficiary that exceeds the negotiated price (including applicable discounts) that the beneficiary would have been responsible for under section 1860F(a) or the price negotiated for insurance coverage under the Medicare+Choice program under part C, a medicare supplemental policy, employer-sponsored coverage, or a State plan.

''(C) COST-SHARING LIMITATIONS.—An eligible entity may not charge an individual enrolled with such entity who is eligible for the catastrophic benefit under this part any copayment, tiered copayment, coinsurance, or other cost-sharing that exceeds 10 percent of

the cost of the drug that is dispensed to the individual.

''(3) PAYMENT IN COMPETITIVE AREAS.—In a geographic area in which 2 or more eligible entities offer a plan under this part, the Secretary may negotiate an agreement with the entity to reimburse the entity for costs incurred in providing the benefit under this part on a capitated basis.

''(c) SECONDARY PAYER PROVISIONS.—The provisions of section 1862(b) shall apply to the benefits provided under this part.

''DETERMINATION OF INCOME LEVELS

''SEC. 1860I. (a) DETERMINATION OF INCOME LEVELS.—

''(1) IN GENERAL.—The Commissioner of Social Security shall determine income levels of eligible beneficiaries for purposes of this part.

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for the Commissioner of Social Security to make the determinations required by paragraph (1).

''(b) ENFORCEMENT OF INCOME DETERMINATIONS.—The Secretary, in consultation with the Secretary of the Treasury, shall—

''(1) establish procedures that ensure that eligible beneficiaries comply with sections 1860E(c) and 1860F(b); and

''(2) require, if the Secretary determines that payments were made under this part to which an eligible beneficiary was not entitled, the repayment of any excess payments with interest and a penalty.

''(c) QUALITY CONTROL SYSTEM.—

''(1) ESTABLISHMENT.—The Secretary shall establish a quality control system to monitor income determinations made by eligible entities under this section and to produce appropriate and comprehensive measures of error rates.

''(2) PERIODIC AUDITS.—The Inspector General of the Department of Health and Human Services shall conduct periodic audits to ensure that the system established under paragraph (1) is functioning appropriately.

''APPROPRIATIONS

''SEC. 1860J. There are authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, to the Federal Supplementary Medical Insurance Trust Fund established under section 1841, an amount equal to the amount by which the benefits and administrative costs of providing the benefits under this part exceed the enrollment fees collected under section 1860E.

''MEDICARE COMPETITION AND PRESCRIPTION DRUG ADVISORY BOARD

''SEC. 1860K. (a) ESTABLISHMENT OF BOARD.—There is established a Medicare Prescription Drug Advisory Board (in this section referred to as the 'Board').

''(b) ADVICE ON POLICIES; REPORTS.—

''(1) ADVICE ON POLICIES.—The Board shall advise the Secretary on policies relating to the Medicare Outpatient Prescription Drug Discount and Security Program under this part.

''(2) REPORTS.—

''(A) IN GENERAL.—With respect to matters of the administration of the program under this part, the Board shall submit to Congress and to the Secretary such reports as the Board determines appropriate. Each such report may contain such recommendations as the Board determines appropriate for legislative or administrative changes to improve the administration of the program under this part. Each such report shall be published in the Federal Register.

''(B) MAINTAINING INDEPENDENCE OF BOARD.—The Board shall directly submit to Congress reports required under subparagraph (A). No officer or agency of the United States may require the Board to submit to any officer or agency of the United States for approval, comments, or review, prior to the submission to Congress of such reports.

''(c) STRUCTURE AND MEMBERSHIP OF THE BOARD.—

''(1) MEMBERSHIP.—The Board shall be composed of 7 members who shall be appointed as follows:

''(A) PRESIDENTIAL APPOINTMENTS.—

''(i) IN GENERAL.—Three members shall be appointed by the President, by and with the advice and consent of the Senate.

''(ii) LIMITATION.—Not more than 2 such members may be from the same political party.

''(B) SENATORIAL APPOINTMENTS.—Two members (each member from a different political party) shall be appointed by the President pro tempore of the Senate with the advice of the Chairman and the Ranking Minority Member of the Committee on Finance of the Senate.

''(C) CONGRESSIONAL APPOINTMENTS.—Two members (each member from a different political party) shall be appointed by the Speaker of the House of Representatives, with the advice of the Chairman and the Ranking Minority Member of the Committee on Ways and Means of the House of Representatives.

''(2) QUALIFICATIONS.—The members shall be chosen on the basis of their integrity, impartiality, and good judgment, and shall be individuals who are, by reason of their education, experience, and attainments, exceptionally qualified to perform the duties of members of the Board.

''(3) COMPOSITION.—Of the members appointed under paragraph (1)—

''(A) at least one shall represent the pharmaceutical industry;

''(B) at least one shall represent physicians;

''(C) at least one shall represent medicare beneficiaries;

''(D) at least one shall represent practicing pharmacists; and

''(E) at least one shall represent eligible entities.

''(d) TERMS OF APPOINTMENT.—

''(1) IN GENERAL.—Subject to paragraph (2), each member of the Board shall serve for a term of 6 years.

''(2) CONTINUANCE IN OFFICE AND STAGGERED TERMS.—

''(A) CONTINUANCE IN OFFICE.—A member appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term.

''(B) STAGGERED TERMS.—The terms of service of the members initially appointed under this section shall begin on January 1, 2004, and expire as follows:

''(i) PRESIDENTIAL APPOINTMENTS.—The terms of service of the members initially appointed by the President shall expire as designated by the President at the time of nomination, 1 each at the end of—

''(I) 2 years;

''(II) 4 years; and

''(III) 6 years.

''(ii) SENATORIAL APPOINTMENTS.—The terms of service of members initially appointed by the President pro tempore of the Senate shall expire as designated by the President pro tempore of the Senate at the time of nomination, 1 each at the end of—

''(I) 3 years; and

''(II) 6 years.

''(iii) CONGRESSIONAL APPOINTMENTS.—The terms of service of members initially appointed by the Speaker of the House of Representatives shall expire as designated by the Speaker of the House of Representatives at the time of nomination, 1 each at the end of—

''(I) 4 years; and

''(II) 5 years.

''(C) REAPPOINTMENTS.—Any person appointed as a member of the Board may not serve for more than 8 years.

''(D) VACANCIES.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Board shall be filled in the manner in which the original appointment was made.

''(e) CHAIRPERSON.—A member of the Board shall be designated by the President to serve as Chairperson for a term of 4 years, coincident with the term of the President, or until the designation of a successor.

''(f) EXPENSES AND PER DIEM.—Members of the Board shall serve without compensation, except that, while serving on business of the Board away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.

''(g) MEETING.—

''(1) IN GENERAL.—The Board shall meet at the call of the Chairperson (in consultation with the other members of the Board) not less than 4 times each year to consider a specific agenda of issues, as determined by the Chairperson in consultation with the other members of the Board.

''(2) QUORUM.—Four members of the Board (not more than 3 of whom may be of the same political party) shall constitute a quorum for purposes of conducting business.

''(h) FEDERAL ADVISORY COMMITTEE ACT.—The Board shall be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

''(i) PERSONNEL.—

''(1) STAFF DIRECTOR.—The Board shall, without regard to the provisions of title 5, United States Code, relating to the competitive service, appoint a Staff Director who shall be paid at a rate equivalent to a rate established for the Senior Executive Service under section 5382 of title 5, United States Code.

''(2) STAFF.—

''(A) IN GENERAL.—The Board may employ, without regard to chapter 31 of title 5, United States Code, such officers and employees as are necessary to administer the activities to be carried out by the Board.

''(B) FLEXIBILITY WITH RESPECT TO CIVIL SERVICE LAWS.—

''(i) IN GENERAL.—The staff of the Board shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and, subject to clause (ii), shall be paid without regard to the provisions of chapters 51 and 53 of such title (relating to classification and schedule pay rates).

''(ii) MAXIMUM RATE.—In no case may the rate of compensation determined under clause (i) exceed the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, out of the Federal Supplemental Medical Insurance Trust Fund established under section 1841, and the general fund of the Treasury, such sums as are necessary to carry out the purposes of this section.''.

(b) CONFORMING REFERENCES TO PREVIOUS PART D.—

(1) IN GENERAL.—Any reference in law (in effect before the date of enactment of this

Act) to part D of title XVIII of the Social Security Act is deemed a reference to part E of such title (as in effect after such date).

(2) SECRETARIAL SUBMISSION OF LEGISLATIVE PROPOSAL.—Not later than 6 months after the date of enactment of this section, the Secretary of Health and Human Services shall submit to the appropriate committees of Congress a legislative proposal providing for such technical and conforming amendments in the law as are required by the provisions of this section.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

(2) IMPLEMENTATION.—Notwithstanding any provision of part D of title XVIII of the Social Security Act (as added by subsection (a)), the Secretary of Health and Human Services shall implement the Voluntary Medicare Outpatient Prescription Drug Discount and Security Program established under such part in a manner such that benefits under such part for eligible beneficiaries (as defined in section 1860 of such Act, as added by such subsection) are available to such beneficiaries not later than the date that is 1 year after the date of enactment of this Act.

