

individual insurer insolvencies by providing for risks to be spread among all property and casualty insurers.

HUD's disparate impact approach fails to take account of the careful balancing of objectives reflected in the FAIR plans. Indeed, HUD's approach completely ignores the key difference between unfair discrimination and sound insurance underwriting practices that take the actual condition of the property into consideration. Clearly, it is unfair to discriminate on the basis of race, color, religion, sex, familial status, national origin, or handicap. But what HUD fails to recognize is that it is not unfair—indeed it is legally required by the States—for an insurer to evaluate the condition of the property and determine the risk. State insurance statutes not only deem these risk assessments to be legal, but indeed require them to prevent unfairness.

States and the District of Columbia have laws and regulations addressing unfair discrimination in property insurance. The State legislatures have debated and enacted a wide variety of antidiscrimination provisions to ensure that an insurer does not use race or other improper factors in determining whether to provide a citizen property insurance. The States are actively investigating and addressing discrimination where it is found to occur. In light of these comprehensive protections against discrimination, HUD's insurance-related activities are yet another example of unnecessary and duplicative Federal bureaucracy.

Let HUD enforce FAIR, and let the States regulate the insurance industry.

EDWARD MCGAFFIGAN, JR.

• Mr. BINGAMAN. Mr. President, when the Senate convenes in January, lots of familiar faces will be gone for one reason or another, and those of us returning will take up our work without the company and help of so many who are important to us and to this institution.

Because the Senate acted so quickly and responsibly on one matter before the August recess, one of my staff members is already gone, off to what is sure to be another outstanding period in an already distinguished career. Late in August, Ed McGaffigan was sworn in as a Commissioner on the Nuclear Regulatory Commission. Many of my colleagues and their staffs are well acquainted with Ed, and hold him in high regard, as do all of us in my office who have valued his company and counsel over the years.

Ed was among the first people I hired when I came to the Senate in 1983. Recommended to me by Joe Nye, Ed was then the assistant director of the White House Office of Science and Technology Policy. Prior to his work in the White House, he had been in the Foreign Service for 7 years, 2 of which were spent as science attaché at the American Embassy in Moscow.

From February 1983 until August 1996, Ed handled defense, national secu-

rity, technology, and foreign policy issues in my office, as well as non-proliferation and export control policy, and personnel and acquisition reform. Early on, he was recognized by staff and constituents alike as a high-minded individual of bedrock honesty and great intelligence. I once heard our former colleague, Lloyd Bentsen, say that there is a special bond forged between a new Senator and the people who help him or her get started. Setting up an office, sorting out the priorities, and learning to say "yes" or "no" at the proper time on this floor take a certain devotion and effort of will on the part of all concerned. Ed McGaffigan was one of those who helped me get started here, and I could not have guessed that how valuable this intense, brilliant man would become to me, the people of New Mexico, and, indeed, the people of this country because of his service to the Senate. I could not have known how much we would all come to depend on his intellect, his great curiosity, and his unswerving commitment to truth.

Emerson, who was a student at the Boston Latin School more than 100 years ahead of Ed, anticipated him and knew his value in his essay on "Power," when he wrote: "Concentration is the secret strength in politics, in war, in trade in short in all management of human affairs \* \* \*. A man who has that presence of mind which can bring to him on the instant all he knows, is worth for action a dozen men who know as much but can only bring it to light slowly."

Mr. President, Ed McGaffigan has concentrated his career on public service. We are fortunate that this is so, and fortunate, too, that we have in him not just a superb public official, but a true friend.

#### IMPORTANCE OF OPEN LANDS NEAR TETON NATIONAL PARK

• Mr. SIMPSON. Mr. President, I rise today to speak for a few moments on an issue that is so very dear to the hearts of every citizen in my State—indeed most citizens of our Nation: I speak of the importance of open spaces.

Now, I believe it is safe to say that some of us take our open spaces for granted—a charge that applies—especially so—to those of us inhabiting our Nation's western regions. Most of us, upon taking an objective look at our Western States, conclude the dire environmentalist warnings of imminent coast to coast asphalt are shrill, exaggerated and foundationless. And yet, as with any other hysterical manifestation, there is a kernel of truth hidden beneath the hyperbole.

