

sorted out, I am here to lay out proposals that I think are bottom-line ways to act in the best interests of Medicare. I do this as someone who has tried to protect Medicare for a long time, and will keep fighting to do exactly that. I do this as the former chair of the Medicare Subcommittee on the Finance Committee, and now the ranking member—the majority leader is the chairman of that subcommittee now.

I do this as someone who smells a rat when the same people who have talked for months about stepping up to the plate, with specifics on how the budget can be balanced by 2002 with tax cuts thrown in and defense off the table, but now suggest that the \$300 million in Medicare cuts they are talking about is their new plan for saving Medicare. Something is not quite right about this picture, I suggest. I agree that Medicare has to be put on better financial footing. But that effort should not be a smokescreen for using it to finance other agendas like tax cuts for corporations.

First, I am introducing legislation to create a National Commission on Medicare modeled after the National Commission on Social Security Reform that President Reagan chartered in 1981.

The charge given to the Social Security Commission was to propose "realistic, long-term reforms to put Social Security back on a sound financial footing; and to forge a working bipartisan consensus so that the necessary reforms can be passed into law."

We need this kind of bipartisan process to shore up Medicare. We need to jump off the current rhetorical, budget-driven track to one where we can resolve the real question: how best to keep Medicare dependable for seniors over the next generations.

If Medicare is cut by unprecedented amounts of money to pay for anything but Medicare, the consequences will be disastrous for health care providers and beneficiaries. Rural hospitals will close in droves. Doctors will be forced to turn away the elderly. Medicare will no longer be reliable insurance for seniors in West Virginia.

As my second proposal, I will offer an amendment to the budget resolution when it comes to the Senate floor that will put Medicare in a lock-box to protect it from looting.

This isn't the blueprint we need to get Medicare back on solid ground for the long term, but it will buy a few more years of solvency and ensure it will not be used for anything but the promises made to senior citizens. Medicare is not a slush fund to finance tax cuts or other Government programs.

I will tell you why I am concerned about Medicare. I am worried its true purpose is getting lost.

It is a promise, a pledge, to the American people that they will be able to live their lives in dignity and security past their working years. Instead of treating Medicare like a checking account in this budget process, we need to remember it is an investment.

The Medicare trustees sounded the alarm about the short-term insolvency of the Medicare Program more than 3 years ago.

In fact, the Medicare trustees urged action on comprehensive health care reform to address the country's systemic problem of rising health care costs that are draining the Medicare hospital trust fund and the pockets of American families and businesses.

But comprehensive reform was rejected by the Congress last year. I should note that up until very recently, the Medicare Program outperformed the private sector in holding down its costs. Over the past 2 years, Medicare costs have been slightly higher than the private sector costs.

But, and this is a big "but," the private sector is insuring fewer and fewer people, while Medicare's enrollment is increasing; and Medicare pays for home care services and skilled nursing home care, types of services that are not normally covered by private insurance policies.

Mr. President, I have heard lots of talk about needing to move the Medicare Program into the 21st century by "restructuring" it so it looks more like insurance in the private sector.

So far, I just cannot share in the enthusiasm for copying something that is leaving out so many hard-working people and families from any kind of health care security. In fact, Medicare was first established because the private insurance industry had failed so miserably to provide affordable insurance to senior citizens. While many of my colleagues like to talk about the "miracles of the marketplace," I still see cherry-picking and redlining, medical underwriting and policy cancellations, job-lock, and families paying more and more money for fewer and fewer health benefits.

Just think about sending 37 million people with pre-existing medical conditions to the private insurance market with vouchers called choice-clerk and medi-check. High administrative costs in the private sector will eat up the value of Medicare benefits right off the bat. Will the senior citizens living in small towns across West Virginia end up paying more of their own money for their health care or be forced to join an HMO—if one is even available in the area?

To "save" Medicare we need comprehensive proposals to address these issues, not just blind cutting of Medicare. Last year, we offered proposals to fix these myriad problems. Republicans disagreed with our approach, and celebrated the defeat of our proposals. Our opponents' television ads stated again and again that there's "a better way." Slashing \$250 to \$300 billion out of Medicare is not a better way.

Mr. President, cutting \$250 billion out of Medicare over 7 years is not the way to guarantee the long-term solvency of the Medicare Hospital Trust Fund. It might add a few more years of solvency—5 to 8 tops, CBO thinks—to

the trust fund. We need to rise to the challenge met when Medicare was created and Social Security was rescued, and chart a long-term prescription for Medicare's health over the next 25 years of more.

I make my two suggestions as a way to get started.

Protect Medicare from raids to pay for anything, especially tax cuts, but what its intended for—the promise of health care security for the seniors of West Virginia and the country. And while we know Medicare is safe, let us replicate the approach used to save Social Security and really prepared Medicare for the challenges of the next century.

I thank the Presiding Officer and yield the floor. 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. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

Mr. GORTON. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending question is the Gorton amendment No. 620.

Mr. GORTON. Is the Snowe amendment to the Gorton amendment also pending?

The PRESIDING OFFICER. It is a Gorton amendment offered on behalf of Senator SNOWE.

Mr. GORTON. Mr. President, this amendment is identical to an amendment which was adopted by a rollcall vote earlier today to the medical malpractice sections of the bill. We have discussed it. Everyone has agreed that we do not need another rollcall vote on it. I believe all debate is concluded. I ask the President to put the question.

The PRESIDING OFFICER. If there is no further debate, the question occurs on agreeing to the amendment No. 620 to amendment No. 596.

The amendment (No. 620) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ROCKEFELLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER (Mr. GORTON). Without objection, it is so ordered.

Mr. DEWINE. Mr. President, I ask unanimous consent that the pending amendment be set aside.

