

Senate with the request that it be officially entered into the Congressional Record as a memorial to the Congress of the United States.

POM-112. A resolution adopted by the Council of the City of Cincinnati, Ohio relative to the Social Security Act; to the Committee on Health, Education, Labor, and Pensions.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CHAFEE, from the Committee on Environment and Public Works, without amendment:

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

S. 858. A bill to designate the Federal building and United States courthouse located at 18 Greenville Street in Newnan, Georgia, as the "Lewis R. Morgan Federal Building and United States Courthouse."

EXECUTIVE REPORT OF A COMMITTEE

The following executive report of a committee was submitted:

By Mr. CHAFEE, for the Committee on Environment and Public Works:

George T. Frampton, Jr., of the District of Columbia, to be a Member of the Council on Environmental Quality.

(The above nomination was reported with the recommendation that he be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. SCHUMER (for himself, Mr. SARBAKES, Mr. BRYAN, and Mr. JOHN-SON):

S. 1015. A bill to require disclosure with respect to securities transactions conducted "online", to require the Securities and Exchange Commission to study the effects on online trading on securities markets, to prevent online securities fraud, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DEWINE (for himself, Mr. GREGG, Mr. WELLSTONE, and Mrs. MURRAY):

S. 1016. A bill to provide collective bargaining for rights for public safety officers employed by States or their political subdivisions; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MACK (for himself, Mr. GRAHAM, Mr. SANTORUM, Mr. SARBAKES, Mr. CHAFEE, Mr. BRYAN, Mr. MURKOWSKI, Mr. BREAUX, Mr. JEFFORDS, Mr. KERREY, Mr. COVERDELL, Mr. ROBB, Mr. CRAIG, Mr. CONRAD, Mr. SHELBY, Mr. ROCKEFELLER, Mr. ALLARD, Mr. DODD, Mr. GRAMS, Mr. JOHNSON, Mr. HAGEL, Mr. SCHUMER, Mr. CRAPO, Mr. LIEBERMAN, Mr. HELMS, Mr. EDWARDS, Mr. ABRAHAM, Mrs. LINCOLN, Mr. SESSIONS, Mrs. BOXER, Mr. HUTCHINSON, Mrs. FEINSTEIN, Mr. LUGAR, Mr. WELLSTONE, Ms. SNOWE, Mr. TORRICELLI, Mr. SPECTER, Mr. DORGAN, Mrs. HUTCHISON, Mr. HOLLINGS, Mr. THOMAS, Mr. DASCHLE, Mr. LAUTENBERG, Mr. KERRY, and Mrs. MURRAY):

BOXER, Mr. HUTCHINSON, Mrs. FEINSTEIN, Mr. LUGAR, Mr. WELLSTONE, Ms. SNOWE, Mr. TORRICELLI, Mr. SPECTER, Mr. DORGAN, Mrs. HUTCHISON, Mr. HOLLINGS, Mr. THOMAS, Mr. DASCHLE, Mr. LAUTENBERG, Mr. KERRY, Mrs. MURRAY):

S. 1017. A bill to amend the Internal Revenue Code of 1986 to increase the State ceiling on the low-income housing credit; to the Committee on Finance.

By Mr. EDWARDS:

S. 1018. A bill to provide for the appointment of additional Federal district judges in the State of North Carolina, and for other purposes; to the Committee on the Judiciary.

By Mr. GRASSLEY:

S. 1019. A bill for the relief of Regine Beatie Edwards; to the Committee on the Judiciary.

By Mr. GRASSLEY (for himself and Mr. FEINGOLD):

S. 1020. A bill to amend chapter 1 of title 9, United States Code, to provide for greater fairness in the arbitration process relating to motor vehicle franchise contracts; to the Committee on the Judiciary.

By Mr. KOHL:

S. 1021. A bill to provide for the settlement of claims of the Menominee Indian Tribe of Wisconsin; to the Committee on the Judiciary.

By Mr. DORGAN (for himself, Mr. CONRAD, and Mr. WELLSTONE):

S. 1022. A bill to authorize the appropriation of an additional \$1,700,000,000 for fiscal year 2000 for health care for veterans; to the Committee on Veterans' Affairs.

By Mr. MOYNIHAN (for himself, Mr. KENNEDY, Mr. SCHUMER, Mr. HELMS, Mr. KERRY, Mr. TORRICELLI, Mr. DURBIN, Mr. SANTORUM, Mr. LIEBERMAN, Mr. KERREY, Mr. LEVIN, Mrs. MURRAY, Mr. SPECTER, Mr. CLELAND, and Mr. EDWARDS):

S. 1023. A bill to amend title XVIII of the Social Security Act to stabilize indirect graduate medical education payments; to the Committee on Finance.

By Mr. MOYNIHAN (for himself, Mr. SCHUMER, Mr. SPECTER, Mr. KERRY, Mr. KERREY, Mr. SANTORUM, Mr. DURBIN, Mr. CLELAND, and Mr. CHAFEE):

S. 1024. A bill to amend title XVIII of the Social Security Act to carve out from payments to Medicare+Choice organizations amounts attributable to disproportionate share hospital payments and pay such amounts directly to those disproportionate share hospitals in which their enrollees receive care; to the Committee on Finance.

By Mr. MOYNIHAN (for himself, Mr. BREAUX, Mr. DASCHLE, Mr. SANTORUM, Mr. DURBIN, Mr. SCHUMER, Mr. KERRY, Mr. SPECTER, Mr. CONRAD, Mr. BAUCUS, Mr. CHAFEE, Mr. KERREY, and Mr. CLELAND):

S. 1025. A bill to amend title XVIII of the Social Security Act to ensure the proper payment of approved nursing and allied health education programs under the medicare program; to the Committee on Finance.

By Mr. DODD:

S. 1026. A bill to amend title XVIII of the Social Security Act to prevent sudden disruption of medicare beneficiary enrollment in Medicare+Choice plans; to the Committee on Finance.

By Mr. SMITH of Oregon (for himself, and Mr. WYDEN):

S. 1027. A bill to reauthorize the participation of the Bureau of Reclamation in the Deschutes Resources Conservancy, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BROWNBACK (for himself, Mr. HELMS, Mr. INHOFE, Mr. SANTORUM, Mr. ASHCROFT, Mr. ENZI, Mr. MCCAIN, Mr. SMITH of New Hampshire, and Mr. NICKLES):

S. Res. 100. A resolution reaffirming the principles of the Programme of Action of the International Conference on Population and Development with respect to the sovereign rights of countries and the right of voluntary and informed consent in family planning programs; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MACK (for himself, Mr. GRAHAM, Mr. SANTORUM, Mr. SARBAKES, Mr. CHAFEE, Mr. BRYAN, Mr. MURKOWSKI, Mr. BREAUX, Mr. JEFFORDS, Mr. KERREY, Mr. COVERDELL, Mr. ROBB, Mr. CRAIG, Mr. CONRAD, Mr. SHELBY, Mr. ROCKEFELLER, Mr. ALLARD, Mr. DODD, Mr. GRAMS, Mr. JOHNSON, Mr. HAGEL, Mr. SCHUMER, Mr. CRAPO, Mr. LIEBERMAN, Mr. HELMS, Mr. EDWARDS, Mr. ABRAHAM, Mrs. LINCOLN, Mr. SESSIONS, Mrs. BOXER, Mr. HUTCHINSON, Mrs. FEINSTEIN, Mr. LUGAR, Mr. WELLSTONE, Ms. SNOWE, Mr. TORRICELLI, Mr. SPECTER, Mr. DORGAN, Mrs. HUTCHISON, Mr. HOLLINGS, Mr. THOMAS, Mr. DASCHLE, Mr. LAUTENBERG, Mr. KERRY, and Mrs. MURRAY):

S. 1017. A bill to amend the Internal Revenue Code of 1986 to increase the State ceiling on the low-income housing credit; to the Committee on Finance.

