American elected to the California State Bar's board of governors. He also became the first person of color elected president of the Alumni Association for his alma mater, McGeorge Law School.

Mr. Speaker, we ask our colleagues to join us in saluting Samuel L. Jackson for a remarkable record of professional excellence and community service. The people of Sacramento are the proud beneficiaries of Sam Jackson's hard work and good citizenship.

MEDICARE

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1997

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, August 13, 1997, into the CONGRESSIONAL RECORD:

REFORMING MEDICARE[1]

Medicare has been a very successful government program in providing for the health of older persons and the disabled. It has substantially improved access to health care. Because of Medicare, the percentage of older Americans with health coverage has increased from less than 50% in the 1960s to 99% today. And since it was initiated three decades ago, life expectancy at age 65 has increased by more than it did in the six decades before Medicare. All of this has made Medicare one of our most popular social programs.

But Medicare has some major cost-related problems. First, its sharply increasing costs have been a major contributor to the large budget deficits of recent years. In just three decades its costs have grown to about 2½% of the nation's gross domestic product (GDP). And if no action is taken it will claim nearly 4% GDP ten years from now and 8% of GDP by the middle of the next century. It is simply not possible to balance the budget and keep it balanced unless large Medicare savings are achieved. Second, the numbers driving the future projections are simply relentless. Today we have 24 million retirees, but when the baby boom generation is fully retired the figure will be 48 million. Yet the number of working-age citizens whose payroll taxes finance most of the Medicare benefits will increase only 20% in that period and Medicare spending per beneficiary continues to rise. Third, excess care is often provided, as beneficiaries simply do not have to decide if medical services are worth their cost. And providers do not have sufficient incentive to reduce the cost of medical services because their payments are based on the number and type of services they provide. Finally, the amount of fraud and waste in the Medicare program, is huge. The government spends about $200 billion a year on Medicare, yet recent estimates are that ⅓ of that consists of overpayment. We now have only about one agent to investigate every $10 billion of Medicare spending.

Program Changes: Given the rapid projected growth in Medicare, it is not politically realistic to expect tax increases to restore solvency to the program, especially in the current anti-tax mood in the country. Thus Congress is focusing on cutting back costs and restructuring the Medicare program. There are three main approaches: cutting back payments to providers (doctors and hospitals), requiring Medicare beneficiaries to pay more, and restricting Medicare to provide for market-based incentives. These approaches are not mutually exclusive, and reform is proceeding along all three lines.

Cutting back payments to providers: Medicare's prospective payment system for hospitals has helped curb payments to providers. This system creates roughly 470 diagnosis-related groups (DRGs) into which hospitals admissions have to be placed. It is a complex system, but it has created incentives for hospitals to be more efficient. Yet the prospective payment system is no panacea. The payments apply only to certain Medicare-covered services, and when payments to providers are cut back they often respond by performing more services to offset some of their income loss. The recently passed budget reconciliation agreement achieved most of its savings by curbing and reforming payments to providers, but it is generally agreed now that cutting back fees is not a long-range solution to the Medicare problem.

Making patients pay more: Another approach is to make the beneficiaries—the patients—pay more. More of the burden could be shifted to beneficiaries by increasing their costs or increasing the age of Medicare eligibility. In general, most of the experts think that it makes some sense to impose at least part of the burden on Medicare beneficiaries since they are the ones who receive the benefits. This year Congress considered proposals to strengthen Medicare's financial condition by charging extra premiums to wealthier retirees, raising the eligibility age, and imposing a co-payment of $5 per visit for home health care services. None of those proposals survived in the final bill, but there is broad agreement that it would be a mistake to consider them dead.

Restructuring program: The third approach is to redesign the Medicare system in a way that can improve its efficiency. Today Medicare guarantees people a particular insurance plan. An alternative, ''choice-based'', system would guarantee people a fixed amount of money with which to purchase health insurance, but it would not specify which policy they are to receive. The shopping for insurance plans would encourage the plans to be more efficient and would create more competition. A choice-based system probably holds the most promise for restraining costs, but it will not be easy to implement. The choices offered, the price, the eligibility for the plans, and how to protect poorer beneficiaries all would have to be worked out.

Congressional Action. Congress must soon begin a fundamental reexamination of this immensely popular but hugely expensive program. I believe Americans understand the need for change. They recognize the amount of fraud and waste in the Medicare system and also realize that the projections about its future growth mean the program in its present form is unsustainable. But Medicare reform is as difficult as it is essential. The temptation for the politician is to deal only with the problems of the next few years but not much beyond. But Medicare will need more than that. It is certainly going to be a major test of the nation's political system to see if it has the capacity to resolve the problems for the longer term rather than to lurch from one crisis to another.

The sooner we begin restructuring Medicare the more options we will have and the less wrenching the changes will be. Whatever changes are made, caution and prudence will be virtues in dealing with a program as vital to millions of vulnerable Americans as Medicare. The reform process should proceed at a deliberate pace. It does not have to be accomplished all in a matter of two or three years. It will be complicated, divisive, and time-consuming. I doubt very much if we get it correct the first time. Mid-course corrections and adjustments will be necessary throughout the process, but it is very clear to me that we should get on with the job.

