

trend. Probably more than any other circuit in the America, the views of the Ninth Circuit are unquestionably out of alignment with mainstream America, and I believe the panel badly needs a sense of judicial balance. I do not believe that Judge Fisher would have helped to provide that balance.

#### AMERICA'S HEALTH CARE

Mr. GRAMM. Mr. President, I wish to bring to the attention of my colleagues one of the most insightful articles that I have read in regard to the most effective way to promote health care and patient's rights.

Written by Mr. M. Anthony Burns of Ryder System Inc., the comments appear on the op-ed page of yesterday's Washington Post. Mr. Burns speaks as the CEO of a company which provides health care benefits for 80,000 employees and family members. At a time when courage appears to be in short supply, it is refreshing to find a person who is able and willing to publicly examine a complex issue in such a lucid, thoughtful manner.

I encourage all my colleagues to read and consider carefully the analysis offered by Mr. Burns. I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Oct. 5, 1999]

AN ASSAULT ON AMERICA'S HEALTH CARE

(By M. Anthony Burns)

As the CEO of a \$5 billion transportation company, when I need legal advice, I listen to the experts. Congress should do the same when it considers the Dingell-Norwood "Patients' Bill of Rights," which would allow patients to sue their HMOs but would also make employers liable in state court for the health care benefits they provide.

The sponsors claim their legislation includes an exemption to shield employers from liability, but Reps. John Dingell and Charlie Norwood are just dead wrong on that. A new study prepared by independent legal experts shows this so-called employers' "shield" is nothing more than a legal mirage that provides only the illusion of protection. In reality, very few companies could withstand the lawsuit exposure this bill would impose on every business in America.

David Kenty and Frank Sabatino, experts in employee benefits law and co-authors of the publication "ERISA: A Comprehensive Guide," found that under the Dingell-Norwood bill "employers would be subject to state law causes of action replete with jury trials, extra-contractual damages, and punitive damages." This would "dramatically change the way that group health benefits claims are litigated in the United States," conclude the authors. "Anyone who claims the contrary is simply failing to comprehend the thrust of the legislation."

Trial lawyers could initiate lawsuits against employers based on a number of legal arguments, according to Kenty and Sabatino.

First, plaintiffs could argue that insurance companies or third-party administrators are merely the agents of the employer and therefore—shield language notwithstanding—the employer is also responsible.

Second, a lawyer could argue that by selecting one health care provider over an-

other, the employer's discretionary decisions played an integral part in a particular employee/patient outcome.

Third, most employers commonly retain the right to override the decisions of their health care provider or fiduciary to enable them to serve as patient advocates for their employees. The Dingell-Norwood bill would turn that relationship on its ear, forcing most companies to abandon their advocacy role altogether.

Supporters of the lawsuit provisions scoff at the notion that trial attorneys would abuse the health care system or employers who provide insurance. Tell that to the West Virginia convenience store that got hit with a \$3 million judgment when one of its workers injured her back opening a pickle jar.

The likely epidemic of litigation this kind of legislation would generate creates an impossible choice for employers. They can continue to provide health care coverage and risk financial disaster if they find themselves on the losing end of a health care lawsuit, whether they had anything to do with treatment decisions or not. Or they can stop providing health care altogether.

In fact, according to a recent survey of small business owners, six out of 10 reported they would be forced to end employee coverage rather than face this risk. Today my company, Ryder, provides top quality health care benefits to 22,000 employees covering more than 80,000 people. We monitor employee satisfaction with our health care providers, and we act as a strong advocate for employees in disputes with these providers.

But if Dingell-Norwood passes, we will be forced to seriously reevaluate whether and how we can continue to offer health benefits to our employees. As with most businesses today, the exposure could simply be too severe for us. It would put our traditional employer-provided system of health care at extreme risk.

Add rising health care costs to this new threat of expensive litigation and it's clear that this legislation is a prescription for disaster. Last year health care costs went up 6 percent and the average employer spent \$4,000 per employee on health care. This year, health care costs are expected to go up an average 9 percent, and potentially much higher for small businesses.

As a result, it will be harder for employers to offer health insurance and, as some costs are passed on, harder for workers to afford it. Research shows that every one percent increase in costs forces 300,000 more people to lose their health care coverage.

A lot of people agree that "right-to-sue" provisions don't make sense for either employers or employees. The U.S. Senate, 25 state legislatures and President Clinton's own hand-picked Health Care Quality Commission all refused to support similar provisions to expand liability.

Congress says it wants to make managed care more accountable, but Dingell-Norwood would only raise health care costs, increase the number of uninsured and punish the nation's employers who voluntarily provide health care to millions of American workers and their families.