AFFORDABLE HOUSING OPPORTUNITY ACT OF 1999

Mr. MACK. Mr. President, I rise today to introduce the Affordable Housing Opportunity Act of 1999. My colleague from my home state, BOB GRAHAM, my colleague from Pennsylvania, Senator SANTORUM, and 42 other members of the Senate join me as original cosponsors of this effort to make sure that the Low Income Housing Tax Credit is not undercut by the effects of inflation.

The Low Income Housing Tax Credit is one federal housing program that works. It works to produce affordable rental housing by allowing states to distribute tax credits to those who invest in apartments for low income families. It works because it is decentralized, it is market-oriented, and it relies on the private sector.

The Low Income Housing Tax Credit works because it is based on sound economics. This is in stark contrast to the alternative government approach to the problem of a scarcity of privately owned, affordable housing units, the approach of rent control. Under rent

control, owners are restricted in the price they can charge for their apartments. Since this dramatically reduces the return on their investment in housing, potential owners of rental units take their money elsewhere. The result, confirmed in a study of rent control in California in the early 1990s, is that rent control actually reduces the number of rental units available for low income families.

There is a better way. The Low Income Housing Tax Credit is that way. Under this program, tax credits are allocated by states and their localities to investors in low income housing. In return for agreeing to charge low rents for the units produced, the investors receive a tax credit that makes up for the financial risk of the investment. Instead of mandating low rents, the program provides an incentive for property owners to charge low rents.

And, as Adam Smith would have predicted, this incentive does the job. Since 1987, state agencies have allocated over \$3 billion in Housing Credits to help finance nearly one million apartments for low income families, including 70,000 apartments in 1997. In my own state of Florida, the Credit is responsible for helping finance over 52,000 apartments for low income families, including 3,300 apartments in 1997. The demand for Housing Credits nationwide currently outstrips supply by more than three to one.

Despite the success of the Housing Credit in meeting affordable rental housing needs, the apartments it helps finance can barely keep pace with the nearly 100,000 low cost apartments which are demolished, abandoned, or converted to market rents each year. This is because the credit has been set at an annual amount of \$1.25 per resident of each state, since its creation in 1986. To make up for the loss in value of the credit due to inflation, we propose to increase this amount to \$1.75 per resident and to index the amount for future inflation. It has been estimated that this will increase the stock of critically needed low income apartments by 27,000 each year.

There has long existed in this body a dedication to affordable housing, an interest that knows no party lines. One of the major, early proponents of federally supported affordable housing was Senator Robert A. Taft of Ohio, known in his day as Mr. Republican, whose monument chimes regularly just a few hundred yards from here. With this strong, bipartisan pedigree, I have no hesitation in asking my colleagues on both sides of the aisle to join me to enact this proposal—which is similar to one contained in the President's budget and is supported by the nation's governors and mayors and the affordable housing community—to ensure the continued vitality of a program that works.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1017

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Affordable Housing Opportunity Act of 1999".

SEC. 2. INCREASE IN STATE CEILING ON LOW-INCOME HOUSING CREDIT.

(a) IN GENERAL.—Clause (i) of section 42(h)(3)(C) of the Internal Revenue Code of 1986 (relating to State housing credit ceiling) is amended by striking "\$1.25" and inserting "\$1.75".

(b) ADJUSTMENT OF STATE CEILING FOR INCREASES IN COST-OF-LIVING.—Paragraph (3) of section 42(h) of such Code (relating to housing credit dollar amount for agencies) is amended by adding at the end the following new subparagraph:

"(H) COST-OF-LIVING ADJUSTMENT.—

"(i) IN GENERAL.—In the case of a calendar year after 2000, the dollar amount contained in subparagraph (C)(i) shall be increased by an amount equal to—

"(I) such dollar amount, multiplied by

"(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 1999' for 'calendar year 1992' in subparagraph (B) thereof.

"(ii) ROUNDING.—If any increase under clause (i) is not a multiple of 5 cents, such increase shall be rounded to the next lowest multiple of 5 cents."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years after 1999.

Mr. GRAHAM. Mr. President, I rise today with my good friend and colleague, Senator MACK to introduce the Affordable Housing Opportunity Act of 1999. This legislation would raise the annual limit on state authority to allocate low-income housing tax credits from \$1.25 to \$1.75 per capita, and to index the cap to inflation.

Since its creation in the Tax Reform Act of 1986, the low income housing tax credit program has been a tremendous success that has generated nearly a million units of housing for low and moderate income families. In my home state of Florida the tax credit has produced over 52,000 affordable rental units, valued at over \$2.2 billion, including 3,300 apartments in 1997.

This housing tax credit is a valuable incentive for developers to build and rehabilitate low-income housing. It encourages the construction and renovation of low income housing by reducing the tax liability placed on developers of affordable homes. The credit is based on the costs of development as well as the percentage of units devoted to low-income families.

The low income housing tax credit not only helps developers but also benefits families. Those families that get up and go to work every day to earn their rent and mortgage payments, the low income housing tax credit provides families with an important stake in maintaining self-sufficiency. By supporting this credit we make the American dream more available to all Americans.

This credit has succeeded as a catalyst in bringing new sources of funding to low income housing development. This is particularly important at a time when decreasing appropriations for federally-assisted housing and the elimination of other tax incentives for rental housing production have only grown. While this success is gratifying, we should not take for granted the continued growth of this program.

Under the current formula used to fund this program, each state is located \$1.25 multiplied by the State's population. Unlike other provisions of the Tax Code, this formula has not been adjusted since the credit was created in 1986. During the same period, inflation has eroded the credit's purchasing power by nearly 45 percent, as measured by the Consumer Price Index. This cap is strangling state capacity to meet the pressing low income housing needs.

By increasing the cap on this credit to \$1.75, we will free the 12 year cap on housing credit from its current limitations, as requested by our Nation's governors, and we will liberate states' capacity to help millions of Americans who still have no decent, safe, affordable place to live.

A brief look at the history of the housing credit provides ample evidence of why we need our legislation. Nationwide, demand for housing credits outstrips supply by a ratio of three to one. In 1998, states received applications requesting more than 1.2 billion in housing credits—far surpassing the \$365 million in the credit authority available to allocate that year. This trend coupled with the fact that every year nearly 100,000 low cost apartments are demolished, abandoned, or converted to market rate use makes clear the need for this legislation. Increasing the cap as I propose would allow states to finance approximately 27,000 more critically needed low income apartments each year using the housing credit.

In the last Congress, sixty seven Senators cosponsored this legislation, including nearly two-thirds of the Finance Committee, raising the low income housing tax credit to \$1.75 and indexing it for inflation. Nearly 70 percent of the House Ways and Means Committee and a total of 299 House Members cosponsored legislation proposing the same increase.