SEC. ____02. ADMINISTRATION OF VOLUNTARY MEDICARE OUTPATIENT PRESCRIPTION DRUG DISCOUNT AND SECURITY PROGRAM.

(a) ESTABLISHMENT OF CENTER FOR MEDICARE PRESCRIPTION DRUGS.—There is established, within the Centers for Medicare & Medicaid Services of the Department of Health and Human Services, a Center for Medicare Prescription Drugs. Such Center shall be separate from the Center for Beneficiary Choices, the Center for Medicare Management, and the Center for Medicaid and State Operations.

(b) DUTIES.—It shall be the duty of the Center for Medicare Prescription Drugs to administer the Voluntary Medicare Outpatient Prescription Drug Discount and Security Program established under part D of title XVIII of the Social Security Act (as added by section ____01).

(c) DIRECTOR.—

(1) APPOINTMENT.—There shall be in the Center for Medicare Prescription Drugs a Director of Medicare Prescription Drugs, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) RESPONSIBILITIES.—The Director shall be responsible for the exercise of all powers and the discharge of all duties of the Center for Medicare Prescription Drugs and shall have authority and control over all personnel and activities thereof.

(d) PERSONNEL.—The Director of the Center for Medicare Prescription Drugs may appoint and terminate such personnel as may be necessary to enable the Center for Medicare Prescription Drugs to perform its duties.

SEC. ____03. EXCLUSION OF PART D COSTS FROM DETERMINATION OF PART B MONTHLY PREMIUM.

Section 1839(g) of the Social Security Act (42 U.S.C. 1395r(g)) is amended—

(1) by striking ''attributable to the application of section'' and inserting ''attributable to—

''(1) the application of section'';

(2) by striking the period and inserting ''; and''; and

(3) by adding at the end the following new paragraph:

''(2) the Voluntary Medicare Outpatient Prescription Drug Discount and Security Program under part D.''.

SEC. ____04. MEDIGAP REVISIONS.

Section 1882 of the Social Security Act (42 U.S.C. 1395ss) is amended by adding at the end the following new subsection:

''(v) MODERNIZATION OF MEDICARE SUPPLEMENTAL POLICIES.—

''(1) PROMULGATION OF MODEL REGULATION.—

''(A) NAIC MODEL REGULATION.—If, within 9 months after the date of enactment of the Medicare Rx Drug Discount and Security Act of 2002, the National Association of Insurance Commissioners (in this subsection referred to as the 'NAIC') changes the 1991 NAIC Model Regulation (described in subsection (p)) to revise the benefit package classified as 'J' under the standards established by subsection (p)(2) (including the benefit package classified as 'J' with a high deductible feature, as described in subsection (p)(11)) so that—

''(i) the coverage for outpatient prescription drugs available under such benefit package is replaced with coverage for outpatient prescription drugs that complements but does not duplicate the benefits for outpatient prescription drugs that beneficiaries are otherwise entitled to under this title;

''(ii) a uniform format is used in the policy with respect to such revised benefits; and

''(iii) such revised standards meet any additional requirements imposed by the Medicare Rx Drug Discount and Security Act of 2002;

subsection (g)(2)(A) shall be applied in each State, effective for policies issued to policy holders on and after January 1, 2004, as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the 1991 NAIC Model Regulation as changed under this subparagraph (such changed regulation referred to in this section as the '2004 NAIC Model Regulation').

''(B) REGULATION BY THE SECRETARY.—If the NAIC does not make the changes in the 1991 NAIC Model Regulation within the 9-month period specified in subparagraph (A), the Secretary shall promulgate, not later than 9 months after the end of such period, a regulation and subsection (g)(2)(A) shall be applied in each State, effective for policies issued to policy holders on and after January 1, 2004, as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the 1991 NAIC Model Regulation as changed by the Secretary under this subparagraph (such changed regulation referred to in this section as the '2004 Federal Regulation').

''(C) CONSULTATION WITH WORKING GROUP.—In promulgating standards under this paragraph, the NAIC or Secretary shall consult with a working group similar to the working group described in subsection (p)(1)(D).

''(D) MODIFICATION OF STANDARDS IF MEDICARE BENEFITS CHANGE.—If benefits under part D of this title are changed and the Secretary determines, in consultation with the NAIC, that changes in the 2004 NAIC Model Regulation or 2004 Federal Regulation are needed to reflect such changes, the preceding provisions of this paragraph shall apply to the modification of standards previously established in the same manner as they applied to the original establishment of such standards.

''(2) CONSTRUCTION OF BENEFITS IN OTHER MEDICARE SUPPLEMENTAL POLICIES.—Nothing in the benefit packages classified as 'A' through 'I' under the standards established by subsection (p)(2) (including the benefit package classified as 'F' with a high deductible feature, as described in subsection (p)(11)) shall be construed as providing coverage for benefits for which payment may be made under part D.

''(3) APPLICATION OF PROVISIONS AND CONFORMING REFERENCES.—

''(A) APPLICATION OF PROVISIONS.—The provisions of paragraphs (4) through (10) of subsection (p) shall apply under this section, except that—

''(i) any reference to the model regulation applicable under that subsection shall be deemed to be a reference to the applicable 2004 NAIC Model Regulation or 2004 Federal Regulation; and

''(ii) any reference to a date under such paragraphs of subsection (p) shall be deemed to be a reference to the appropriate date under this subsection.

''(B) OTHER REFERENCES.—Any reference to a provision of subsection (p) or a date applicable under such subsection shall also be considered to be a reference to the appropriate provision or date under this subsection.''.

NOTICES OF HEARINGS/MEETINGS

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that an additional bill has been added to the hearing agenda for the hearing that was previously scheduled before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources on Tuesday, July 30, 2002, beginning at 2:30 p.m. in room 366 of the Dirksen Senate Office Building in Washington, DC.

The additional measure to be considered is S. 2652, to authorize the Secretary of Agriculture to sell or exchange certain land in the State of Florida, and for other purposes.

For further information, please contact Kira Finkler of the Committee staff at (202–224–8164).

SUBCOMMITTEE ON WATER AND POWER

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that two additional bills have been added to the hearing agenda for the hearing that was previously scheduled before the Subcommittee on Water and Power of the Committee on Energy and Natural Resources on Wednesday, July 31, 2002, beginning at 2:30 p.m. in room 366 of the Dirksen Senate Office Building in Washington, DC.

The additional measures to be considered are S. 2773, to authorize the Secretary of the Interior to cooperate with the High Plains Aquifer States in conducting a hydrogeologic characterization, mapping modeling, and monitoring program for the High Plains Aquifer and for other purposes; and

H.R. 2990, to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize additional projects under that Act, and for other purposes.

For further information, please contact Patty Beneke at (202) 224–5451 or Mike Connor at (202) 224–5479, of the Committee staff.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. EDWARDS. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and

Urban Affairs be authorized to meet during the session of the Senate on Tuesday, July 23, 2002, at 10 a.m. to conduct a hearing on the nominations of Ms. Cynthia A. Glassman, of Virginia, to be a member of the Securities and Exchange Commission; and Mr. Roel C. Campos, of Texas, to be a member of the Securities and Exchange Commission.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. EDWARDS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the senate on Tuesday, July 23, 2002 at 10:30 a.m. to hold a hearing on the Moscow Treaty.

Agenda

Witnesses

Panel I: The Honorable Sam Numm, Co-Chair and Chief Executive Officer, Nuclear Threat Initiative, Washington, DC;

Gen. Eugene E. Habiger, USAF (Ret.), Former Commander, U.S. Strategic Command, United States Air Force, San Antonio, Texas;

The Honorable Ken Adelman, Former Director of the Arms Control and Disarmament Agency, Senior Counselor, Edelman Public Relations Worldwide, Washington, DC.

Panel II: Fr. Drew Christiansen, S.J., Counselor, International Affairs, U.S. Conference of Catholic Bishops, Washington, DC;

Mr. Christopher E. Paine, Co-Director, Nuclear Warhead Elimination and Nonproliferation Project, Natural Resources Defense Council, Charlottesville, Virginia;

Mr. Frank J. Gaffney, Jr., President and CEO, Center for Security Policy, Washington, DC;

Mr. Dimitri K. Simes, President, The Nixon Center, Washington, DC.

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

COMMITTEE ON THE JUDICIARY

Mr. EDWARDS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a Judicial nominations hearing on Tuesday, July 23, 2002 in Dirksen Room 226 at 10:00 a.m.

