SENATE CONCURRENT RESOLUTION 5—EXPRESSING CONGRESSIONAL OPPOSITION TO THE UNILATERAL DECLARATION OF A PALESTINIAN STATE AND URGING THE PRESIDENT TO ASSERT CLEARLY UNITED STATES OPPOSITION TO SUCH A UNILATERAL DECLARATION OF STATEHOOD

Mr. MURKOWSKI (for himself, Mr. WYDEN, Mr. MACK, Mr. SMITH of Oregon, Mr. HATCH, Mr. KERREY of Nebraska, Mr. FITZGERALD, Mr. HELMS, Mr. ASHCROFT, Mr. SCHUMER, Mr. TORRICELLI, Mr. GRAMS, and Mr. LAUTENBERG) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 5

Whereas at the heart of the Oslo peace process lies the basic, irrevocable commitment made by Palestinian Chairman Yasir Arafat that, in his words, ''all outstanding issues relating to permanent status will be resolved through negotiations'';

Whereas resolving the political status of the territory controlled by the Palestinian Authority while ensuring Israel's security is one of the central issues of the Israeli-Palestinian conflict;

Whereas a declaration of statehood by the Palestinians outside the framework of negotiations would, therefore, constitute a most fundamental violation of the Oslo process;

Whereas Yasir Arafat and other Palestinian leaders have repeatedly threatened to declare unilaterally the establishment of a Palestinian state;

Whereas the unilateral declaration of a Palestinian state would introduce a dramatically destabilizing element into the Middle East, risking Israeli countermeasures, a quick descent into violence, and an end to the entire peace process; and

Whereas in light of continuing statements by Palestinian leaders, United States opposition to any unilateral Palestinian declaration of statehood should be made clear and unambiguous: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That—

(1) the final political status of the territory controlled by the Palestinian Authority can only be determined through negotiations and agreement between Israel and the Palestinian Authority;

(2) any attempt to establish Palestinian statehood outside the negotiating process will invoke the strongest congressional opposition; and

(3) the President should unequivocally assert United States opposition to the unilateral declaration of a Palestinian State, making clear that such a declaration would be a grievous violation of the Oslo accords and that a declared state would not be recognized by the United States.

SENATE RESOLUTION 32—TO EXPRESS THE SENSE OF THE SENATE REAFFIRMING THE CARGO PREFERENCE POLICY OF THE UNITED STATES

Mr. INOUYE submitted the following resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. RES. 32

Resolved,

Whereas the maritime policy of the United States expressly provides that the United States have a merchant marine sufficient to carry a substantial portion of the international waterborne commerce of the United States;

Whereas the maritime policy of the United States expressly provides that the United States have a merchant marine sufficient to serve as a fourth arm of defense in time of war and national emergency;

Whereas the Federal Government has expressly recognized the vital role of the United States merchant marine during Operation Desert Shield and Operation Desert Storm;

Whereas cargo reservation programs of Federal agencies are intended to support the privately owned and operated United States-flag merchant marine by requiring a certain percentage of government-impelled cargo to be carried on United States-flag vessels;

Whereas when Congress enacted Federal cargo reservation laws Congress contemplated that Federal agencies would incur higher program costs to use the United States-flag vessels required under such laws;

Whereas section 2631 of title 10, United States Code, requires that all United States military cargo be carried on United States-flag vessels;

Whereas Federal law requires that cargo purchased with loan funds and guarantees from the Export-Import Bank of the United States established under section 635 of title 12, United States Code, be carried on United States-flag vessels;

Whereas section 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241f) requires that 75 percent of the gross tonnage of certain agricultural exports that are the subject of an export activity of the Commodity Credit Corporation or the Secretary of Agriculture be carried on United States-flag vessels;

Whereas section 901(b) of such Act (46 U.S.C. App. 1241(b)) requires that at least 50 percent of the gross tonnage of other ocean borne cargo generated directly or indirectly by the Federal Government be carried on United States-flag vessels;

Whereas cargo reservation programs are very important for the shipowners of the United States who require compensation for maintaining a United States-flag fleet;

Whereas the United States-flag vessels that carry reserved cargo provide quality jobs for seafarers of the United States;

Whereas, according to the most recent statistics from the Maritime Administration, in 1997, cargo reservation programs generated $900,000,000 in revenue to the United States fleet and accounted for one-third of all revenue from United States-flag foreign trade cargo;