That indicates just how much support this program has in the Congress. Also, the Administration, the nation's governors and mayors, other state and local government groups, and the affordable housing community strongly support this increase. I am confident with all this support that this measure will finally pass this year. I urge all my colleagues to embrace this important legislation.

By Mr. EDWARDS:

S. 1018. A bill to provide for the appointment of additional Federal district judges in the State of North Carolina, and for other purposes; to the Committee on the Judiciary.

JUSTICE FOR WESTERN NORTH CAROLINA ACT

Mr. EDWARDS. Mr. President, I rise to introduce the Justice for Western North Carolina Act—legislation that will create an additional permanent district court judgeship and an additional temporary district court judgeship in the Western District of North Carolina.

The Western District of North Carolina is one of the most overworked districts in the United States. And it is strained almost to the breaking point. The statistics tell the tale: its judges have the heaviest caseload of all the district courts in the Fourth Circuit. That means of all the district court judges working in Maryland, Virginia, West Virginia, North Carolina, and South Carolina—no other judges have a more crushing workload. Indeed, they deal with a caseload almost twice that recommended for any federal judge. The nonpartisan Judicial Conference of the United States, the principal policymaking body for the federal court system, believes that no judge should handle more than 430 weighted case filings. Well, the judges in the Western District have a weighted filing per judge of 703.

The people of western North Carolina feel the impact of this burden. Criminal felony cases take longer to deal with in western North Carolina than any other district in the country but two. And businesses have to wait almost two years to have their lawsuits heard before a jury. Business disputes, Social Security claims, civil rights disputes—all of them are needlessly delayed when we in the Senate fail to fulfill our responsibility to ensure the prompt administration of justice.

Three able Western District Court judges are doing their utmost to deal with this deluge. But they need our help. And we have failed to address the need sooner. It has been more than twenty years since Congress authorized the Western District's third judgeship. In 1978, there were 775 raw case filings. Last year, there were more than 7,000. It is folly to think that three judges should be able to handle the nearly tenfold increase in case filings in the Western District.

Nor is there any relief from a growing caseload in sight. North Carolina is in the midst of a population boom. Since the 1990 census, the state's population grew by 12%. The Charlotte metropolitan area, which is in the western district of North Carolina, grew by 19 percent since 1990, making it the tenth fastest growing region in the country during this period. This growth in population, business, and industry translates into more commercial, corporate, and criminal law cases.

Mr. President, more than any other justice system in the world, ours provides fair and equal administration of justice. We put this at risk when we do not have enough judges. When judges are overworked, they may be unable to give each case the attention it deserves. The maxim that "justice de-

layed is justice denied" is absolutely true. Slow justice does not just affect the litigants. With commercial cases involving major corporations, it can also hurt employees and consumers, as well. Moreover, we cheapen the Constitution when we fail to authorize the resources necessary for the federal judiciary—one of the three, coequal branches of government—to adequately serve society. Congress must respect the principle of an independent federal judiciary by ensuring that federal judges are not so consumed by the backlog of cases that they are not able to give the cases that come before them the attention they deserve.

The legislation I propose puts into effect the recent recommendation made by the Judicial Conference. The Judicial Conference works to ensure that the federal judiciary delivers equal justice under law. On March 16 of this year, it recommended that we add one permanent and one temporary judgeship in the Western District of North Carolina. The Chief Justice serves as the presiding officer of the nonpartisan Judicial Conference. The membership of the Conference includes the chief judges of the 13 courts of appeals, a district judge from each of the 12 geographic circuits, and the chief judge of the Court of International Trade.

No one, at least no one I know, disagrees that the Western District is overworked. But some people have proposed the misguided solution of eliminating a judgeship from the Eastern District of North Carolina and transferring it to the Western District. I think that eliminating a judge from the Eastern District would be a real mistake, as big a mistake as not creating new judgeships in the Western District. The proposal is simply robbing Peter to pay Paul.

Eliminating a judgeship from the Eastern District would leave it in the same painful position that the Western District is in now. Last year, the Eastern District had 2056 weighted filings, or 514 for each of its four judgeships, easily above the national average of 484. Taking away a judgeship from the Eastern District would result in a weighted caseload per judge of 685. Transferring a judgeship from the Eastern to the Western District would do no more than switch the problem from the west to the east.

I am also very concerned about the effect this elimination would have on Raleigh and the many people and companies who are based there and depend on the federal judiciary. For the last twenty years, at least one Eastern District judgeship has been filled by a judge presiding in Raleigh. Today, however, the three active judges in the Eastern District reside in Elizabeth City, Greenville, and Wilmington, and most of the Eastern District's court sessions are held in those cities. It is important that those areas have judges, but it is also important that there be a judge in Raleigh. If we transfer the unfilled judgeship to the west,

we will do serious harm to our state capital.

Raleigh is the home of the main offices of the U.S. Attorney, the Federal Public Defender for the Eastern District, the Clerk of Court, the United States Probation Office, the Federal Bureau of Investigation for the Eastern District, and the North Carolina Department of Justice. In addition, many private lawyers who handle civil and criminal cases in the Eastern District come from Raleigh. Finally, the Raleigh metropolitan area, which has more than one million people, is the fifth fastest growing urban area in the nation—swelling by 26 percent since 1990. Eliminating a judgeship based in Raleigh would create unnecessary obstacles to the pursuit of fair administration of justice in that city.

Mr. President, the marble facade on the Supreme Court building says, "Equal Justice Under Law." We in the Congress must not jeopardize this principle by failing to provide the judiciary the resources it needs to do its work. Therefore, I urge your support of the Justice for Western North Carolina Act.

I ask unanimous consent that a copy of the legislation be printed in the RECORD.

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

S. 1018

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Justice for Western North Carolina Act of 1999".

SEC. 2. DISTRICT JUDGES FOR THE NORTH CAROLINA DISTRICT COURTS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate, 1 additional district judge for the western district of North Carolina.

(b) TEMPORARY JUDGESHIP.—

(1) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate, 1 additional district judge for the western district of North Carolina.

(2) FIRST VACANCY NOT FILLED.—The first vacancy in the office of district judge in the western district of North Carolina, occurring 7 years or more after the confirmation date of the judge named to fill a temporary judgeship created by this subsection, shall not be filled.

(c) TABLES.—In order that the table contained in section 133 of title 28, United States Code, will reflect the changes in the total number of permanent district judgeships authorized as a result of subsection (a) of this section, the item relating to North Carolina in such table is amended to read as follows:

"North Carolina:	
Eastern	4
Middle	4
Western	4."

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including such sums as may be necessary to provide appropriate space and facilities for the judicial positions created by this Act.

By Mr. GRASSLEY:

S. 1019. For the relief of Regine Beatie Edwards; to the Committee on the Judiciary.

PRIVATE RELIEF LEGISLATION

• Mr. GRASSLEY. Mr. President, today I am introducing legislation to allow Regine Beatie Edwards, an 18 year old German-born legal resident of the United States, to realize her life-long dream of becoming a United States citizen.

Miss Edwards is the adopted daughter of Mr. Stan Edwards, a U.S. citizen who married Regine's mother while engaged in military service in Germany. Regine moved to the United States with her mother on October 16th, 1994. In 1997, Mr. Edwards contacted the INS on several occasions, attempting to obtain the proper form to apply for Regine's naturalization. The INS sent Mr. Edwards form N-643, Application for Certificate in Behalf of an Adopted Child. The INS informed Mr. Edwards that the adoption had to be completed by the time Regine turned 18. The adoption was completed on January 13th, 1997, when Regine was 16½ years of age. Mr. Edwards delivered Regine's application to the INS office in Omaha, Nebraska on March 27, 1998.