Tentative Witness List

Panel I: The Honorable Phil Gramm, U.S. Senator (R–TX);

The Honorable Kay Bailey Hutchison, U.S. Senator (R–TX);

The Honorable Bill Nelson, U.S. Senator (D–FL);

The Honorable Kay Granger, U.S. Representative (R–TX).

Panel II: Priscilla Owen to the U.S. Court of Appeals for the Fifth Circuit.

Panel III: Timothy J. Corrigan to be U.S. District Court Judge for the Middle District of Florida;

Jose E. Martinez to be U.S. District Court Judge for the Southern District of Florida.

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

COMMITTEE ON THE JUDICIARY

Mr. EDWARDS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on ''The Law Enforcement Officers Safety Act, S. 2480,'' on Tuesday, July 23, 2002 in Dirksen Room 226 at 2:00 p.m.

Tentative Witness List

Panel I: The Honorable Max Baucus, U.S. Senator [D–MT];

The Honorable Randy ''Duke'' Cunningham, U.S. Representative [R-CA-51st District].

Panel II: Lieutenant Steve Young, National President, Fraternal Order of Police, Marion, OH;

Mr. Arthur Gordon, National Executive Board Member, Federal Law Enforcement Officers Association, Woodbine, MD;

Deputy Chief of Police David Johnson, Cedar Rapids Police Department, Cedar Rapids, IA;

Colonel Lonnie J. Westphal, Chief, Colorado State Patrol, Denver, CO.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. EDWARDS. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Tuesday, July 23, 2002 at 10 a.m. to hold a closed hearing on the Joint Inquiry into the events of September 11, 2001.

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

SUBCOMMITTEE ON NATIONAL PARKS

Mr. EDWARDS. Mr. President, I ask unanimous consent that the Subcommittee on National Parks of the Committee on Energy and Natural Resources be authorized to hold a Hearing during the session of the Senate on Tuesday, July 23, at 2:30 p.m. in SD–366. The purpose of this hearing is to receive testimony on the following bills:

S. 2494, to revise the boundary of the Petrified Forest National Park in the State of Arizona;

S. 2598, to enhance the criminal penalties for illegal trafficking of archaeological resources;

S. 2727, to provide for the protection of paleontological resources on Federal lands; and

H.R. 3954, to designate certain waterways in the Caribbean National Forest in the Commonwealth of Puerto Rico as components of the National Wild and Scenic Rivers System, and for other purposes.

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

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. EDWARDS. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs be authorized to meet on Tuesday, July 23, 2002, at 9:30 a.m., for a hearing entitled ''The Role of the Financial Institutions In Enron's Collapse.''

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

PRIVILEGES OF THE FLOOR

Mr. REID. Mr. President, I ask unanimous consent that a fellow in the office of Senator JEFFORDS, Drew Kumperis, be granted floor privileges for the remainder of the consideration of the measure dealing with prescription drugs.

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

Mr. BROWNBACK. Mr. President, I ask unanimous consent that Malinda Baehr, an intern in my office, be granted floor privileges during the remainder of this debate.

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

NATIONAL VETERANS AWARENESS WEEK

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 502, S. Res. 293.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 293) designating the week of November 10 through November 16, 2002, as ''National Veterans Awareness Week'' to emphasize the need to develop educational programs regarding the contributions of veterans to the country.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid on the table, and that any statements relating thereto be printed in the RECORD at the appropriate place as if given, without intervening action or debate.

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

The resolution (S. Res. 293) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 293

Whereas tens of millions of Americans have served in the Armed Forces of the United States during the past century;

Whereas hundreds of thousands of Americans have given their lives while serving in the Armed Forces during the past century;

Whereas the contributions and sacrifices of the men and women who served in the Armed Forces have been vital in maintaining our freedoms and way of life;

Whereas the advent of the all-volunteer Armed Forces has resulted in a sharp decline in the number of individuals and families who have had any personal connection with the Armed Forces;

Whereas this reduction in familiarity with the Armed Forces has resulted in a marked decrease in the awareness by young people of the nature and importance of the accomplishments of those who have served in our Armed Forces, despite the current educational efforts of the Department of Veterans Affairs and the veterans service organizations;

Whereas our system of civilian control of the Armed Forces makes it essential that

the future leaders of the Nation understand the history of military action and the contributions and sacrifices of those who conduct such actions; and

Whereas on October 30, 2001, President George W. Bush issued a proclamation urging all Americans to observe November 11 through November 17, 2001, as National Veterans Awareness Week: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of November 10 through November 16, 2002, as ''National Veterans Awareness Week'' for the purpose of emphasizing educational efforts directed at elementary and secondary school students concerning the contributions and sacrifices of veterans; and

(2) requests that the President issue a proclamation calling on the people of the United States to observe National Veterans Awareness Week with appropriate educational activities.

NATIONAL AIRBORNE DAY

Mr. REID. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 242 and the Senate proceed to its immediate consideration.

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

The clerk will read the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 242) designating August 16, 2002, as ''National Airborne Day''.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Mr. President, I ask unanimous consent that the resolution and the preamble be agreed to, the motion to reconsider be laid on the table, and that statements regarding this matter be printed in the RECORD.

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

The resolution (S. Res. 242) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 242

Whereas the airborne forces of the United States Armed Forces have a long and honorable history as units of adventuresome, hardy, and fierce warriors who, for the national security of the United States and the defense of freedom and peace, project effective ground combat power of the United States by Air Force air transport to the far reaches of the battle area and, indeed, to the far corners of the world;

Whereas August 16, 2002, marks the anniversary of the first official validation of the innovative concept of inserting United States ground combat forces behind battle lines by means of parachute;

Whereas the United States experiment of airborne infantry attack was begun on June 25, 1940, when the Army Parachute Test Platoon was first authorized by the United States Department of War, and was launched when 48 volunteers began training in July 1940;

Whereas the Parachute Test Platoon performed the first official Army parachute jump on August 16, 1940;

Whereas the success of the Parachute Test Platoon in the days immediately preceding the entry of the United States into World War II led to the formation of a formidable force of airborne units that, since then, have served with distinction and repeated success in armed hostilities;

Whereas among those units are the former 11th, 13th, and 17th Airborne Divisions, the venerable 82nd Airborne Division, the versatile 101st Airborne Division (Air Assault), and the airborne regiments and battalions (some as components of those divisions, some as separate units) that achieved distinction as the elite 75th Infantry (Ranger) regiment, the 173rd, 187th, 503rd, 507th, 508th, 517th, 541st, and 542nd airborne infantry regiments, the 88th Glider Infantry Battalion, and the 509th, 550th, 551st, and 555th airborne infantry battalions;

Whereas the achievements of the airborne forces during World War II provided a basis for evolution into a diversified force of parachute and air assault units that, over the years, have fought in Korea, Vietnam, Grenada, Panama, the Persian Gulf region, and Somalia, and have engaged in peacekeeping operations in Lebanon, the Sinai Peninsula, the Dominican Republic, Haiti, Bosnia, and Kosovo;

Whereas the modern-day airborne force that has evolved from those World War II beginnings is an agile, powerful force that, in large part, is composed of the 82nd Airborne Division, the 101st Airborne Division (Air Assault), and the 75th Infantry (Ranger) regiment which, together with other units, comprise the quick reaction force of the Army's XVIIIth Airborne Corps when not operating separately under the command of a Commander in Chief of one of the regional unified combatant commands;

Whereas that modern-day airborne force also includes other elite forces composed entirely of airborne trained and qualified special operations warriors, including Army Special Forces, Marine Corps Reconnaissance, Navy SEALs, Air Force Combat Control Teams, Air Sea Rescue, and Airborne Engineer Aviation Battalions, all or most of which comprise the forces of the United States Special Operations Command;

Whereas, in the aftermath of the terrorist attacks on the United States on September 11, 2001, the 75th Infantry (Ranger) regiment, Special Forces units, and units of the 101st Airborne Division (Air Assault), together with other units of the Armed Forces, have been prosecuting the war against terrorism, carrying out combat operations in Afghanistan, training operations in the Philippines, and other operations elsewhere;

Whereas, of the members and former members of the Nation's combat airborne forces, all have achieved distinction by earning the right to wear the airborne's ''Silver Wings of Courage'', thousands have achieved the distinction of making combat jumps, 69 have earned the Medal of Honor, and hundreds have earned the Distinguished-Service Cross, Silver Star, or other decorations and awards for displays of such traits as heroism, gallantry, intrepidity, and valor;

Whereas, the members and former members of the Nation's combat airborne forces are members of a proud and honorable fraternity of the profession of arms that is made exclusive by those distinctions which, together with their special skills and achievements, distinguish them as intrepid combat parachutists, special operations forces, and (in former days) glider troops; and

Whereas the history and achievements of the members and former members of the airborne forces of the United States Armed Forces warrant special expressions of the gratitude of the American people as the airborne community celebrates August 16, 2002, as the 62nd anniversary of the first official jump by the Army Parachute Test Platoon: Now, therefore, be it

Resolved, That the Senate requests and urges the President to issue a proclamation—

(1) designating August 16, 2002, as ''National Airborne Day''; and

(2) calling on Federal, State, and local administrators and the people of the United States to observe ''National Airborne Day'' with appropriate programs, ceremonies, and activities.