My State is blessed with many spectacular vistas, but perhaps none more so than the stunning Grand Teton mountains. Unless you have seen them yourself, you simply cannot appreciate their visual impact. They seem to come rearing up out of the prairie to tower high above our heads before plunging

straight back down into the prairie again. In the valley beneath them lies the city of Jackson Hole. This is a city that has experienced booming growth in recent years as people from all over the Nation search for places to raise their families and make their fortunes that are not overtaxed, overregulated, or crime or pollution ridden. It has been both Wyoming's blessing and its curse to fit this bill so perfectly, and nowhere is this troubling dichotomy better exemplified than in the city of Jackson Hole.

Traditionally a ranching area, that town has now become a tourist mecca. But as pleased as environmentalists are to see land use industries give way to tourism, this same phenomenon has resulted in the destruction of heretofore open ranchlands which have been sold off bit by bit to the developers. It is an unfortunate and oh-so slippery slope. For the more development which takes place in the valley at the base of the Tetons, the higher the land values—and their accompanying property taxes—climb. The higher the property and estate taxes climb, the more difficult it is for these generations old ranching families to stay in business. This represents a far more serious situation than many eastern Members of this body can possibly realize. Cattlemen have long been the hapless holders of one of the most razor thin profit margins of any industry in this Nation. Today, they are going out of business left, right and center, Mr. President, and the last thing they do before they turn out the lights for good, is to sell off their property bit by bit to real estate developers who then build expensive homes that only the wealthy can afford—we call them "log cabins on steroids." The view of those mountains is spectacular and these developers and real estate agents charge for it accordingly.

Mr. President, the critical importance of preserving these incredible views—euphemistically referred to as "view sheds" by the land managers—available to all is of no small import to my State or the Nation. We need to be more business friendly. We need to keep our tax appetites under control. We absolutely need to reduce contrived regulation on our cattle industry and we need to ensure its access to Federal and State grazing lands and reasonable grazing fees. Above all, we must work to keep our ranchers ranching and our open lands open, in order to prevent the developers from overrunning this fragile and magnificent part of our Earth.

SCOTT CORWIN

• Mr. HOLLINGS. Mr. President, as I noted earlier, committee staff have been working night and day all throughout this month to produce an acceptable omnibus appropriations bill. This has been a real hardship on the staff, but most of all on one of our majority staff on the Commerce, Justice,

and State Subcommittee. I say this because Scott Corwin was married in Portland, OR, on August 24. His bride, Kristen, has been out in Oregon since that time, waiting for Congress to conclude the people's business and recess sine die.

So, I note that while we are very sorry to hear that Scott Corwin is leaving our CJS Subcommittee and Washington, DC to return and live in Oregon—I'm sure that he is happy and we should be happy for him.

Getting right to the point, Scott Corwin is the consummate professional. He is a graduate of Dartmouth College in Senator GREGG's home State, and a graduate of the University of Washington Law School. Even though his roots are in the Northwest, Scott came to Washington, DC to work for Ambassador Bob Strauss' law firm in 1987. Since 1991, he has served our distinguished chairman, MARK O. HATFIELD. Since February 1995, Scott has served on our State, Justice, and Commerce Subcommittee.

Mr. President, Scott Corwin is the type of dedicated public servant who is so essential to our legislative system. He was assigned a number of appropriation accounts ranging from the U.S. attorneys to the Supreme Court to the Maritime Administration. Scott is a quick study and he dug into the details and specifics of these agency programs and budget requests. He soon mastered the details and became a real appropriator.

It became obvious to me and other Members that Scott came to truly care about the agencies that were under his review on behalf of Senator GREGG and the majority. Scott was the first to ferret out soft dollars that are unnecessary. But, he also stood up for programs that deserved our support. He was especially tenacious in his defense of small agency programs, like the Marine Mammal Commission—which the House of Representatives has proposed to cut significantly. In the case of agencies like the National Oceanic and Atmospheric Administration, we were fortunate to have someone so knowledgeable in earth sciences, fisheries, and oceanic research.

Scott Corwin will be missed on both sides of the aisle. It will be hard, if not impossible, to find such a talented individual to take his place. We wish him all the best as he returns to Oregon along with my friend, Senator MARK HATFIELD.

#### MEDICAL PROCEDURES PATENTS

• Mr. FRIST. Mr. President, I am very pleased that the omnibus appropriations bill being considered today includes S. 2105, legislation I introduced regarding the enforcement of patents for pure medical procedures. I greatly appreciate Senator GREGG's efforts to include this provision.