The INS reported in January of 1998 that the application was to be denied since the adoption of Ms. Edwards had not been completed prior to her 16th birthday, and therefore form N-643 was the incorrect form for application. Previously, the INS had told Mr. Edwards that the adoption need only be completed by Regine's 18th birthday. The INS then refunded to Mr. Edwards the application fee and informed him that, because of her age, Regine met only three of four qualifications to apply for citizenship. Had the INS told the Edwards that Regine needed to be adopted by the age of 16 in order to qualify for citizenship, the Edwards would have expedited the adoption process, and Regine would be closer to her dream of citizenship.

This bill, passed during the last Congress by the Senate but not acted on by the House, would reclassify Regine as a child pursuant to section 101(b)(1) of the Immigration and Naturalization Act, thereby allowing the processing of her citizenship application.

Regine has stated that it has always been a goal of hers to live in the United States, and to become a citizen of, as she puts it, "a land of freedom and individual opportunity to seek out your dreams and realize them." It would be tragic if we were to let a simple mistake on the part of the INS prevent such a promising young woman from becoming a U.S. citizen. I urge my fellow colleagues to support Regine by allowing her to make her dream of U.S. citizenship a reality.●

By Mr. GRASSLEY (for himself and Mr. FEINGOLD):

S. 1020. A bill to amend chapter 1 of title 9, United States Code, to provide for greater fairness in the arbitration process relating to motor vehicle franchise contracts.

MOTOR VEHICLE FRANCHISE CONTRACT ARBITRATION FAIRNESS ACT

• Mr. GRASSLEY. Mr. President, today, along with my colleague from Wisconsin, Senator FEINGOLD, I am introducing the Motor Vehicle Franchise Contract Arbitration Fairness Act.

Over the years, I have been in the forefront of promoting alternative dispute resolution (ADR) mechanisms to encourage alternatives to litigation when disputes arise. Such legislation includes the permanent use of ADR by federal agencies. Last year we also passed legislation to authorize federal court-annexed arbitration. These statutes are based, in part, on the premise that arbitration should be voluntary rather than mandatory.

While arbitration often serves an important function as an efficient alternative to court some trade offs must be considered by both parties, such as limited judicial review and less formal procedures regarding discovery and rules of evidence. When mandatory binding arbitration is forced upon a party, for example when it is placed in a boiler-plate agreement, it deprives the weaker party the opportunity to elect any other forum. As a proponent of arbitration I believe it is critical to ensure that the selection of arbitration is voluntary and fair.

Unequal bargaining power exists in contracts between automobile and truck dealers and their manufacturers. The manufacturer drafts the contract and presents it to dealers with no opportunity to negotiate. Increasingly these manufacturers are including compulsory binding arbitration in their agreements, and dealers are finding themselves with no choice but to accept it. If they refuse to sign the contract they have no franchise. This clause then binds the dealer to arbitration as the exclusive procedure for resolving any dispute. The purpose of arbitration is to reduce costly, time-consuming litigation, not to force a party to an adhesion contract to waive access to judicial or administrative forums for the pursuit of rights under state law.

I am extremely concerned with this industry practice that conditions the granting or keeping of motor vehicle franchises on the acceptance of mandatory and binding arbitration. While several states have enacted statutes to protect weaker parties in "take it or leave it" contracts and attempted to prevent this type of inequitable practice, these state laws have been held to conflict with the Federal Arbitration Act (FAA).

In 1925, when the FAA was enacted to make arbitration agreements enforceable in federal courts, it did not expressly provide for preemption of state law. Nor is there any legislative history to indicate Congress intended to occupy the entire field of arbitration. However, in 1984 the Supreme Court interpreted the FAA to preempt state law in *Southland Corporation versus Keating*. Thus, state laws that protect

weaker parties from being forced to accept arbitration and to waive state rights (such as Iowa's law prohibiting manufacturers from requiring dealers to submit to mandatory binding arbitration) are preempted by the FAA.

With mandatory binding arbitration agreements becoming increasingly common in motor vehicle franchise agreements, now is the time to eliminate the ambiguity in the FAA statute. The purpose of the legislation Senator FEINGOLD and I are introducing is to ensure that in disputes between manufacturers and dealers, both parties must voluntarily elect binding arbitration. This approach would continue to recognize arbitration as a valuable alternative to court—but would provide an option to pursue other forums such as administrative bodies that have been established in a majority of states, including Iowa, to handle dealer/manufacturer disputes.

This legislation will go a long way toward ensuring that parties will not be forced into binding arbitration and thereby lose important statutory rights. I am confident that given its many advantages arbitration will often be elected. But it is essential for public policy reasons and basic fairness that both parties to this type of contract have the freedom to make their own decisions based on the circumstances of the case.

I urge my colleagues to join Senator FEINGOLD and myself in supporting this legislation to address this unfair franchise practice.●

• Mr. FEINGOLD. Mr. President, I rise today to introduce, with my distinguished colleague from Iowa, Senator GRASSLEY, the "Motor Vehicle Franchise Contract Arbitration Fairness Act of 1999."

While alternative methods of dispute resolution such as arbitration can serve a useful purpose in resolving disputes between parties, I am extremely concerned by the increasing trend of stronger parties to a contract forcing weaker parties to waive their rights and agree to arbitrate any future disputes that may arise. Earlier this Congress, I introduced S. 121, the Civil Rights Procedures Protection Act, to amend certain civil rights statutes to prevent the involuntary imposition of arbitration to claims that arise from unlawful employment discrimination and sexual harassment.

It has come to my attention that the automobile and truck manufacturers, which often present dealers with "take it or leave it" contracts, are increasingly including mandatory and binding arbitration clauses as a condition of entering into or maintaining an auto or truck franchise. This practice forces dealers to submit their disputes with manufacturers to arbitration. As a result, dealers are required to waive access to judicial or administrative forums, substantive contract rights, and statutorily provided protection. In short, this practice clearly violates the dealers' fundamental due process rights

and runs directly counter to basic principles of fairness.

Franchise agreements for auto and truck dealerships are typically not negotiable between the manufacturer and the dealer. The dealer accepts the terms offered by the manufacturer, or it loses the dealership. Plain and simple. Dealers, therefore, have been forced to rely on the states to pass laws designed to balance the manufacturers' far greater bargaining power and to safeguard the rights of dealers. The first state automobile statute was enacted in my home state of Wisconsin in 1937 to protect citizens from injury caused when a manufacturer or distributor induced a Wisconsin citizen to invest considerable sums of money in dealership facilities, and then canceled the dealership without cause. Since then, all states except Alaska have enacted substantive law to balance the enormous bargaining power enjoyed by manufacturers over dealers and to safeguard small business dealers from unfair automobile and truck manufacturer practices.

A little known fact is that under the Federal Arbitration Act (FAA), arbitrators are not required to apply the particular federal or state law that would be applied by a court. That enables the stronger party—in this case the auto or truck manufacturer—to use arbitration to circumvent laws specifically enacted to regulate the dealer/manufacturer relationship. Not only is the circumvention of these laws inequitable, it also eliminates the deterrent to prohibited acts that state law provides.