HONORING THE BUFFALO SOLDIERS AND COLONEL CHARLES YOUNG

Mr. REID. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 97 and the Senate proceed to its immediate consideration.

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

The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 97) honoring the Buffalo Soldiers and Colonel Charles Young.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to, the motion to reconsider be laid upon the table, and any statements regarding this matter be printed in the RECORD at the appropriate place.

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

The resolution (S. Res. 97) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 97

Whereas the 9th and 10th Horse Cavalry Units, (in this resolution referred to as the 'Buffalo Soldiers') have made key contributions to the history of the United States by fighting to defend and protect our Nation;

Whereas the Buffalo Soldiers maintained the trails and protected the settler communities during the period of westward expansion;

Whereas the Buffalo Soldiers were among Theodore Roosevelt's Rough Riders in Cuba during the Spanish-American War, and crossed into Mexico in 1916 under General John J. Pershing;

Whereas African-American men were drafted into the Buffalo Soldiers to serve on harsh terrain and protect the Mexican Border;

Whereas the Buffalo Soldiers went to North Africa, Iran, and Italy during World War II and served in many positions, including as paratroopers and combat engineers;

Whereas in the face of fear of a Japanese invasion, the Buffalo Soldiers were placed along the rugged border terrain of the Baja Peninsula and protected dams, power stations, and rail lines that were crucial to San Diego's war industries;

Whereas among these American heroes, Colonel Charles Young, of Ripley, Ohio, stands out as a shining example of the dedication, service, and commitment of the Buffalo Soldiers;

Whereas Colonel Charles Young, the third African-American to graduate from the United States Military Academy at West Point, served his distinguished career as a

member of the Buffalo Soldiers throughout the world, traveling to the Philippines during the Spanish-American War, Haiti as the first African-American military attache for the United States, Liberia and Mexico as a military attache, Monrovia as advisor to the Liberian government, and several other stations within the borders of the United States, holding commands during most of these tours;

Whereas Colonel Charles Young took a vested interest in the development of African-American youth by serving as an educator, teaching in local high schools and at Wilberforce University in Ohio, and developing a military training ground for African-American enlisted men to help them achieve officer status for World War I at Fort Huachucha;

Whereas Colonel Charles Young achieved so much in the face of race-based adversity and while he fought a fatal disease, Bright's Disease, which eventually took his life; and

Whereas there are currently 21 existing chapters of the 9th and 10th Cavalry Association, with 20 domestic chapters and 1 in Germany: Now, therefore, be it

Resolved, That the Senate—

(1) honors the bravery and dedication of the Buffalo Soldiers throughout United States and world history;

(2) honors 1 of the Buffalo Soldiers' most distinguished heroes, Colonel Charles Young, for his lifetime achievements; and

(3) recognizes the continuing legacy of the Buffalo Soldiers throughout the world.

ORDERS FOR WEDNESDAY, JULY 24, 2002

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 a.m., Wednesday, July 24; that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate be in a period of morning business until 11 a.m., with Senators permitted to speak for up to 10 minutes each, with the first half under the control of the Democratic leader or his designee and the second half of the time under the control of the Republican leader or his designee; that at 11 a.m. the Senate resume consideration of S. 812 under the previous order; and, further, at 3:40 p.m. there will be a moment of silence in observance of the deaths of Officer Chestnut and Detective Gibson which occurred on July 24, 1998, 4 years ago.

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

PROGRAM

Mr. REID. Mr. President, the next rollcall vote will occur at approximately 1:30 p.m. tomorrow on adoption of the supplemental appropriations conference report and in relation to the Hagel second-degree amendment.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:10 p.m., adjourned until Wednesday, July 24, 2002, at 10 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate July 23, 2002:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

RICHARD H. CARMONA, OF ARIZONA, TO BE MEDICAL DIRECTOR IN THE REGULAR CORPS OF THE PUBLIC HEALTH SERVICE, SUBJECT TO QUALIFICATIONS THEREFOR AS PROVIDED BY LAW AND REGULATIONS, AND TO BE SURGEON GENERAL OF THE PUBLIC HEALTH SERVICE FOR A TERM OF FOUR YEARS.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

Daily Digest

HIGHLIGHTS

The House agreed to the conference report on H.R. 4775, Defense and Homeland Security Supplemental Appropriations.

The House failed to pass H.J. Res. 101, disapproving the extension of the waiver authority contained in section 402(c) of the Trade Act of 1974 with respect to Vietnam thereby maintaining normal trade relations with Vietnam.

Senate

Chamber Action

Routine Proceedings, pages S7179–S7242

Measures Introduced: Five bills and one resolution were introduced, as follows: S. 2772–2776, and S. Con. Res. 130. **Page S7226**

Measures Reported:

Special Report entitled ''Further Revised Allocation to Subcommittees of Budget Totals for Fiscal Year 2002''. (S. Rept. No. 107–217)

S. 2489, to amend the Public Health Service Act to establish a program to assist family caregivers in accessing affordable and high-quality respite care, with an amendment in the nature of a substitute. **Page S7226**

Measures Passed:

National Veterans Awareness Week: Senate agreed to S. Res. 293, designating the week of November 10 through November 16, 2002, as ''National Veterans Awareness Week'' to emphasize the need to develop educational programs regarding the contributions of veterans to the country. **Pages S7240–41**

National Airborne Day: Committee on the Judiciary was discharged from further consideration of S. Res. 242, designating August 16, 2002, as ''National Airborne Day'', and the resolution was then agreed to. **Page S7241**

Honoring Buffalo Soldiers: Committee on the Judiciary was discharged from further consideration of S. Res. 97, honoring the Buffalo Soldiers and Colonel Charles Young, and the resolution was then agreed to. **Pages S7241–42**

Greater Access to Affordable Pharmaceuticals Act: Senate continued consideration of S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals, taking action on the following amendments proposed thereto: **Pages S7194–S7218**

Withdrawn:

Graham Amendment No. 4309, to amend title XVIII of the Social Security Act to provide coverage of outpatient prescription drugs under the Medicare program. **Pages S7194, S7199–S7206**

Hatch (for Grassley) Amendment No. 4310, to amend title XVIII of the Social Security Act to provide for a Medicare voluntary prescription drug delivery program under the Medicare program, and to modernize the Medicare program. **Pages S7194, S7199–S7207**

Pending:

Reid (for Dorgan) Amendment No. 4299, to permit commercial importation of prescription drugs from Canada. **Page S7194**

Hagel Amendment No. 4315 (to Amendment No. 4299, as amended), to provide Medicare beneficiaries with a drug discount card that ensures access to affordable outpatient prescription drugs. **Pages S7207–18**

During consideration of this measure today, Senate also took the following actions:

By 52 yeas to 47 nays (Vote No. 186), three-fifths of those Senators duly chosen and sworn, not having voted in the affirmative, Senate failed to agree to the motion to waive the Congressional Budget Act with respect to Graham Amendment No. 4309 (listed above). Subsequently, the point of order that the amendment violates section 302(f) of the Congressional Budget Act of 1974 was sustained, and the

amendment was withdrawn, pursuant to the order of July 18, 2002. **Page S7206**

By 48 yeas to 51 nays (Vote No. 187), three-fifths of those Senators duly chosen and sworn, not having voted in the affirmative, Senate failed to agree to the motion to waive the Congressional Budget Act with respect to Hatch (for Grassley) Amendment No. 4310 (listed above). Subsequently, the point of order that the amendment violates section 302(f) of the Congressional Budget Act of 1974 was sustained, and the amendment was withdrawn, pursuant to the order of July 18, 2002. **Pages S7206–07**

A unanimous-consent-time agreement was reached providing for further consideration of Hagel Amendment No. 4315, listed above, on Wednesday, July 24, 2002, with a vote to occur in relation to the amendment to occur following the vote on adoption of the conference report on H.R. 4775, Supplemental Appropriations (listed below). **Page S7222**

A unanimous-consent agreement was reached providing for further consideration of the bill at 11 a.m., on Wednesday, July 24, 2002. **Page S7242**

Supplemental Appropriations Conference Report—Agreement: A unanimous-consent-time agreement was reached providing for consideration of the conference report on H.R. 4775, Supplemental Appropriations, at 1 p.m., on Wednesday, July 23, 2002, with a vote on adoption of the conference report to occur at 1:30 p.m. **Page S7222**

Nominations Confirmed: Senate confirmed the following nomination:

Richard H. Carmona, of Arizona, to be Medical Director in the Regular Corps of the Public Health Service, subject to qualifications therefor as provided by law and regulations, and to be Surgeon General of the Public Health Service for a term of four years. **Pages S7189–94**

Prior to this action, by a unanimous vote of 98 yeas (Vote No. Ex. 185), three-fifths of those Senators duly chosen and sworn, having voted in the affirmative, Senate agreed to the motion to close debate on the nomination of Richard H. Carmona, of Arizona, to be Medical Director in the Regular Corps of the Public Health Service, subject to qualifications therefor as provided by law and regulations, and to be Surgeon General of the Public Health Service. **Pages S7189, S7242**

Messages From the House: **Page S7225**

Measures Referred: **Pages S7225–26**

Executive Reports of Committees: **Page S7226**

Additional Cosponsors: **Pages S7226–28**

Statements on Introduced Bills/Resolutions: **Pages S7228–32**

Additional Statements: **Pages S7224–25**

Amendments Submitted: **Pages S7232–39**

Notices of Hearings/Meetings: **Page S7239**

Authority for Committees to Meet: **Pages S7239–40**

Privilege of the Floor: **Page S7240**

Record Votes: Three record votes were taken today. (Total—187) **Pages S7189, S7206, S7207**

Adjournment: Senate met at 9:45 a.m., and adjourned at 7:10 p.m., until 10 a.m., on Wednesday, July 24, 2002. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S7242.)

Committee Meetings

(Committees not listed did not meet)

APPROPRIATIONS—AGRICULTURE

Committee on Appropriations: Subcommittee on Agriculture, Rural Development, and Related Agencies approved for full committee consideration an original bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2003.

APPROPRIATIONS—DISTRICT OF COLUMBIA

Committee on Appropriations: Subcommittee on District of Columbia approved for full committee consideration an original bill making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against revenues of said District for the fiscal year ending September 30, 2003.

APPROPRIATIONS—VA/HUD

Committee on Appropriations: Subcommittee on VA, HUD, and Independent Agencies approved for full committee consideration an original bill making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2003.

NOMINATIONS

Committee on Banking, Housing, and Urban Affairs: Committee concluded hearings on the nominations of Cynthia A. Glassman, of Virginia, and Roel C. Campos, of Texas, each to be a Member of the Securities and Exchange Commission, after the nominees testified and answered questions in their own behalf.

BUSINESS MEETING

Committee on Commerce, Science, and Transportation: Committee ordered favorably reported the nominations of Steven Robert Blust, of Florida, to be a Federal Maritime Commissioner, Kathie L. Olsen, of Oregon, and Richard M. Russell, of Virginia, each to be an Associate Director of the Office of Science and Technology Policy, Frederick D. Gregory, of Maryland, to be Deputy Administrator of the National Aeronautics and Space Administration, Jonathan Steven Adelstein, of South Dakota, to be a Member of the Federal Communications Commission, and one United States Coast Guard promotion list.

ARCHAEOLOGICAL RESOURCES

Committee on Energy and Natural Resources: Subcommittee on National Parks concluded hearings on S. 2598, to enhance the criminal penalties for illegal trafficking of archaeological resources; S. 2727, to provide for the protection of paleontological resources on Federal lands; and H.R. 3954, to designate certain waterways in the Caribbean National Forest in the Commonwealth of Puerto Rico as components of the National Wild and Scenic Rivers System; after receiving testimony from Christopher Kearney, Deputy Assistant Secretary for Policy, Management and Budget, Department of the Interior; Elizabeth Estill, Deputy Chief for Programs and Legislation, U.S. Forest Service, Department of Agriculture; and Richard K. Stucky, Denver Museum of Nature and Science, Denver, Colorado.

STRATEGIC OFFENSIVE REDUCTIONS TREATY

Committee on Foreign Relations: Committee concluded hearings on the Treaty Between the United States of America and the Russian Federation on Strategic Offensive Reductions, Signed at Moscow on May 24, 2002 (Treaty Doc. 107–8); after receiving testimony from former Senator Sam Nunn, Nuclear Threat Initiative; Gen. Eugene E. Habiger, USAF (Ret.), San Antonio, Texas, former Commander, U.S. Strategic Command; Kenneth L. Adelman, Edelman Public Relations Worldwide, former Director of the Arms Control and Disarmament Agency, Fr. Drew Christiansen, on behalf of the U.S. Conference of Catholic Bishops, and Frank J. Gaffney, Jr., Center for Security Policy, all of Washington, D.C.; and Christopher E. Paine, Natural Resources Defense Council, Charlottesville, Virginia.

ENRON COLLAPSE

Committee on Governmental Affairs: Permanent Subcommittee on Investigations resumed hearings to examine the role of financial institutions in the collapse of Enron Corporation, focusing on their contribution to Enron's use of complex transactions and questionable accounting practices in order to inaccurately improve the appearance of the company's financial status, receiving testimony from Robert L. Roach, Chief Investigator, Permanent Subcommittee on Investigations, and Gary M. Brown, Special Counsel, both of the Senate Committee on Governmental Affairs; Lynn E. Turner, Colorado State University Center for Quality Financial Reporting, Broomfield, former Chief Accountant, Securities and Exchange Commission; and Pamela M. Stumpp and John C. Diaz, both of Moody's Investors Service, Ronald M. Barone and Nik Khakee, both of Standard's and Poor, Donald H. McCree, Robert W. Traband, and Jeffrey W. Dellapina, all of JP Morgan Chase and Company, David C. Bushnell, James F. Reilly, Jr., Richard Caplan, and Maureen Hendricks, all of Salomon Smith Barney/Citigroup, all of New York, New York.

Hearings will resume on Tuesday, July 30.

NOMINATIONS

Committee on the Judiciary: Committee concluded hearings on the nominations of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit, Timothy J. Corrigan, to be United States District Judge for the Middle District of Florida, and Jose E. Martinez, to be United States District Judge for the Southern District of Florida, after the nominees testified and answered questions in their own behalf. Ms. Owen was introduced by Senators Gramm and Hutchison, and Representative Granger, and Mr. Corrigan and Mr. Martinez were introduced by Senator Bill Nelson.

LAW ENFORCEMENT OFFICERS SAFETY

Committee on the Judiciary: Committee concluded hearings on S. 2480, to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from state laws prohibiting the carrying of concealed handguns, after receiving testimony from Senator Baucus; Representative Cunningham; Steve Young, Marion, Ohio, on behalf of the Fraternal Order of Police; Arthur Gordon, Woodbine, Maryland, on behalf of the Federal Law Enforcement Officers Association; David Johnson, Cedar Rapids Police Department, Cedar Rapids, Iowa; and Lonnie J. Westphal, Colorado State Patrol, Denver, on behalf of the International Association of Chiefs of Police.

House of Representatives

Chamber Action

Measures Introduced: 15 public bills, H.R. 5179–5193; and 1 resolution, H. Con. Res. 445, were introduced. **Page H5194**

Reports Filed: Reports were filed today as follows:

H.R. 4547, to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense and to prescribe military personnel strengths for fiscal year 2003, amended (H. Rept. 107–603);

H.R. 4965, to prohibit the procedure commonly known as partial-birth abortion (H. Rept. 107–604);

H.R. 3609, to amend title 49, United States Code, to enhance the security and safety of pipelines, amended (H. Rept. 107–605, Pt. 1);

H.R. 3609, to amend title 49, United States Code, to enhance the security and safety of pipelines, amended (H. Rept. 107–605, Pt. 2);

H. Res. 437, requesting that the President focus appropriate attention on neighborhood crime prevention and community policing, and coordinate certain Federal efforts to participate in ''National Night Out'', including by supporting local efforts and neighborhood watches and by supporting local officials to provide homeland security (H. Rept. 107–606);

H. Res. 497, providing for the consideration of H.R. 4628, to authorize appropriations for fiscal year 2003 for intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System (H. Rept. 107–607);

H. Res. 498, providing for consideration of H.R. 4965, to prohibit the procedure commonly known as partial-birth abortion (H. Rept. 107–608); and

H.R. 5005, to establish the Department of Homeland Security, amended (H. Rept. 107–609).

Page H5193

Speaker Pro Tempore: Read a letter from the Speaker wherein he appointed Representative Schrock to act as Speaker pro tempore for today.