[1] Material taken from Setting National Priorities: Budget Choices for the Next Century, Robert D. Reischauer, Editor, The Brookings Institution Press, Washington, DC, 1997.

SAINT JOAN OF ARC ELEMENTARY SCHOOL AWARDED NATIONAL BLUE RIBBON AWARD

HON. THOMAS J. MANTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1997

Mr. MANTON. Mr. Speaker, I rise today to recognize the outstanding work and educational achievements of Saint Joan of Arc Elementary School in Jackson Heights, NY. The school has recently been selected as a Blue Ribbon School Program winner by the U.S. Department of Education.

Established in 1982, the Blue Ribbon Schools Program honors elementary and secondary schools that offer rigorous, efficacious curricula to their students. Schools selected for the Blue Ribbon Award must have challenging academic standards and curriculum, high retention and graduation rates, strong school, family, and community partnerships, excellent teaching and teacher development, and must provide a safe, disciplined, drug-free learning environment for their students.

Schools were nominated by State education agencies, the Council for American Private Education, and the Department of Defense Dependents Schools. Schools selected for recognition conducted a rigorous self-evaluation involving administrators, faculty, students, parents, and community representatives in the completion of their nomination application. This self-evaluation included an assessment of the school's individual strengths and weaknesses and the development of strategic plans for the future.

Saint Joan of Arc Elementary School is one of only 36 private schools and 226 public schools selected from among the 527 schools, from over 40 States, to be nominated this year. Saint Joan of Arc is the only school in the city of New York and the only Catholic School in the State of New York to be so honored.

In today's world where many students are forced to attend school in overcrowded classrooms, learn from outdated textbooks, do without the most basic computer technologies, it is imperative that we commend and encourage those institutions and educators who excel.

Mr. Speaker, I know my colleagues join me in congratulating the administrators, faculty, and students of Saint Joan of Arc School on their outstanding achievement.

INTRODUCTION OF THE FAIR ACCESS TO INDEMNITY AND REIMBURSEMENT [FAIR] ACT

HON. HARRIS W. FAWELL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1997

Mr. FAWELL. Mr. Speaker, I rise today to introduce a bill which will level the playing field

for small businesses as they face an aggressive National Labor Relations Board [NLRB] with vast expertise and resources. The Fair Access to Indemnity and Reimbursement Act—the FAIR Act—is about being fair to small businesses. It is about giving small entities, including labor organizations, the incentive they need to fight meritless claims brought against them by an intimidating bureaucracy which often strongarms those who have limited resources to defend themselves.

The FAIR Act amends the National Labor Relations Act to provide that a small business or labor organization which prevails in an action against the NLRB will automatically be allowed to recoup the attorney's fees and expenses it spent defending itself. The FAIR Act applies to any employer who has not more than 100 employees and a net worth of not more than $1.4 million. It is these small entities which are most in need of the FAIR Act's protection.

Mr. Speaker, the FAIR Act ensures that those with modest means will not be forced to capitulate in the face of frivolous actions brought by the NLRB, while making the agency's bureaucrats think long and hard before they start an action against a small business. By granting attorney's fees and expenses to small businesses who know the case against them is a loser, who know that they have done nothing wrong, the FAIR Act gives these entities an effective means to fight against abusive and unwarranted intrusions by the NLRB. A government agency the size of the NLRB—well-staffed, with numerous lawyers—should more carefully evaluate the merits of a case before bringing a complaint against a small business, which is ill-equipped to defend itself against an opponent with such superior expertise and resources. The FAIR Act will provide protection for an employer who feels strongly that its case merits full consideration. It will ensure the fair presentation of the issues.

The FAIR Act says to the NLRB that if it brings a case against a little guy it had better make sure the case is a winner, because if the Board loses, if it puts the small entity through the time, expense and hardship of an action only to have the business or labor organization come out a winner in the end, then the Board itself will have to reimburse the employer for its attorney's fees and expenses.

The FAIR Act's 100-employee/$1.4 million net worth eligibility limits represent a mere 20 percent of the 500-employee/$7 million net worth limits that are in the Equal Access to Justice Act [EAJA]—an act passed in 1980 with strong bipartisan support to level the playing field for small businesses by awarding fees and expenses to parties prevailing against agencies. Under the EAJA, however, the Board—even if it loses its case—is able to escape paying fees and expenses to the winning party if the Board can show it was substantially justified in bringing the action.

When the EAJA was made permanent law in 1985, the Congress made it clear in committee report language that the NLRB should have to meet a high burden in order to escape paying fees and expenses to winning parties. Congress said that for the agency to be considered substantially justified it must have more than a reasonable basis for bringing the action. Unfortunately, however, courts have undermined that 1985 directive from Congress and have interpreted substantially justified to mean that the Board does not have to reimburse the winner if it had any reasonable basis in law or fact for bringing the action. The result of all this is that the Board easily is able to win an EAJA claim and the prevailing business is almost always left high and dry. Even though the employer wins its case against the Board, the Board can still avoid paying fees and expenses under the EAJA if it meets this lower burden. This low threshold has led to egregious cases in which the employer has won its NLRB case—or even where the NLRB has withdrawn its complaint after forcing the employer to endure a costly trial or changed its legal theory in the middle of its case—and the employer has lost its followup EAJA claim for fees and expenses.