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

AMENDMENT NO. 622 TO AMENDMENT NO. 617

(Purpose: To provide protection for individuals, small businesses, charitable organizations and other small entities from excessive punitive damage awards.)

Mr. DEWINE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Ohio [Mr. DEWINE], for himself and Mr. ABRAHAM, proposes an amendment numbered 622 to amendment No. 617.

Mr. DEWINE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 3, line 23, strike "loss." and insert in lieu thereof: "loss;

"except that if the award is against an individual whose net worth does not exceed \$500,000 or against an owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization which has fewer than twenty-five full-time employees, that amount shall not exceed \$250,000."

Mr. DEWINE. Mr. President, I offer this amendment on behalf of Senator ABRAHAM and myself. It really is an amendment that is a small business amendment.

I expressed yesterday on the floor a concern, a twofold concern: One, that we make sure that the cap was sufficiently high so that larger businesses would in fact be deterred by the proper awards juries would make in regard to punitive damages, and that we not lose that deterrent effect; but I also expressed a concern that small business not be unduly penalized by punitive damages.

I have talked to small business men and women throughout Ohio who do have this very legitimate concern and who really live in fear literally every day of something happening where they would have a huge award that would literally put them out of business; that what would become a punitive damage award which, for a big business, might, in fact, be a deterrent, might, in fact, be for a small business actually the death penalty.

This particular amendment provides an exception for small business. And small business is defined in the amendment as any business that has 25 or fewer employees or has a net worth of not over one-half million dollars. If this amendment is agreed to, a punitive damage award could not exceed \$250,000.

I think this amendment makes a great deal of sense. I think it will take care of one of the problems that we have today, a problem expressed to me many, many times by small business.

I hope that tomorrow it will, in fact, be adopted.

Mr. President, at this time, I ask unanimous consent that this amendment be set aside for the moment.

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

AMENDMENT NO. 623 TO AMENDMENT NO. 617

Mr. DEWINE. Mr. President, I send another amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Ohio [Mr. DEWINE] proposes an amendment numbered 623 to amendment No. 617.

The amendment is as follows:

On page 4 line 11 strike the semicolon after the word "awarded" through line 15 and insert a period.

Mr. DEWINE. Mr. President, this amendment will, I believe, clean up the bill and it will finish a process that was begun several days ago. That was a concern that I expressed on the floor yesterday in regard to the way the bill was originally drafted, which said that juries no longer could consider the assets that a corporation had when that jury made its decision about what was the appropriate level of punitive damages.

As I indicated yesterday, that type of preemption of State law makes absolutely no sense because punitive damages have always been intended to do basically two things: One, to serve as punishment and, second, to serve as a legitimate deterrent.

A jury cannot make that determination unless the jury knows all the facts. One of the pertinent facts has to be what the assets of the corporation might be, and other relevant financial information.

The danger of the way the bill was written was not only that we might lose that deterrent effect. Because a jury would not really know what assets the company had, it might have just the opposite effect. You might have a jury assuming that a company had a great deal of assets and the company did not have those assets. The jury then would make a disproportionate award. And so it could hurt really on both sides.

What this amendment does is really complete the process that was started several days ago, by providing and taking out of the bill that preemption. So if this amendment would be passed, we would be back to where we were before in regard to what juries could consider in regard to making their decision about punitive damages; namely, we would be back to State law, which I think is where we need to go.

So, in this case, I hope that tomorrow, when we vote on this particular amendment, we will agree to it. I think it is only equitable and fair. I urge my colleagues to do so.

At this point, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. DEWINE). Without objection, it is so ordered.

#### CLOTURE MOTION

Mr. GORTON. Mr. President, I send two separate motions to invoke cloture on the Gorton amendment No. 596 to the desk.

The PRESIDING OFFICER. The clerk will read the motion.

The legislative clerk read as follows:

#### CLOTURE MOTION

We the undersigned Senators in accordance with the provisions of rule XXII of the Standing Rules of the Senate do hereby move to bring to a close debate on the Gorton Amendment No. 596 to H.R. 956, the Product Liability bill.

Bob Dole, Slade Gorton, Rick Santorum, Jim Inhofe, Conrad Burns, Pete V. Domenici, Hank Brown, Spencer Abraham, Paul D. Coverdell, Larry E. Craig, Dirk Kempthorne, Bob Smith, Trent Lott, Chuck Grassley, Judd Gregg, Mitch McConnell.

#### CLOTURE MOTION

The PRESIDING OFFICER. The clerk will now read the second motion.

The legislative clerk read as follows:

#### CLOTURE MOTION

We the undersigned Senators in accordance with the provisions of rule XXII of the Standing Rules of the Senate do hereby move to bring to a close debate on the Gorton Amendment No. 596 to H.R. 956, the Product Liability bill.

Bob Dole, Slade Gorton, Orrin G. Hatch, Dirk Kempthorne, Pete V. Domenici, Conrad Burns, John Ashcroft, Dan Coats, Bill Frist, Olympia J. Snowe, Spencer Abraham, Nancy Landon Kassebaum, James J. Jeffords, Ted Stevens, Mark O. Hatfield, Frank H. Murkowski.

#### MORNING BUSINESS

(During today's session of the Senate, the following morning business was transacted.)

#### REMEMBERING GINGER ROGERS

Mr. MOYNIHAN. Mr. President, the Op-Ed page of Friday's Washington Post featured an irresistible account by Philip Geyelin, "When I Danced With Ginger Rogers." The occasion was the Gridiron Club dinner of March 28, 1981. With the advent of Ronald Reagan's presidency "Hooray for Hollywood" was the evening's theme, and Miss Rogers its most illustrious guest.