Whereas the Maritime Administration has indicated that the total volume of cargoes moving under the programs subject to Federal cargo reservation laws is declining and will continue to decline;

Whereas, in 1970 Congress found that the degree of compliance by Federal agencies with the requirements of the cargo reservation laws was chaotic, uneven, and varied from agency to agency;

Whereas, to ensure maximum compliance by all agencies with Federal cargo reservation laws, Congress enacted the Merchant Marine Act of 1970 (Public Law 91–469) to centralize monitoring and compliance authority for all cargo reservation programs to the Maritime Administration;

Whereas, notwithstanding section 901(b) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b)), and the purpose and policy of the Federal cargo reservation programs, compliance by Federal agencies with Federal cargo reservation laws continues to be inadequate;

Whereas the Maritime Administrator cited the limited enforcement powers of the Maritime Administration with respect to Federal agencies that fail to comply with section 901(b) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b)) and other Federal cargo reservation laws; and

Whereas the Maritime Administrator recommended that Congress grant the Maritime Administration the authority to settle any cargo reservation disputes that may arise between a ship operator and a Federal agency: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) each Federal agency shall administer programs of the Federal agency that are subject to Federal cargo reservation laws (including regulations of the Maritime Administration) to ensure that such programs are in compliance with the intent and purpose of such cargo reservation laws; and

(2) the Maritime Administration shall closely and strictly monitor any cargo that is subject to such cargo reservation laws and shall provide directions and decisions to such Federal agencies as will ensure maximum compliance with the cargo preference laws.

• Mr. INOUYE. Mr. President, the law of the land, specifically section (1) of the Merchant Marine Act of 1936, declares that the United States shall have a merchant marine sufficient to, among other things, carry a substantial portion of our international waterborne commerce and to serve as a fourth arm of defense in time of war and national emergency.

The importance of these requirements has been dramatically illustrated by the vital role of our merchant marine in World War II, Korea, Vietnam, during operations Desert Shield and Desert Storm, and most recently in Haiti, Somalia, and Bosnia.

While the privately owned and operated U.S.-flag merchant marine has performed so magnificently and effectively in times of crisis, it has also made extraordinary efforts to ensure that a substantial portion of commercial cargo bound to and from the United States moves on U.S. vessels. Given the chronic overtonnaging in international shipping, cut-throat competition, and the competitive edge our trading partners give their national flags, this has not been easy. In addition to competition with subsidized foreign carriers, U.S.-flag carriers are forced to complete with flag of convenience carriers. Over two-thirds of the

international vessels operating in commerce are operating under flags of convenience. Flag of convenience registries include such major maritime powers as Panama, Liberia, the Marshall Islands, and Vanuatu. These registries only require their vessel owners to pay registration fees. Shipowners are not required to pay tax on revenues earned and employees do not have to pay income tax. Further, the shipowner has little or no obligation to comply with the law of the nation of registry.

Nevertheless, if our commercial fleet is to continue to be an effective auxiliary in times of war or national emergency, it must first be commercially viable in times of peace. Otherwise, there will be no merchant fleet when the need arises.

I think we all would agree that there is a substantial national interest in promoting our merchant fleet. I think, also, that we would all agree that U.S. national security and economic security interests should not be held hostage by insufficient U.S.-controlled sealift assets. Given the diminution of the flag fleets of our NATO allies it will be more important in the future to sustain a viable U.S.-flag presence. Indeed, several laws of our land recognize that national interest and spell out specifically how the U.S. government is to go about promoting it. Federal laws require that U.S. military cargo, cargo purchased with loan funds and guarantees from the Export-Import Bank, 75 percent of concessionary agricultural cargo, and at least 50 percent of all other international ocean borne cargo generated directly or indirectly by the federal government be carried on U.S.-flag vessels. The alarming news is that according to the Maritime Administration (MARAD) the total volume of cargo moving under these programs is declining and will continue to do so.

According to a report by Nathan Associates, Inc., the 1992 economic impact of cargo preference for the United States was 40,000 direct, indirect and induced jobs; $2.2 billion in direct, indirect and induced household earnings; $354 million in direct, indirect and induced federal personal and business income tax revenues—$1.20 for every dollar of government outlay on cargo preference; and $1.2 billion in foreign exchange.

It is, therefore, imperative that U.S.-flag vessels carry every ton of cargo which these programs and the law intend, and in fact require, them to carry. This brings me to the reason for the resolution I am submitting today. These are two substantial problems which threaten the viability of these programs and, therefore, the viability of our merchant fleet.