Since a prevailing employer faces such a difficult task when attempting to recover fees under the EAJA, very few even try to recover. For example, Mr. Speaker, in fiscal year 1996, the NLRB received only eight EAJA fee applications, and awarded fees to a single applicant—for a little more than $11,000. In fiscal year 1995, the Board received only nine fee applications from prevailing parties and awarded fees to only four applicants totaling less than $50,000. Indeed, during the 10-year period from fiscal year 1987 to fiscal year 1996, the NLRB received a grand total of 100 applications for fees. This small number of EAJA awards arises in an overall context of thousands of cases each year. In fiscal year 1996 alone, for example, the NLRB received nearly 33,000 unfair labor practice charges and issued more than 2,500 complaints, 2,204 of them settled at some point post-complaint.

The NLRB understandably argues the lack of successful EAJA claims is due to it carefully issuing only worthy complaints—those it is substantially justified in bringing. Does anyone believe this? Of 2,500 complaints last year the Board was unreasonable one time? In fact, Mr. Speaker, employers who have prevailed against the Board recognize the long odds of winning, and high expense of undertaking, additional EAJA litigation. Since it is clear the EAJA is underutilized at best, and at worst simply not working, the FAIR Act imposes a flat rule: If you are a small business, or a small labor organization, and you prevail against the Board, then you will automatically get your attorney's fees and expenses.

The FAIR Act adds to new section 20 to the National Labor Relations Act. Section 20(a) simply states that a business or labor organization which has not more than 100 employees and a net worth of not more than $1.4 million and is a prevailing party against the NLRB in administrative proceedings shall be awarded fees as a prevailing party under the EAJA without regard to whether the position of the Board was substantially justified.

The FAIR Act awards fees and expenses in accordance with the provisions of the EAJA and would thus require a party to file a fee application pursuant to existing NLRB EAJA regulations, but the prevailing party would not be precluded from receiving an award by any burden the NLRB could show. If the Board loses an action against the small entity, the Board pays the fees and expenses of the prevailing party.

Section 20(b) of the FAIR Act applies the same rule regarding the awarding of fees and expenses to a small employer or labor organization engaged in a civil court action with the NLRB. This covers situations in which the party wins a case against the Board in civil court, including a proceeding for judicial review of Board action. The section also makes clear that fees and expenses incurred appealing an actual fee determination under section 20(a) would also be awarded to a prevailing party without regard to whether or not the Board could show it was substantially justified.

In adopting EAJA case law and regulations for counting number of employees and assessing net worth, an employer's eligibility under the FAIR Act is determined as of the date of the complaint in an unfair labor practice proceeding or the date of the notice in a backpay proceeding. In addition, in determining the 100-employee limit, the FAIR Act adopts the NLRB's EAJA regulations, which count part-time employees on a proportional basis.

Mr. Speaker, the FAIR Act will arm small entities—businesses and labor organizations alike—with the incentive to defend themselves against the NLRB. The FAIR Act will help prevent spurious lawsuits and ensure that small employers have the ability to effectively fight for themselves when they have actions brought against them by a vast bureaucracy with vast resources.

If the NLRB wins its case against a small employer than it has nothing to fear from the FAIR Act. If, however, the NLRB drags an innocent small employer through the burden, expense, heartache and intrusion of an action that the employer ultimately wins, reimbursing the employer for its attorney's fees and expenses is the very least that should be done. It's the FAIR thing to do. I urge my colleagues in the House to support this important legislation and look forward to working with all Members in both the House and Senate in passing this bill.

FLORIDA INTERNATIONAL UNIVERSITY'S 25TH ANNIVERSARY

HON. LINCOLN DIAZ-BALART

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1997

Mr. DIAZ-BALART. Mr. Speaker, I rise today to congratulate Florida International University for 25 years of academic excellence and exciting growth.

Florida International University [FIU] has distinguished itself by becoming a center for intellectual inquiry and research that emphasizes the link between basic and applied scholarship. The university's interdisciplinary centers have acted as a catalyst for creativity in the arts, the sciences, and the professions by encouraging interaction among its students, faculty, staff, and the communities it serves.

Florida International University is ranked among the top 10 public commuter colleges in the United States by Money Magazine and is also cited in several leading college guides, including Barron's Guide to the Most Prestigious Colleges; and U.S. News & World Report's annual survey of America's Best Colleges.

Under the tenure of Dr. Modesto Mitch Madique, the university has made tremendous inroads. Dr. Madique, the first Cuban-American to be president of a 4-year college, became president in 1986. He has had the vision and the initiative to push the institution toward the 21st century.