The majority of states have created their own alternative dispute resolution mechanisms and forums with access to auto industry expertise that provide inexpensive, efficient, and non-judicial resolution of disputes. For example, in Wisconsin mandatory mediation is required before the start of an administrative hearing or court action. Arbitration is also an option if both parties agree. These state dispute resolution forums, with years of experience and precedent, are greatly responsible for the small number of manufacturer-dealer lawsuits. When mandatory binding arbitration is included in dealer agreements, these specific state laws and forums established to resolve auto dealer and manufacturer disputes are effectively rendered null and void with respect to dealer agreements.

Besides losing the protection of federal and state law and the ability to use state forums, there are numerous reasons why a dealer may not want to agree to binding arbitration. Arbitration lacks some of the important safeguards and due process offered by administrative procedures and the judicial system: (1) arbitration lacks the formal court supervised discovery process often necessary to learn facts and gain documents; (2) an arbitrator need not follow the rules of evidence; (3) arbitrators generally have no obligation to provide factual or legal discussion of

the decision in a written opinion; and (4) arbitration often does not allow for judicial review.

The most troubling problem with this sort of mandatory binding arbitration is the absence of judicial review. Take for instance a dispute over a dealership termination. To that dealer—that small business person—this decision is of commercial life or death importance. Even under this scenario, the dealer would not have recourse to substantive judicial review of the arbitrators' ruling. Let me be very clear on this point; in most circumstances an arbitration award cannot be vacated, even if the arbitration panel disregarded state law that likely would have produced a different result.

The use of mandatory binding arbitration is increasing in many industries, but nowhere is it growing more steadily than the auto/truck industry. Currently, at least 11 auto and truck manufacturers require some form of such arbitration in their dealer contracts.

In recognition of this problem, many states have enacted laws to prohibit the inclusion of mandatory binding arbitration clauses in certain agreements. The Supreme Court, however, held in *Southland Corp. v. Keating*, 104 S. Ct. 852 (1984), that the FAA by implication preempts these state laws. This has the effect of nullifying many state arbitration laws that were designed to protect weaker parties in unequal bargaining positions from involuntarily signing away their rights.

The legislative history of the FAA indicates that Congress never intended to have the Act used by a stronger party to force a weaker party into binding arbitration. Congress certainly did not intend the FAA to be used as a tool to coerce parties to relinquish important protections and rights that would have been afforded them by the judicial system. Unfortunately, this is precisely the current situation.

Although contract law is generally the province of the states, the Supreme Court's decision in *Southland Corp.* has in effect made any state action on this issue moot. Therefore, along with Senator GRASSLEY, I am introducing this bill today to ensure that dealers are not coerced into waiving their rights. Our bill, the Motor Vehicle Franchise Contract Arbitration Fairness Act of 1999 would simply provide that each party to an auto or truck franchise contract would have the choice to select arbitration. The bill would not prohibit arbitration. On the contrary, the bill would encourage arbitration by making it a fair choice that both parties to a franchise contract may willingly and knowingly select. In short, this bill would ensure that the decision to arbitrate is truly voluntary and that the rights and remedies provided for by our judicial system are not waived under coercion.

In effect, if small business owners today want to obtain or keep their auto or truck franchise, they may be

able to do so only by relinquishing their statutory rights and foreclosing the opportunity to use the courts or administrative forums. Mr. President, I cannot say this more strongly—this is unacceptable; this is wrong. It is at great odds with our tradition of fair play. I therefore urge my colleagues to join in this bipartisan effort to put an end to this invidious practice. •

By Mr. KOHL:

S. 1021. A bill to provide for the settlement of claims of the Menominee Indian Tribe of Wisconsin; to the Committee on the Judiciary.

MENOMINEE TRIBAL FAIRNESS ACT OF 1999

Mr. KOHL. Mr. President, today I am introducing bipartisan legislation that would give a Congressional "stamp of approval" to a settlement for which the Menominee Indian Tribe of Wisconsin has long awaited—a settlement that, in my opinion and in the opinion of the Federal Court that approved it last year, is long overdue.

Specifically, this bill—the "Menominee Tribal Fairness Act of 1999"—would enforce a settlement owed to the Menominee Tribe by the Federal government, whose termination of the Tribe's federal trust status resulted in enormous damage to the Menominee from 1954 to 1973. Six years ago, Congress passed a congressional reference that ordered the U.S. Claims Court to report back regarding what damages, if any, were owed the Tribe. Last year, the Court approved a \$32 million settlement, and now that we have settled the merits of the case, we simply need congressional approval to conclude this 45-year-old matter once and for all. Let me tell you why this legislation is crucially needed.

When Congress passed the Menominee Termination Act of June 13, 1954, it ended the Tribe's federal trust status, effective in 1961. As a result of termination, the Menominee Tribe plunged into years of severe impoverishment and community turmoil. Indeed, according to a 1965 BIA study of conditions on the former reservation, the economic and social effects were disastrous. Unemployment was 26 percent, compared to Wisconsin's 5 percent rate. The school dropout rate was 75 percent, and the per capita income was less than one-third of the state average. The local hospital, which was built with tribal funds, was shut down because it could not meet state standards, effectively eliminating local health care services which in turn increased mortality rates.

Twelve years after termination, Congress recognized the economic and social devastation this Act had caused for the Tribe by passing the Menominee Restoration Act of 1973, which reinstated the Tribe's federal trust status. Clearly, though, BIA mismanagement and termination threatened to devastate the Tribe for generations to

come, and the Tribe subsequently sought relief for its recuperation.

The Menominee Tribe took this matter to the courts, and though it obtained favorable trial court judgments on the merits of its claims, the Tribe encountered a series of technical roadblocks that prevented it from ever really having its case heard.

The Tribe then came to Congress for help. But it was not until 1993 that Congress passed my proposal to settle this matter by sending it to the Court of Claims and ordering the court to report back what damages the Tribe was owed.

After extensive negotiation, the Federal government and the Menominee Tribe agreed upon a settlement of the Tribe's claims for a sum of \$32,052,547. The Claims Court, on August 12, 1998, reported back to Congress, concluding that the Tribe has stated legitimate claims and endorsing this settlement.

Now, to compensate the Tribe for damages and implement the decision of the Court of Claims, we must pass this legislation that authorizes the payment of this agreed-to settlement. And the money does not have to be appropriated—it will simply be taken from a Treasury Department "judgment fund" account.

Mr. President, the congressional reference procedure is designed so that the court may examine claims against the United States based on negligence or fault, or based on less than fair and honorable dealings, regardless of "technical" defenses that the United States may otherwise assert, especially the statute of limitations.

In other words, it is to be used for precisely the types of circumstances surrounding the Menominee Tribe. The tribe and its members suffered grievous economic loss through legislative termination of its rights and from BIA mismanagement of its resources. Indeed, the Federal governments' actions brought the Menominee Tribe to the brink of economic, social, and cultural disaster. In 1973, the tribe was restored to Federal recognition and tribal status by action of the Congress. But the Tribe has yet to be compensated for the damages it suffered.

Mr. President, I urge my colleagues to approve the Court's ruling, support this bill, and settle this case once and for all. And don't take my word for it—this measure has been endorsed by the Chairman of the Indian Affairs Committee, BEN NIGHTHORSE CAMPBELL, and Representative MARK GREEN, who represents the district where the Menominee reservation is located.