Several agencies administering cargo reservation programs continue to evade the spirit and letter of the reservation laws by finding the law inapplicable to a particular program or employing other loopholes.

This problem of evasion and uneven confidence led the Congress to amend the Merchant Marine Act of 1970 to centralize monitoring and compliance authority for all cargo reservation programs in the MARAD. Nevertheless, the problem remains. Critics of the MARAD maintain the agency is too timid, and does not discharge its obligation aggressively. The MARAD, on the other hand, says it has limited enforcement powers over those government agencies which are not in compliance.

Recently, the United States District Court for the District of Columbia entered an unopposed order upon consideration of the joint motion of the parties in Farrell Lines Incorporated versus United States Department of Agriculture (USDA) and Sea-Land Service, Inc. The order affirms the appropriate roles of the MARAD in administering the cargo preference laws with respect to Food for Progress and Section 416(b) programs, and the USDA in complying with those laws and the MARAD's policies and regulations implementing them.

Mr. President, the resolution I am submitting today expresses the sense of the Senate that all of these federal agencies must fully comply with both the intent and purpose of existing cargo reservation laws, and that the MARAD should provide directions and decisions to these agencies to ensure maximum compliance with these laws.●

ADDITIONAL STATEMENTS

STATES' RIGHTS PROTECTION ACT OF 1999

● Mr. ABRAHAM. Mr. President, I rise as an original cosponsor of the ''States' Rights Protection Act of 1999.'' This legislation will prevent a grave injustice that could do significant damage to our states, and to our federal system.

Several years ago, Mr. President, a number of states commenced lawsuits against American tobacco companies. The states sought damages on the basis of a number of claims, including violation of consumer fraud and other State consumer protection laws, antitrust violations and unjust enrichment. Some suits included claims for tobacco-related health care costs incurred by the states, and some did not.

Eventually all 50 states became parties in one way or another to anti-tobacco lawsuits. Last November a major settlement was reached, involving 46 states. That settlement included no funds of any kind to be allocated for State medicaid costs.

The federal government in Washington did not initiate these suits. The federal government in Washington provided no financial assistance to the states in furtherance of their suits. Yet now, after the states and the tobacco companies have agreed on a financial settlement, the Clinton Administration is seeking to divert a significant portion of that settlement to its own use.

The federal Health Care Financing Administration (HCFA) has stated that it wants to ''recoup'' some of the states' settlement funds. They claim to have a right to these funds under a Medicaid law which the federal government has traditionally used to recover its share of ''overpayments.'' These overpayments typically arise when providers overbill Medicaid.

Mr. President, HCFA's claims cannot stand. The law to which they refer was intended to prevent fraud and other forms of overbilling. It was not intended to allow the federal government to seize huge amounts of money to which it has no proper title. States have obtained a legal right to this money. They gained this right through a properly constructed and affirmed legal settlement of lawsuits filed against product manufacturers, on behalf of all their residents, asserting a consumer protection and various other causes of action.

There is no federal medical claim involved. Thus HCFA has no right to these monies, and neither does any agency of the federal government.

The Administration's pursuit of monies from this settlement amounts to nothing more or less than a raw assertion of federal power. We must oppose it for the good of our states and for the good of our form of limited, federal government.

Ours is a limited government, Mr. President. It is limited in that the Constitution delegates only certain powers to the federal branches and their officials. Our Constitution includes a number of what James Madison called ''auxiliary precautions'' to keep federal officials within their proper bounds, thereby protecting our liberties. But Madison recognized that the primary check on those who would overstep their proper bounds must be the determination of elected officials to see that the Constitution's terms are respected.

A federal government that simply steps in to take money from the states is not respecting our Constitution. That federal government is taking us far down a dangerous path toward unrestrained central power. We must see that this does not happen.

In addition, Mr. President, as a practical matter it would be a mistake to allow the federal government to commandeer these funds. To begin with, were the federal government in Washington to take these funds from the states under the weak legal pretense put forward by the HCFA, the result would be long, wasteful litigation. That litigation will benefit no one, instead it will poison intergovernmental relations for years to come.

Indeed, if the HCFA begins to seize state settlement funds, it will do so by cutting federal Medicaid payments to the states. This will make it much more difficult for states to provide health care for children from low and moderate income families, the disabled and millions of others who depend on Medicaid. The real victims of this