Page H5091

Guest Chaplain: The prayer was offered by the guest Chaplain, Captain Jeff Struecker, Chaplain, United States Army, 1st Battalion, 319th Airborne Field Artillery Regiment of Ft. Bragg, North Carolina. **Page H5095**

Journal: The House agreed to the Speaker's approval of the Journal of Monday, July 23 by a yea-and-nay vote of 339 yeas to 45 nays with 1 voting ''present'', Roll No. 326. **Pages H5095, H5098**

Recess: The House recessed at 9:34 a.m. and reconvened 10 a.m. **Page H5095**

Defense and Homeland Security Supplemental Appropriations Conference Report: The House agreed to the conference report on H.R. 4775, making supplemental appropriations for the fiscal year ending September 30, 2002 by a yea-and-nay vote of 397 yeas to 32 nays, Roll No. 328. The conference report was considered pursuant to the order of the House of July 22, 2002. **(See next issue.)**

Trade With Vietnam—Maintained Normal Trade Relations: The House failed to pass H.J. Res. 101, disapproving the extension of the waiver authority contained in section 402(c) of the Trade Act of 1974 with respect to Vietnam by a yea-and-nay vote of 91 yeas to 338 nays, Roll No. 329. The joint resolution was considered pursuant to the order of the House of July 22, 2002.

Pages H5098–H5107 (continued next issue)

Treasury and Postal Operations Appropriations: The House completed debate and began considering amendments to H.R. 5120, making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 2003. Consideration will resume on Wednesday, July 24. **(See next issue.)**

Agreed To:

Rogers amendment No. 13 printed in the Congressional Record of July 16 that increases funding for the United States Customs Service Salaries and Expenses funding by $700,000 for six customs agents to inspect Canadian trash coming into Michigan and decreases Internal Revenue Service Processing, Assistance, and Management funding accordingly; **(See next issue.)**

Millender-McDonald amendment No. 19 printed in the Congressional Record of July 17 that makes available $600,000 in National Archives and Records Administration Operating Expenses funding for the preservation of the records of the Freedmen's Bureau; **(See next issue.)**

Kucinich amendment No. 17 printed in the Congressional Record of July 17 that strikes section 513 which exempted contracts under the Federal Employees Health Benefits Program from the cost accounting standards promulgated under section 26 of the Office of Federal Procurement Policy Act;

(See next issue.)

Flake amendment No. 1 printed in the Congressional Record of July 15 that prohibits the use of any funding to administer or enforce part 515 of

title 31, Code of Federal Regulations (the Cuban Assets Control regulations) with respect to travel to Cuba (agreed to by a recorded vote of 262 ayes to 167 noes with 1 voting ''present'', Roll No. 331); **(See next issue.)**

Flake amendment No. 20 printed in the Congressional Record of July 18 that prohibits the use of any funding to enforce any restriction on remittances to nationals of Cuba (agreed to by a recorded vote of 251 ayes to 177 noes, Roll No. 332); and **(See next issue.)**

Moran of Kansas amendment No. 9 printed in the Congressional Record of July 15 that prohibits the use of any funding to implement sanctions imposed by the United States on private commercial sales of agricultural commodities, medicine, or medical supplies to Cuba. **(See next issue.)**

Rejected:

Goss amendment printed in H. Rept. 107–585 that sought to require the President to certify to Congress that the Government of Cuba does not possess biological weapons, is not developing or providing terrorist states or terrorist organizations the technology to develop biological weapons, and is not providing support or sanctuary to international terrorists before any limitation on funding is applied to the enforcement and administration of travel restrictions to Cuba (rejected by a recorded vote of 182 ayes to 247 noes, Roll No. 330); and **(See next issue.)**

Rangel amendment No. 5 printed in the Congressional Record of July 15 that sought to prohibit the use of any funding to implement, administer, or enforce the economic embargo of Cuba (rejected by a recorded vote of 204 ayes to 226 noes, Roll No. 333). **(See next issue.)**

Points of Order sustained Against:

Language on page 74, lines 15 through 25 dealing with affidavits signed by employees to certify their United States citizenship and permanent resident status; and **(See next issue.)**

Section 646 that deals with corporate expatriates. **(See next issue.)**

The House agreed to H. Res. 488, the rule that is providing for consideration of the bill on July 18.

Order of Business—Further Consideration of Treasury and Postal Operations Appropriations: Agreed that during further consideration of H.R. 5120 in the Committee of the Whole pursuant to H. Res. 488, no further amendment to the bill may be offered except: Pro forma amendments offered by the Chairman or ranking minority member of the Committee on Appropriations or their designees for the purpose of debate; amendments numbered 2, 8, 12, and 18 in the Congressional Record, which shall be debatable for 5 minutes each; an amendment by Representative Barr of Georgia regarding a national media campaign and an amendment by Representative George Miller of California regarding a Federal Acquisition Regulation, both of which shall be debatable for 20 minutes each; amendment numbered 16 in the Congressional Record, an amendment by Representative Hoyer regarding High Sea Repairs, and the amendment by Representative Hefley, placed at the desk, all of which shall be debatable for 10 minutes each; amendment numbered 21 in the Congressional Record, which shall be debatable for 40 minutes; and an amendment by Representative Sanders regarding taxation of pension plans, which shall be debatable for 30 minutes. Each such amendment may be offered only by the member designated in this request, or a designee, or the Member who caused it to be printed, or a designee, shall be considered as read, shall be debatable for the time specified, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole. **(See next issue.)**

Suspensions: The House agreed to suspend the rules and pass the following measures:

National Aviation Capacity Expansion: H.R. 3479, amended, to expand aviation capacity in the Chicago Area (agreed to by a yea-and-nay vote of 343 yeas to 87 nays, Roll No. 327). Agreed to amend the title so as to read: ''To expand aviation capacity.''; and **Pages H5114–91 (continued next issue)**

Pipeline Infrastructure Protection: H.R. 3609, amended, to amend title 49, United States Code, to enhance the security and safety of pipelines (agreed to by a yea-and-nay vote of 423 yeas to 4 nays, Roll No. 334). **(See next issue.)**

Suspension Proceedings Postponed: The House completed debate on motions to suspend the rules and pass the following measures. Further proceedings on the motions were postponed:

Improving Access to Long-Term Care: H.R. 4946, amended, to amend the Internal Revenue Code to provide health care incentives related to long-term care; and **Pages H5107–14**

FY 2003 National Defense Authorization Act for Fiscal Year 2003: H.R. 4537, amended, to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense and to prescribe military personnel strengths for fiscal year 2003. **(See next issue.)**

Privileged Resolution: Representative Sanchez notified the House of her intention to offer a resolution as a question of the privileges of the House and that the text reads as follows: In the matter of James A. Traficant, Jr.; Resolved, that, pursuant to Article 1,

Section 5, Clause 2 of the United States Constitution, Representative James A. Traficant, Jr., be, and he hereby is, expelled from the House of Representatives. **(See next issue.)**

Discharge Petitions: Pursuant to Clause 2 of Rule XV, Representative Carson moved to discharge the Committee on Rules from the consideration of H. Res. 479, providing for consideration of H.R. 3818, to protect investors by enhancing regulation of public auditors, improving corporate governance, overhauling corporate disclosure made pursuant to the securities laws (Discharge Petition No. 9) and Representative Phelps moved to discharge the Committee on Rules from the consideration of H. Res. 480, providing for consideration of H.R. 4098, to provide for criminal prosecution of persons who alter or destroy evidence in certain Federal investigations or defraud investors of publicly traded securities, to disallow debts incurred in violation of securities fraud laws from being discharged in bankruptcy, to protect whistleblowers against retaliation by their employers (Discharge Petition No. 10).

(See next issue.)

Late Report Select Committee on Homeland Security: Agreed that the Select Committee on Homeland Security have until 3 a.m. on Wednesday, July 24 to file a report on H.R. 5005, to establish the Department of Homeland Security. **(See next issue.)**

Amendments: Amendments ordered printed pursuant to the rule appear on pages H5195–H5200.

Quorum Calls—Votes: Five yea-and-nay votes and four recorded votes developed during the proceedings of the House today and appears on pages H5098 (continued next issue). There were no quorum calls.

Adjournment: The House met at 9 a.m. and adjourned at 12:13 a.m. on Wednesday, July 24.

Committee Meetings

COMMERCIAL SHIPBUILDING

Committee on Armed Services: Special Oversight Panel on the Merchant Marine held a hearing on commercial shipbuilding in the United States and the Maritime Security Program. Testimony was heard from public witnesses.

WHAT'S NEXT FOR SCHOOL CHOICE?

Committee on Education and the Workforce: Held a hearing on ''What's Next for School Choice?'' Testimony was heard from Representative Armey; and public witnesses.

COMPULSORY UNION DUES AND CORPORATE CAMPAIGNS

Committee on Education and the Workforce: Subcommittee on Workforce Protections held a hearing on ''Compulsory Union Dues and Corporate Campaigns.'' Testimony was heard from public witnesses.

INSURANCE COVERAGE OF MENTAL HEALTH BENEFITS

Committee on Energy and Commerce: Subcommittee on Health held a hearing titled ''Insurance Coverage of Mental Health Benefits.'' Testimony was heard from public witnesses.

OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT'S RISK-BASED CAPITAL STRESS TEST FOR FANNIE MAE AND FREDDIE MAC

Committee on Financial Services: Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises held a hearing regarding the Office of Federal Housing Enterprise Oversight's (OFHEO) risk-based capital stress test for Fannie Mae and Freddie Mac. Testimony was heard from Armando Falcon, Jr., Director, Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development.

HOMELAND SECURITY; PROTECTING STRATEGIC PORTS

Committee on Government Reform: Subcommittee on National Security, Veterans' Affairs, and International Relations held a hearing on Homeland Security: Protecting Strategic Ports. Testimony was heard from Maj. Gen. Kenneth L. Privratsky, USA, Commander, Military Traffic Management Command, Department of Defense; the following officials of the Department of Transportation: William G. Schubert, Maritime Administrator; and Rear Adm. Paul J. Pluta, USCG, Assistant Commandant, Marine Safety and Environmental Protection, U.S. Coast Guard; Raymond Decker, Director, Defense Capabilities and Management Team, GAO; and a public witness.

MISCELLANEOUS MEASURES

Committee on International Relations: Subcommittee on Africa approved for full Committee action the following resolutions: H. Con. Res. 287, expressing the sense of Congress relating to efforts of the Peace Parks Foundation in the Republic of South Africa to facilitate the establishment and development of transfrontier conservation efforts in southern Africa; and H. Con. Res. 421, recognizing the importance of inheritance rights of women in Africa.

PACIFIC ISLAND NATIONS

Committee on International Relations: Subcommittee on East Asia and the Pacific held a hearing on Pacific Island Nations: Current Issues and U.S. Interests. Testimony was heard from the following officials of the Department of State: Matthew Daley, Deputy Assistant Secretary, Bureau of East Asian and Pacific Affairs; and Mary Beth West, Deputy Assistant Secretary, Bureau of Oceans and International Environmental Scientific Affairs; and a public witness.

MISCELLANEOUS MEASURES

Committee on the Judiciary: Ordered reported the following bills: H.R. 1452, amended, Family Reunification Act of 2001; H.R. 4757, amended, Our Lady of Peace Act; and H.R. 3995, Housing Affordability for America Act of 2002.

The Committee began markup of H.R. 4600, Help Efficient, Accessible, Low Cost, Timely Health Care (HEALTH) Act of 2002.

NINTH CIRCUIT COURT OF APPEALS REORGANIZATION ACT

Committee on the Judiciary: Subcommittee on Courts, the Internet and Intellectual Property held a hearing on H.R. 1203, Ninth Circuit Court of Appeals Reorganization Act of 2001. Testimony was heard from the following Judges of the U.S. Court of Appeals for the Ninth Circuit: Mary M. Schroeder, Chief; Diarmuid F. O'Scannlain and Sidney R. Thomas; and Alan G. Lance, Attorney General, State of Idaho.

OVERSIGHT

Committee on Resources: Subcommittee on Energy and Mineral Resources held an oversight hearing on Availability of Bonds to Meet Federal Requirement for Mining, Oil and Gas Projects. Testimony was heard from Tom Fulton, Deputy Assistant Secretary, Land and Minerals Management, Department of the Interior; and public witnesses.

INTELLIGENCE AUTHORIZATION ACT

Committee on Rules: Granted, by voice vote, a modified open rule providing 1 hour of debate on H.R. 4628, Intelligence Authorization Act for Fiscal Year 2003. The rule waives all points of order against consideration of the bill. The rule provides that it shall be in order to consider as an original bill for the purpose of amendment the amendment in the nature of a substitute recommended by the Permanent Select Committee on Intelligence now printed in the bill. The rule waives all points of order against the committee amendment in the nature of a substitute. The rule provides that no amendment shall be in order except pro-forma amendments for the purpose of debate and those printed in the Congressional Record, which shall only be offered by the Member who caused it to be printed or his designee and shall be considered as read. Finally, the rule provides one motion to recommit with or without instructions. Testimony was heard from Chairman Goss and Representatives Pelosi, Roemer and Hastings of Florida.

PARTIAL-BIRTH ABORTION BAN ACT

Committee on Rules: Granted, by voice vote, a closed rule providing 2 hours of debate in the House on H.R. 4965, Partial-Birth Abortion Ban Act of 2002. The rule waives all points of order against consideration of the bill. Finally, the rule provides one motion to recommit with or without instructions. Testimony was heard from Chairman Sensenbrenner and Representatives Nadler, Scott, Jackson-Lee of Texas, Hoyer and Edwards.

INCREASED STEEL TARIFFS—AMERICAN MANUFACTURERS—UNINTENDED CONSEQUENCES

Committee on Small Business: Held a hearing on "Unintended Consequences of Increased Steel Tariffs on American Manufacturers." Testimony was heard from public witnesses.

AVIATION SECURITY

Committee on Transportation and Infrastructure: Subcommittee on Aviation held a hearing on Aviation Security. Testimony was heard from the following officials of the Department of Transportation: Norman Y. Mineta, Secretary; Michael Jackson, Deputy Secretary; and Adm. James M. Loy, USCG, Acting Assistant Secretary, Security; and Alexis Stefani, Assistant Inspector General, Auditing, GAO.

The Subcommittee also met in executive session to continue hearings on Aviation Security. Testimony was heard from departmental witnesses.

MEDICARE'S GEOGRAPHIC COST ADJUSTORS

Committee on Ways and Means: Subcommittee on Health held a hearing on Medicare's Geographic Cost Adjustors. Testimony was heard from Representatives Nussle, Roukema, Kanjorski, Visclosky, Shays, Peterson of Minnesota, Hinchey, Smith of Michigan, Watt of North Carolina, Kelly, Aderholt, Moran of Kansas, Peterson of Pennsylvania, Sandlin and Sherwood; William J. Scanlon, Director, Health Financing and System Issues, GAO; Glenn D. Hackbarth, Chairman, Medicare Payment Advisory Commission; and a public witness.

Joint Meetings

9/11 INTELLIGENCE INVESTIGATION

Joint Hearing: Senate Select Committee on Intelligence held joint closed hearings with the House Permanent Select Committee on Intelligence to examine events surrounding September 11, 2001.

Select Committee will meet again Thursday, July 25.

COMMITTEE MEETINGS FOR WEDNESDAY, JULY 24, 2002

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Appropriations: business meeting to mark up an original bill making appropriations for energy and water development for the fiscal year ending September 30, 2003, 10 a.m., S–128, Capitol.

Subcommittee on Transportation, business meeting to mark up proposed legislation making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 2003, 4 p.m., SD–116.

Committee on Banking, Housing, and Urban Affairs: Subcommittee on Housing and Transportation, to hold oversight hearings to examine management challenges of the Department of Housing and Urban Development, 2:30 p.m., SD–538.

Committee on Commerce, Science, and Transportation: Subcommittee on Science, Technology, and Space, to hold hearings to examine women in science and technology, 2:30 p.m., SR–253.

Committee on Energy and Natural Resources: to hold hearings to examine issues surrounding the Federal Energy Regulatory Commission, 3 p.m., SD–366.

Committee on Environment and Public Works: with the Committee on Foreign Relations, to hold joint hearings to examine implementation of environmental treaties, 10:30 a.m., SD–406.

Committee on Foreign Relations: with the Committee on Environment and Public Works, to hold joint hearings to examine implementation of environmental treaties, 10:30 a.m., SD–406.

Full Committee, to hold hearings to examine the nomination of Kristie Anne Kenney, of Maryland, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Ecuador; the nomination of Larry Leon Palmer, of Georgia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Honduras; and the nomination of Barbara Calandra Moore, of Maryland, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Nicaragua, 2:30 p.m., SD–419.

Committee on Governmental Affairs: business meeting to reconsider the Committee's action of 5/22, with respect to ordering favorably reported, with amendments S. 2452, to establish the Department of National Homeland Security and the National Office for Combating Terrorism; and to consider the nominations of James E. Boasberg, to be an Associate Judge of the Superior Court of the District of Columbia; Michael D. Brown, of Colorado, to be Deputy Director of the Federal Emergency Management Agency; and Mark W. Everson, of Texas, to be Deputy Director for Management, Office of Management and Budget, 9:30 a.m., SD–342.

Committee on Health, Education, Labor, and Pensions: business meeting to consider S. 2328, to amend the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act to ensure a safe pregnancy for all women in the United States, to reduce the rate of maternal morbidity and mortality, to eliminate racial and ethnic disparities in maternal health outcomes, to reduce pre-term, labor, to examine the impact of pregnancy on the short and long term health of women, to expand knowledge about the safety and dosing of drugs to treat pregnant women with chronic conditions and women who become sick during pregnancy, to expand public health prevention, education and outreach, and to develop improved and more accurate data collection related to maternal morbidity and mortality; S. 2394, to amend the Federal Food, Drug, and Cosmetic Act to require labeling containing information applicable to pediatric patients; S. 2499, to amend the Federal Food, Drug, and Cosmetic Act to establish labeling requirements regarding allergenic substances in food; S. 1998, to amend the Higher Education Act of 1965 with respect to the qualifications of foreign schools; proposed legislation authorizing funds for the Child Care and Development Block Grant; and the nominations of Edward J. Fitzmaurice, Jr., of Texas, and Harry R. Hoglander, of Massachusetts, each to be a Member of the National Mediation Board, 9:30 a.m., SD–430.