I ask unanimous consent that the full texts of my bill, the U.S. Court of Federal Claims Report of the Review Panel, Court Order, and Stipulation for Recommendation of Settlement, along with Chairman CAMPBELL's letter of support for this measure, be printed in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

S. 1021

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PAYMENT.

The Secretary of the Treasury shall pay to the Menominee Indian Tribe of Wisconsin, out of any funds in the Treasury of the United States not otherwise appropriated, \$32,052,547 for damages sustained by the Menominee Indian Tribe of Wisconsin by reason of—

(1) the enactment and implementation of the Act entitled "An Act to provide for a per capita distribution of Menominee tribal funds and authorize the withdrawal of the Menominee Tribe from Federal jurisdiction", approved June 17, 1954 (68 Stat. 250 et seq., chapter 303); and

(2) the mismanagement by the United States of assets of the Menominee Indian Tribe held in trust by the United States before April 30, 1961, the effective date of termination of Federal supervision of the Menominee Indian Tribe of Wisconsin.

SEC. 2. EFFECT OF PAYMENT.

Payment of the amount referred to in section 1 shall be in full satisfaction of any claims that the Menominee Indian Tribe of Wisconsin may have against the United States with respect to the damages referred to in that section.

SEC. 3. REQUIREMENTS FOR PAYMENT.

The payment to the Menominee Indian Tribe of Wisconsin under section 1 shall—

(1) have the status of a judgment of the United States Court of Federal Claims for the purposes of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.); and

(2) be made in accordance with the requirements of that Act on the condition that after payment of attorneys fees and expenses of litigation, of the remaining amount—

(A) not less than 30 percent shall be distributed on a per capita basis; and

(B) not more than 70 percent shall be set aside and programmed to serve tribal needs, including—

(i) educational, economic development, and health care programs; and

(ii) such other programs as the circumstances of the Menominee Indian Tribe of Wisconsin may justify.

[In the United States Court of Federal Claims, No. 93-649X (Filed: August 12, 1998)]

MENOMINEE INDIAN TRIBE OF WISCONSIN, PLAINTIFF, v. THE UNITED STATES, DEFENDANT

REPORT OF THE REVIEW PANEL

Pending before the review panel in this congressional reference is the order of the hearing officer of August 11, 1998, adopting the stipulated settlement of the parties. The parties have agreed to resolve this matter without further litigation. The hearing officer carefully reviewed the basis of the settlement and satisfied himself that it was well grounded in fact and law. The parties have waived by stipulation the normal period for filing exceptions to the report.

This panel hereby affirms and adopts the order of the hearing officer in its entirety. After reviewing the order of August 11, 1998, it is the judgment of this panel that the stipulated agreement between the parties is a just and equitable resolution of the lengthy dispute that it resolves. It is the view of the panel that there is a basis in law and in equity to support the payment to the Tribe of the settlement amount and that such payment would not constitute a gratuity.

Accordingly, the review panel recommends that Congress adopt legislation paying to the Menominee Tribe of Wisconsin \$32,052,547 in settlement of the claims embraced in this congressional reference.

Because the parties have waived the normal period for requesting reconsideration, the Clerk is directed promptly to forward this order and supporting materials to Congress.

Done this twelfth day of August, 1998.

ROBERT H. HODGES, Jr.,

Presiding Officer.

MOODY R. TIDWELL,

Panel Member.

BOHDAN A. FUTEY,

Panel Member.

[In the United States Court of Federal Claims, No. 93-649X (Filed: August 11, 1998)]

MENOMINEE INDIAN TRIBE OF WISCONSIN, PLAINTIFF, v. THE UNITED STATES, DEFENDANT

Charles A. Hobbs, with whom were Jerry C. Straus, Frances L. Horn, Marsha Kostura Schmidt, and Joseph H. Webster, all of Washington, D.C. for plaintiff.

James Brookshire, with whom was Glen R. Goodsell, U.S. Department of Justice, General Litigation Section, Environment & Natural Resources Division, Washington, D.C., for defendant.

ORDER

On August 6, 1993, Senate Resolution 137 referred to the Court of Federal Claims a proposed bill, S. 1335, for the relief of the Menominee Indian Tribe of Wisconsin, and requested the Chief Judge to proceed in accordance with the provisions of 28 U.S.C. §§ 1492 and 2509 regarding congressional references. The Resolution requested that the court "report back to the Senate . . . providing such findings of fact and conclusions that are sufficient to inform the Congress of the nature, extent, and character of the damages referred to in such bill as a legal or equitable claim against the United States or a gratuity, and the amount, if any, legally or equitably due from the United States to the Menominee Indian Tribe of Wisconsin by reason of such damages."

The proposed bill if enacted would authorize the payment, "out of any money in the Treasury of the United States not otherwise appropriated," of "a sum equal to the damages sustained by the Menominee Tribe of Wisconsin by reason of "(a) the enactment and implementation of the Act of June 17, 1954 (68 Stat. 250), as amended, and (b) the mismanagement by the United States of the Menominee assets held in trust by the United States prior to April 30, 1961, the effective date of Termination of Federal supervision of the Menominee Indian Tribe of Wisconsin."

The Menominee Tribe filed with this court a complaint alleging injury and damages that arose from the enactment and implementation of the Menominee Termination Act, as well as for various acts of mismanagement by the Bureau of Indian Affairs (BIA) during the period to Termination, 1951-1961. Specific claims alleged were: Count (I) Congressional Breach of Trust ("Basic" claim); (II) Forest Mismanagement; (III) Mill Mismanagement; (IV) Loss of Tax Exemption; (V) Loss of Hospital; (VI) Highway Rights-of-Way; (VII) Power Lines; (VIII) Public Water and Sewage Systems; (IX) Mismanagement of Tribal Funds (Accounting); (X) Loss of Government Programs; (XI) Imposition of Bond Debt; and (XII) Loss of Tribal Property.

This case has a long history before this court. Many of the claims at issue in this congressional reference were litigated previously before the U.S. Court of Claims in the case of *Menominee Tribe of Indians v. United States*, Nos. 134-67-A through -I, originally filed in April 1967. The case concerned breach of trust and taking claims related to the Termination of the Menominee Tribe and certain claims for mismanagement of tribal

assets during the period prior to Termination (1951-1961). It has been the subject of seven trial court decisions and four decisions before the appellate court. *Menominee Tribe v. United States*, 607 F.2d 1335 (Ct. Cl. 1979) (congressional breach of trust or "Basic" claim); *Menominee Tribe v. United States*, 223 Ct. Cl. 632 (1980) (tax exemption statute of limitations); *Menominee Tribe v. United States*, 726 F.2d 712 (Fed. Cir. 1983) (deed restrictions); *Menominee Tribe v. United States*, 726 F.2d 718 (Fed. Cir. 1984) (forest mismanagement). All of the dockets were ultimately dismissed in 1984, seventeen years after they were filed, on statute-of-limitations and jurisdictional grounds.