This legislation isn't a "Patients' Bill of Rights." It's a devastating assault on America's health care system, and Congress should reject it.

#### THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Tuesday, October 5, 1999, the Federal debt stood at \$5,657,493,668,389.71 (Five trillion, six hundred fifty-seven billion, four hun-

dred ninety-three million, six hundred sixty-eight thousand, three hundred eighty-nine dollars and seventy-one cents).

One year ago, October 5, 1998, the Federal debt stood at \$5,527,218,000,000 (Five trillion, five hundred twenty-seven billion, two hundred eighteen million).

Five years ago, October 5, 1994, the Federal debt stood at \$4,692,973,000,000 (Four trillion, six hundred ninety-two billion, nine hundred seventy-three million).

Ten years ago, October 5, 1989, the Federal debt stood at \$2,878,570,000,000 (Two trillion, eight hundred seventy-eight billion, five hundred seventy million).

Fifteen years ago, October 5, 1984, the Federal debt stood at \$1,572,268,000,000 (One trillion, five hundred seventy-two billion, two hundred sixty-eight million) which reflects a debt increase of more than \$4 trillion—\$4,085,225,668,389.71 (Four trillion, eighty-five billion, two hundred twenty-five million, six hundred sixty-eight thousand, three hundred eighty-nine dollars and seventy-one cents) during the past 15 years.

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

##### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### MESSAGES FROM THE HOUSE

At 10:17 a.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 bill, without amendment:

S. 559. An act to designate the Federal building located at 300 East 8th Street in Austin, Texas, as the "J.J. 'Jake' Pickle Federal Building."

The message also announced that the House has agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill, H.R. 2606, making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2000, and for other purposes

At 11:36 a.m., a message from the House of Representative, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills and joint resolution in which it requests the concurrence of the Senate:

H.R. 1663. An act to recognize National Medal of Honor sites in California, Indiana, and South Carolina.

H.R. 764. An act to reduce the incidence of child abuse and neglect, and for other purposes.

H.R. Res. 65. Joint resolution commending the World War II veterans who fought in the Battle of the Bulge, and for other purposes.

#### ENROLLED BILLS SIGNED

At 5:29 p.m. a message from the House of Representatives, delivered by Mr. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 2606. An act making appropriations for foreign operations, export financing, and belted programs for the fiscal year ending September 30, 2000, and for other purposes.

S. 559. An act to designate the Federal building located at 33 East 8th Street in Austin, Texas, as the "J.J. 'Jake' Pickle Federal Building."

The enrolled bills were subsequently signed by the President pro tempore (Mr. THURMOND).

#### MEASURES REFERRED

The following bills and joint resolutions were read the first and second time by unanimous consent and referred as indicated:

H.R. 1663. An act to recognize National Medal of Honors sites in California, Indiana, and South Carolina; to the Committee on Armed Services.

H.R. 764. An act to reduce the incidence of child abuse and neglect, and for other purposes, to the Committee on the Judiciary.

H.J. Res. 65. Joint resolution commending the World War II veterans who fought in the Battle of the Bulge, and for other purposes; to the Committee on Judiciary.

#### MEASURE PLACE ON THE CALENDAR

The following bill was read the second time and placed on the calendar.

S. 1692. A bill to amend title 18, Untied States Code, to ban partial-birth abortions.

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-5502. A communication from the Secretary of Defense, transmitting, the report of a retirement; to the Committee on Armed Services.

EC-5503. A communication from the Secretary of Defense, transmitting, the report of a retirement; to the Committee on Armed Services.

EC-5504. A communication from the Chairman, the J. William Fulbright Foreign Scholarship Board, transmitting, pursuant to law, the 1998 annual report; to the Committee on Foreign Relations.

EC-5505. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the report of the texts and background statements of international agreements, other than treaties; to the Committee on Foreign Relations.

EC-5506. A communication from the Assistant Secretary, Legislative Affairs, Depart-

ment of State, transmitting, pursuant to the Foreign Assistance Act of 1961, a report relative to Indonesia; to the Committee on Foreign Relations.

EC-5507. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to the International Fund for Ireland; to the Committee on Foreign Relations.

EC-5508. A communication from the Auditor of the District of Columbia, transmitting, pursuant to law, a report entitled "Audit of the People's Counsel Agency Fund for Fiscal Year 1997"; to the Committee on Governmental Affairs.

EC-5509. A communication from the Auditor of the District of Columbia, transmitting, pursuant to law, a report entitled "Audit of the Public Service Commission Agency Fund for Fiscal Year 1997"; to the Committee on Governmental Affairs.