Patent law has been a cornerstone of both law and economics since the founding of our Nation. The issuance of

patents was one of the few powers expressly granted to the Federal Government by the Constitution.

Patents allow inventors to recoup their investment and thereby encourage continuous innovation. Without the protection of patents, individuals, and businesses would be reluctant to invest their time, money, and energy into developing new technologies.

While the appropriateness of patents in general has long been established, it has been somewhat controversial with respect to health care. Initially, the medical community took a dim view of the patentability of therapeutic drugs or devices. Many felt that it was morally wrong to profit from improvements in medical care. For instance, the first application for a patent on aspirin was denounced as an attempt to blackmail human suffering.

In time, however, the medical community and others came to realize that, without the benefit of patent law, many improvements in medical care would never materialize.

As in other areas of human endeavor, improvements in health care often require significant investments of time and money. Without the ability to recoup these investments through patents, critical research, and development would never get off the ground.

The appropriateness and importance of allowing patents for pharmaceuticals and medical devices is now well-established. But the appropriateness of patenting medical innovations that do not involve drugs or devices but are simply improvements in surgical or medical techniques remains highly controversial. I think for good reason.

Unlike innovations in medical drugs and devices, innovations in pure procedures—such as discovering a better way to suture a wound or set a broken bone—are constantly being made without the need of significant research investments.

Allowing a doctor to enforce a patent on such improvements would have disastrous effects. Furthermore, innovations in surgical and medical procedures do not require the midwifery of patent law. They will occur anyway as they have throughout history.

My legislation would prevent the enforcement of so-called pure medical procedure patents against health professionals. It would in no way, however, change patent law with respect to biotechnology, medical devices, drugs, or their methods of use. As a result, this narrowly tailored legislation would in no way discourage the important research being done in these areas of medicine.

I intended to offer my legislation as an amendment to the Commerce, Justice, State appropriations bill because a related amendment was offered by Congressman Ganske when the House considered this bill. That amendment—which passed overwhelmingly by a vote of 295-128—took a very broad brush approach. It would have prohibited the

Patent Office from issuing any medical procedure patents.

Because the scope of the Ganske amendment was not clearly defined, it could have impacted many worthwhile patents in biotechnology and pharmacology. Accordingly, representatives of these industries came to me after the passage of the Ganske amendment to express their interest in crafting an alternative approach. The legislation included in this bill is the result of that effort.

Because the Commerce, Justice, State appropriations bill was never considered on the Senate floor, I did not have the opportunity to offer my legislation as an amendment. I am pleased, however, that this legislation was nonetheless included in this omnibus bill as an alternative to the Ganske language.

My legislation enjoys the support of the American Medical Association as well as numerous medical specialty groups that are very concerned about this matter. And, while the biotech and pharmaceutical industries opposed the Ganske amendment, they were instrumental in crafting this narrower approach.

The need for this legislation stems from the recent case of Pallin versus Singer. The facts of this case are very compelling. In performing cataract surgery, an ophthalmologist by the name of Dr. Pallin chose not to stitch the cataract incision because the patient was experiencing heart problems.

When Dr. Pallin later discovered that the incision healed better without the stitch, he sought and was awarded a patent for "no stitch" cataract surgery. Dr. Pallin subsequently sought to license this procedure for a fee of \$4 per operation. Although the no-stitch procedure was widely used, few surgeons were willing to meet Dr. Pallin's demands.

In 1994, Dr. Pallin brought a patent infringement suit against another eye surgeon and his affiliated hospital. After incurring nearly \$500,000 in legal defense costs, a settlement was finally reached. The settlement, however, does not foreclose the prospect of future lawsuits of this kind.

There is legitimate concern that Pallin represents the future unless we nip it in the bud.

My legislation is very narrow in scope. It would simply prevent the enforcement of patents against health professionals or their affiliated facilities for pure procedure patents such as Dr. Pallin's. It does not impact in any way the patentability of medical devices, drugs, or their methods of use.

This change in law is essential. Allowing health professionals to be sued for using innovations in pure medical or surgical procedures would have four disastrous consequences.

First, health care costs would explode if doctors charged licensing fees for every new surgical or medical techniques they developed. There are thousands of new medical and surgical techniques developed every year.