Relying on the substantial record developed in that earlier case as well as on substantial supplemental evidence in the current case, the parties in the present congressional reference filed briefs with the court on the issue of liability as to the first three counts of the Tribe's complaint, as well as on the issue of whether there was good cause for removing the bar of the statute of limitations. In an opinion dated October 30, 1997, this hearing officer held that the claims for Congressional Breach of Trust and forest Mismanagement were not equitable claims for which damages could be recommended; rather, payment of damages for these claims would constitute a gratuity. See *Menominee Indian Tribe v. United States*, 39 Fed. Cl. 441, 460-62 (1997). This hearing officer held as to the Mill Mismanagement claim that the issues presented were grounded in equity, but reserved to a later time a decision on the merits and damages, if any, as to each of the particular acts of mill mismanagement alleged by the Tribe. *See id.* at 471. Finally, the hearing officer held that there was good cause to remove the bar of the statute of limitations, which had barred some of the claims in the earlier case. *See id.* The Tribe has stated in the stipulation filed by the parties its disagreement with the hearing officer's holdings on the merits of Count I and II and its intention, if the case were not settled, to appeal the ruling to the review panel. The United States has reserved the right to challenge the hearing officer's good cause ruling.

After those decisions were rendered, the parties entered into settlement discussions and on August 11, 1998, the parties filed with the hearing officer for approval a stipulated settlement agreement, attached hereto, asking the hearing officer to report to Congress that it has approved the stipulation and recommends that Congress adopt it.

The parties have stipulated that the reference overall includes proper equitable claims appropriate for settlement, and though each side contests certain aspects of the case and aspects of the decisions rendered by this hearing officer, the parties have agreed that the case overall is appropriate for compromise and settlement.

The stipulation of the parties, attached hereto, details the claims and the damage award sought by the Tribe in this reference for the twelve claims. The Tribe claims a total value of \$141 million on all of its claims. Although the government does not concur in the Tribe's assessment of the individual claims, it has negotiated terms of a settlement with the Tribe that the parties believe to be fair, just, and equitable. Although the parties did not agree on a settlement value to each claim in the case, the parties have stipulated, in compromise and settlement of the reference overall, that the Menominee Tribe should be compensated in the amount of \$32,052,547 in total for its claims as a whole.

In issuing its opinion in 1997 with respect to the first three counts, this hearing officer read all the findings and conclusions of the

prior litigation, as well as the appellate opinions. In addition the hearing officer read all the expert reports, irrespective of whether they were directed solely to issues raised in the first three counts, and reviewed virtually all the remaining documentary and testimonial evidence. Because the settlement agreement encompasses not only the three claims that were the subject of the prior opinion, however, but also the remaining claims that have not yet been heard on the merits in the present case, as well as other claims that could have been alleged in the reference, the hearing officer considered additional documentary evidence and citations to the record as well as other information to satisfy himself that the reference overall includes claims equitable in nature. This evidence includes documentary exhibits and an expert report bearing on the Tribe's claim for mismanagement of funds. The government reviewed this evidence as well and provided to the hearing officer its position as to the claims.

Upon careful review of the evidence and consideration of the legal issues, and without withdrawing my 1997 opinion, I am satisfied that the reference overall includes substantial equitable claims appropriate for settlement. I have reviewed the evidence in support of the remaining nine counts, as well as the evidence supporting the damages assertions, and believe that there is ample basis in the record to support a settlement on the grounds that these counts embrace equitable claims that could be the subject of an affirmative recommendation by the hearing officer. I also am satisfied that the amount of the settlement proposed is in line with my assessment of a potential recovery, particularly when recognizing that the tribe does not concede the correctness of the 1997 opinion with respect to counts I and II. Further, while recognizing that the United States disagrees, I conclude that, based on my prior good-cause ruling in this matter, there is a proper basis to find that the bar of the statute of limitations, to the extent applicable, should be removed.

Based on the facts presented in the stipulation, and the evidence that the hearing officer has independently reviewed after consideration of the legal issues, the hearing officer hereby reports that:

a. The reference overall states equitable claims against the United States as set forth in the bill referred to this court.

b. The amount agreed by the parties to be equitably due the Menominee Indian Tribe in full settlement of the aforesaid equitable claims, namely \$32,052,547, appears fair and reasonable to the hearing officer, and the hearing officer recommends that Congress appropriate this amount to the Tribe.

c. There is good cause to remove the bar of the statute of limitations to the extent it applies to any of the claims.

d. The parties have stipulated that they waive the right they would otherwise have under RCFC appendix D, paragraph nine, to a thirty-day period in which to accept or reject this recommendation. They have stipulated to its acceptability. They have also stipulated, in the event that the review panel accepts this recommendation, to waive the right to reconsideration under RCFC appendix D, paragraph eleven.

ERIC G. BRUGGINK,
Hearing Officer.

[Congressional Reference to the United States Court of Federal Claims, Congressional Reference No. 93-649X (Judge Bruggink)]

MENOMINEE INDIAN TRIBE OF WISCONSIN, PLAINTIFF, v. UNITED STATES OF AMERICA, DEFENDANT

STIPULATION FOR RECOMMENDATION OF SETTLEMENT

1. On August 6, 1993, the Senate enacted Resolution 137 which referred to this court a proposed bill, S. 1335, for the relief of the Menominee Indian Tribe of Wisconsin, and requested the Chief Judge to proceed in accordance with the provisions of 28 U.S.C. §§ 1492 and 2509 regarding Congressional References. The Resolution requested that the court "report back to the Senate . . . providing such findings of fact and conclusions that are sufficient to inform the Congress of the nature, extent, and character of the damages referred to in such bill as a legal or equitable claim against the United States or a gratuity, and the amount, if any, legally or equitably due from the United States to the Menominee Indian Tribe of Wisconsin by reason of such damages."

2. The proposed bill, S. 1335, sets forth the claims Congress requested the court to consider as follows:

"Section 1. The Secretary of the Treasury is authorized and directed to pay to the Menominee Indian Tribe of Wisconsin, out of any money in the Treasury of the United States not otherwise appropriated, a sum equal to the damages sustained by the Menominee Indian Tribe of Wisconsin by reason of—

"(a) the enactment and implementation of the Act of June 17, 1954 (68 Stat. 250), as amended, and

"(b) the mismanagement by the United States of the Menominee assets held in trust by the United States prior to April 30, 1961, the effective date of termination of Federal supervision of the Menominee Indian Tribe of Wisconsin.

"Section 2. Payment of the sum referred to in section 1 shall be in full satisfaction of any claims that the Menominee Indian Tribe of Wisconsin may have against the United States with respect to the damages referred to in such section."

3. Many of the claims at issue in this Congressional Reference were litigated previously before the United States Court of Claims in the case of *Menominee Tribe of Indians v. United States*, Dkt. Nos. 134-67 A through I, originally filed in 1967. That case concerned breach of trust and taking claims related to the Termination of the Menominee Tribe and certain claims for mismanagement of tribal assets prior to Termination. It was the subject of seven trial court decisions and four decisions before the appellate court. All of the dockets were ultimately dismissed in 1984, seventeen years after they were filed, on statute of limitations and jurisdictional grounds; none were dismissed on the merits. The Congressional Reference asks this court to make a recommendation under the principles applicable in Congressional Reference cases as to whether the claims are legal or equitable or a gratuity.