Committee on Indian Affairs: to hold hearings on S. 1344, to provide training and technical assistance to Native Americans who are interested in commercial vehicle driving careers, 10 a.m., SR–485.

Committee on the Judiciary: Subcommittee on Crime and Drugs, to hold hearings to examine corporate responsibility, focusing on criminal sanctions to deter wrong doing, 2:30 p.m., SD–226.

Committee on Small Business and Entrepreneurship: business meeting to mark up pending legislation, 9 a.m., SR–428A.

Committee on Veterans' Affairs: to hold hearings to examine mental health care issues, 9:30 a.m., SR–418.

House

Committee on Education and the Workforce, hearing on "Implementation of the No Child Left Behind Act," 10:30 a.m., 2175 Rayburn.

Committee on Energy and Air Quality, Subcommittee on Energy and Air Quality, to mark up H.R. 3880, to provide a temporary waiver from certain transportation conformity requirements and metropolitan transportation planning requirements under the Clean Air Act and under other laws for certain areas in New York where the planning offices and resources have been destroyed by acts of terrorism, 4 p.m., 2123 Rayburn.

Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit, hearing on H.R. 3424, Community Choice in Real Estate Act, 2 p.m., 2128 Rayburn.

Committee on Government Reform, Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations, oversight hearing on ''Cyber-terrorism: Is the Nation's Critical Infrastructure Adequately Protected?'' 10 a.m., 2154 Rayburn.

Subcommittee on Technology and Procurement Policy, hearing entitled ''An Oversight Hearing to Review the Findings of the Commercial Activities Panel,'' 1 p.m., 2154 Rayburn.

Committee on International Relations, hearing on Economic Development and Integration as a Catalyst for Peace: A ''Marshall Plan'' for the Middle East, 10:15 a.m., 2172 Rayburn.

Subcommittee on Europe, to mark up the following measures: H. Con. Res. 164, expressing the sense of Congress that security, reconciliation, and prosperity for all Cypriots can be best achieved within the context of membership in the European Union which will provide significant rights and obligations for all Cypriots; H. Con. Res. 437, recognizing the Republic of Turkey for its cooperation in the campaign against global terrorism, for its commitment of forces and assistance to Operation Enduring Freedom and subsequent missions in Afghanistan, and for initiating important economic reforms to build a stable and prosperous economy in Turkey; and H. Con. Res. 327, commending the republic of Turkey and the State of Israel for the continued strengthening of their political, economic, cultural, and strategic partnership and for their actions in support of the war on terrorism, 12:30 p.m., 2255 Rayburn.

Subcommittee on International Operations and Human Rights, to mark up the following measures: H. Con. Res. 349, calling for an end to the sexual exploitation of refugees; and H. Con. Res. 351, expressing the sense of Congress that the United States should condemn the practice of execution by stoning as a gross violation of human rights, 2:30 p.m., 2255 Rayburn.

Subcommittee on Western Hemisphere, hearing on the Coffee Crisis in the Western Hemisphere, 2:30 p.m., 2200 Rayburn.

Committee on Resources, to mark up the following bills: H.R. 2099, to amend the Omnibus Parks and Public Lands Management Act of 1996 to provide adequate funding authorization for the Vancouver National Historic Reserve; H.R. 2301, to authorize the Secretary of the Interior to construct a bridge on Federal land west of and adjacent to Folsom Dam in California; H.R. 2534, Lower Los Angeles River and San Gabriel River Watersheds Study Act of 2001; H.R. 2748, National War Permanent Tribute Historical Database Act; H.R. 3148, to amend the Alaska Native Claims Settlement Act to provide equitable treatment of Alaska Native Vietnam Veterans; H.R. 3407, Indian Financing Act Reform Amendment; H.R. 3434, McLoughlin House National Historic Site Act; H.R. 3449, to revise the boundaries of the George Washington Birthplace National Monument; H.R. 4622, Gateway Communities Cooperation Act of 2002; H.R. 4682, Allegheny Portage Railroad National Historic Site Boundary Revision Act; H.R. 4708, Fremont-Madison Conveyance Act; H.R. 4917, Los Padres National Forest Land Exchange Act; H.R. 4919, Tonto And Coconino National Forests Land Exchange Act; H.R. 4938, to direct the Secretary of the Interior, through the Bureau of Reclamation, to conduct a feasibility study to determine the most feasible method of developing a safe and adequate municipal, rural, and industrial water supply for the Santee Sioux Tribe of Nebraska; H.R. 4953, to direct the Secretary of the Interior to grant Deschutes and Crook Counties in the State of Oregon a right-of-way to West Butte Road; H.R. 4966, National Oceanic and Atmospheric Administration Act; H.R. 4968, Federal-Utah State Trust Lands Consolidation Act; H.R. 5039, Humboldt Project Conveyance Act; S. 329, Peopling of America Theme Study Act; S. 423, Fort Clatsop National Memorial Expansion Act; S. 491, to authorize the Secretary of the Interior, pursuant to the provisions of the Reclamation Wastewater and Groundwater Study and Facilities Act to participate in the design, planning, and construction of the Denver Water Reuse project; S. 509, Kenai Mountains-Turnagain Arm National Heritage Area Act of 2001; S. 941, Rancho Corral de Tierra Golden Gate National Recreation Area Boundary Adjustment Act of 2001; S. 1097, to authorize the Secretary of the Interior to issue right-of-way permits for natural gas pipelines within the boundary of the Great Smoky Mountains National Park; and S. 1105, Grand Teton National Park Land Exchange Act, 10 a.m., 1324 Longworth.

Committee on Rules, to consider H.R. 5005, Homeland Security Act of 2002, 4 p.m., H–313 Capitol.

Committee on Science, Subcommittee on Environment, Technology and Standards, hearing on Satellite Data Management at NOAA, 10 a.m., 2318 Rayburn.

Committee on Transportation and Infrastructure, to consider the following: Several U.S. Army Corps of Engineers Survey resolutions; GSA Fiscal Year 2003 Capital Investment and Leasing Program; Courthouse Construction Prospectus and Lease Prospectus Resolutions; H. Con. Res. 442, recognizing the American Road and Transportation Builders Associations for reaching its 100th Anniversary and for the many vital contributions of its members in the transportation construction industry to the American economy and quality of life through the multi-modal transportation infrastructure network its members have designed, built, and managed over the past century; H.R. 4727, Dam Safety and Security Act of 2002; and H.R. 5157, to amend section 5307 of title 49, United States Code, to allow transit systems in urbanized areas that, for the first time, exceeded 200,000 in population according to the 2000 census to retain flexibility in the use of Federal transit formula grants in fiscal year 2003, 11 a.m., 2167 Rayburn.

Committee on Veterans' Affairs, Subcommittee on Benefits, hearing on the following bills: H.R. 5111, Servicemember's Civil Relief Act; and H.R. 4017, Soldiers' and Sailors' Civil Relief Equity Act, 10 a.m., 334 Cannon.

Permanent Select Committee on Intelligence, executive, on Global Hot Spots, 1:30 p.m., H–405 Capitol.

Subcommittee on Technical and Tactical Intelligence, executive, on Future Imagery Architecture, 3 p.m., H–405 Capitol.

Joint Meetings

Joint Economic Committee: to hold hearings to examine the measuring of economic change, 10 a.m., 311 Cannon Building.

Next Meeting of the Senate

10 a.m., Wednesday, July 24

Senate Chamber

Program for Wednesday: After the transaction of any morning business (not to extend beyond 11 a.m.), Senate will continue consideration of S. 812, Greater Access to Affordable Pharmaceuticals Act.

At 1 p.m., Senate will consider the Conference Report on H.R. 4775, Supplemental Appropriations, with a vote on adoption of the conference report to occur at 1:30 p.m.; followed by a vote on Hagel Amendment No. 4315 (to Amendment No. 4299) to S. 812 (listed above).

Next Meeting of the **HOUSE OF REPRESENTATIVES**

10 a.m., Wednesday, July 24

House Chamber

Program for Wednesday: Consideration of H.R. 5120, Treasury and Postal Operations Appropriations (complete consideration, unanimous consent order);

Consideration of H.R. 4965, Partial-Birth Abortion Ban Act (closed rule, two hours of general debate);

Consideration of H. Res. 495, In the Matter of Representative James A. Traficant, Jr. (privileged); and

Consideration of H.R. 4628, Intelligence Authorization Act (modified open rule, one hour of general debate).

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