EC-5510. A communication from the Auditor of the District of Columbia, transmitting, pursuant to law, a report entitled "Audit of the People's Counsel Agency Fund for Fiscal Year 1998"; to the Committee on Governmental Affairs.

EC-5511. A communication from the Auditor of the District of Columbia, transmitting, pursuant to law, a report entitled "Audit of the Public Service Commission Agency Fund for Fiscal Year 1998"; to the Committee on Governmental Affairs.

EC-5512. A communication from the Auditor of the District of Columbia, transmitting, pursuant to law, a report entitled "Observed Weaknesses in the District's Early Out Retirement Incentive Program"; to the Committee on Governmental Affairs.

EC-5513. A communication from the Auditor of the District of Columbia, transmitting, pursuant to law, a report entitled "Chronology of the Steps Through Which the Tentative Agreement Between the Washington Teachers Union AFT Local #6, AFL-CIO and the District of Columbia Public Schools Passed"; to the Committee on Governmental Affairs.

EC-5514. A communication from the Auditor of the District of Columbia, transmitting, pursuant to law, a report entitled "Auditors Review of Unauthorized Transactions Pertaining to ANC 1A"; to the Committee on Governmental Affairs.

EC-5515. A communication from the Auditor of the District of Columbia, transmitting, pursuant to law, a report entitled "Auditors Review of Unauthorized and Improper Transactions of ANC 7C's Chairperson"; to the Committee on Governmental Affairs.

EC-5516. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled "Prevailing Rate Systems; Change in Survey Cycle for the Southwest Michigan Appropriated Fund Wage Area" (RIN3206-AI68), received October 4, 1999; to the Committee on Governmental Affairs.

EC-5517. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled "Prevailing Rate Systems; Redefinition of the Eastern South Dakota and Wyoming Appropriated Fund Wage Areas" (RIN3206-AI74), received October 4, 1999; to the Committee on Governmental Affairs.

EC-5518. A communication from the Executive Director, Committee for Purchase from People who are Blind or Severely Disabled, transmitting, pursuant to law, the report of a rule relative to additions to and deletions from the Procurement List, received September 30, 1999; to the Committee on Governmental Affairs.

EC-5519. A communication from the Chairman and CEO, Chemical Safety and Hazard

Investigation Board, transmitting, pursuant to law, a report relative to the annual inventory of agency activities which could be considered for performance by the private sector; to the Committee on Governmental Affairs.

EC-5520. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report relative to its commercial activities inventory of the Department; to the Committee on Governmental Affairs.

EC-5521. A communication from the Architect of the United States, transmitting, pursuant to law, a report relative to its commercial activities inventory; to the Committee on Governmental Affairs.

EC-5522. A communication from the Director, Federal Mediation and Conciliation Service, transmitting, pursuant to law, a report relative to its commercial activities inventory; to the Committee on Governmental Affairs.

EC-5523. A communication from the Chairman, U.S. Commission for the Preservation of America's Heritage Abroad, transmitting, pursuant to law, a report relative to its commercial activities inventory; to the Committee on Governmental Affairs.

EC-5524. A communication from the Acting Director, Office of Federal Housing Enterprise Oversight, transmitting, pursuant to law, a report relative to its commercial activities inventory; to the Committee on Governmental Affairs.

EC-5525. A communication from the Director, Office of Government Ethics, transmitting, pursuant to law, a report relative to its commercial activities inventory; to the Committee on Governmental Affairs.

EC-5526. A communication from the President, James Madison Memorial Fellowship Foundation, transmitting, pursuant to law, a report relative to its commercial activities inventory; to the Committee on Governmental Affairs.

EC-5527. A communication from the Chairman, National Labor Relations Board, transmitting, pursuant to law, a report relative to its commercial activities inventory; to the Committee on Governmental Affairs.

#### PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-361. A resolution adopted by the City Council of the City of Fond du Lac, Wisconsin relative to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women; to the Committee on Foreign Relations.

POM-362. A joint resolution adopted by the Legislature of State of California relative to war crimes committed by the Japanese military during World War II; to the Committee on Foreign Relations.

#### ASSEMBLY JOINT RESOLUTION NO. 27

Whereas, Our nation is founded on democratic principles that recognize the vigilance with which fundamental individual human rights must be safeguarded in order to preserve freedom; and

Whereas, This resolution condemns all violations of the international law designed to safeguard fundamental human rights as embodied in the Geneva and Hague Conventions; and

Whereas, This resolution vociferously condemns all crimes against humanity and at the same time condemns the actions of those who would use this resolution to further an agenda that fosters anti-Asian sentiment and racism, or Japan "bashing," or otherwise fails to distinguish between Japan's war