4. The Tribe has alleged twelve claims in this Congressional Reference as follows:

(I) *Congressional Breach of Trust*.—The Tribe claims that the United States breached its trust duty to the Tribe by enacting and implementing the Termination Act of June 17 1954, which terminated federal supervision over the Menominee Tribe. The nature of the alleged wrong was that the Tribe was not prepared for Termination and that, though Congress has the power to terminate a Tribe, it cannot without breaching its trust responsibilities terminate the Tribe prematurely or

in a manner that would result in unreasonable harm to the Tribe. The Tribe claims this was the circumstance in 1954 when the Termination Act was enacted and later in 1961 when the Termination Act was implemented. It is alleged that after the Termination Act was implemented, the economy on the reservation collapsed, and tribal members suffered from poverty, serious lack of health care and education, disruption of tribal institutions and customary ways of making a living, causing severe economic and psychological hardship, so that the once thriving Menominee reservation became a pocket of poverty and despair. In the Tribe's view, the loss of tribal status left tribal members disenfranchised and shorn of their tribal identity and culture.

The Tribe's federal trust status was later restored in 1973. In enacting the Restoration Act, 25 U.S.C. § 903, members of the enacting Congress repudiated the policy of Termination as applied to the Menominee as a "mistake", a "failure" and "an experiment that has had tragic and disheartening results." 119 Cong. Rec. 34308 (Oct. 16, 1973) (statements of Rep. Froehlich, Nelson and Kastenmeier). President Nixon also stated that "This policy of forced Termination is wrong" 6 Pres. Doc. 894 (1970), reprinted in, 116 Cong. Rec. S23258-23262 (July 8, 1970).

In the original "Basic" proceeding the trial court held that the United States had breached its trust duties to the Tribe by terminating it. However, on appeal, the Court of Claims held that the court had no jurisdiction to determine if an act of Congress was a wrong subject to judicial remedy. *Menominee Tribe v. United States*, 607 F.2d 1335 (Ct. Cl. 1979). Following the reasoning of the Court of Claims, the hearing officer in this Congressional Reference has also held that even though "the decision to end the Government's relationship with the Tribe when it did was a serious mistake of judgment," acts of Congress cannot serve as a source of a wrong even as an equitable claim in a Congressional Reference context.

Whether this conclusion has been, and remains, correct is a subject of contention between the parties. In any event, the Tribe has the right to seek review of this decision by the Review Panel when it becomes final. The Government agrees with the hearing officer's ruling. Despite their differing positions, the parties nevertheless agree the claim is appropriate for inclusion in an overall compromise and settlement of all the Reference claims. The Tribe's valuation of this claim is \$60 million.

(II) *Forest Mismanagement*.—This is a claim for breach of trust in the mismanagement of the Menominee Tribe's valuable forest between 1951 and 1961, prior to Termination. The claim springs from the alleged failure of the BIA to seek an amendment to the congressionally imposed but (according to the Tribe) outdated statutory cutting limit which seriously impaired the ability of the agency to properly manage the forest. In the original case the trial court found the BIA had breached its trust duty and awarded damages in the amount of \$7.2 million. The decision was overturned when the Federal Circuit ruled the claim was barred by the statute of limitations. *Menominee Tribe v. United States*, 726 F.2d 718 (Fed. Cir. 1984).

In the Congressional Reference action, this claim was briefed before the hearing officer, who held that the claim could not be an equitable one because the Tribe was actually challenging an act of Congress. As such the claim was dismissed for reasons similar to those set forth under Count I—i.e., an act of Congress may not constitute a wrong, even for an "equitable" claim. The Tribe strenuously disagrees with that assessment be-

cause it believes the wrongdoer was the BIA for not warning Congress of the damage being done by the outmoded cutting limit. The Tribe has the right to review of this decision by the Review Panel when it becomes final. The Government disagrees with the Tribe's legal and factual basis for this claim. Despite their differing positions, the parties nevertheless agree the claim is appropriate for inclusion in an overall compromise and settlement of all the Reference claims. The Tribe's valuation of the Forest claim is \$6.6 million.

(III) *Mill Mismanagement*.—This claim is for breach of trust in the mismanagement of the Menominee Mill between 1951 and 1961. In the Tribe's view, the Mill and Forest were the heart of the economy on the Reservation. The claim focuses on the BIA's alleged failure to make repairs and to maintain the Mill, as well as update the equipment to make it efficient and safe. The claim is made up of 13 subclaims which deal with specific acts of mill mismanagement. In the original case, the trial court awarded \$5.5 million in damages, but the claim was later dismissed by stipulation based on the Federal Circuit's ruling on statute of limitations in the forest mismanagement case.

In this Congressional Reference, the hearing officer ruled that the claim is an equitable claim but has reserved judgment as to liability and damages on each of the 13 subclaims to a later proceeding. The hearing officer also ruled that there is reason to remove the statute of limitations bar. The Government disputes this and has the right to seek review of both rulings. Despite their differing positions, the parties nevertheless agree the claim is appropriate for inclusion in an overall compromise and settlement of all the Reference claims. The Tribe's valuation of this claim is \$5.9 million.

(IV) *Tax Exemption Taking*.—This claim alleges the taking of the Tribe's tax exemption with the passage of the Termination Act. The Tribe claims that, at the time of Termination, it held a valuable property right in its tax immunity. According to the Tribe, this immunity from taxes was based on (a) the Tribe's political status as a sovereign entity; (b) the related doctrine that a state has no jurisdiction over a tribe; and (c) the Tribe's treaty-guaranteed right that its land would "be held as Indian lands are held," and hence implied tax exemption. Treaty of 1854, 10 Stat. 1065, Art. 2. The Tribe alleges that this immunity from taxation is a property right protected by the Fifth Amendment. See *Choate v. Trappe*, 224 U.S. 665 (1912).

When the Termination Act was passed, it envisioned specifically subjecting the assets and income of the Tribe's successor corporation (Menominee Enterprise, Inc. or MEI) to federal and state taxation. 25 U.S.C. §§898, 899. While Congress has the power to take away the Tribe's immunity from tax, the Tribe contends that immunity is a valuable property right and that the Tribe is constitutionally entitled to just compensation for its taking (*Choate v. Trappe*, *supra*).

In the original case the taking claim was subject to trial and briefing but was ultimately dismissed on statute of limitations grounds. *Menominee Tribe v. United States*, 223 Ct. Cl. 632 (1980). The Tribe maintains that, as a taking claim, the claim is an equitable one and that there is a substantial argument that the statute of limitations should be removed. The United States does not concur in the Tribe's assessment of this claim. The hearing officer has not heard this claim. The Tribe's valuation of this claim is \$12,675,910 including principal and interest.

(V) *Hospital Breach of Trust*.—The Tribe claims that the BIA breached its trust duty in managing tribal funds which were negligently spent by the BIA in remodeling the

Tribe's hospital. The Tribe alleges that the BIA was required to ensure that any renovations to the hospital be in the best interest of the Tribe. In the Tribe's view, this necessarily included bringing the hospital up to state standards when the BIA knew that the hospital would become subject to state laws upon Termination. The Tribe alleges that the BIA failed in this duty by spending hundreds of thousands of dollars of tribal money on major renovations to the Tribe's hospital, though it knew that the renovations would be inadequate under State codes to allow the hospital to continue operating after Termination. Further, according to the Tribe, the BIA failed to remedy these problems in the months before Termination despite the BIA's actual knowledge that the hospital could not be licensed due to numerous violations of State codes. Allegedly as a result, the hospital was forced to close and the tribal money spent on renovations was wasted.

The Tribe alleges that such conduct is a clear violation of the BIA's trust duty to manage tribal funds prudently and is a proper basis for an equitable claim. The original court proceeding did not address this claim directly and it was dismissed by stipulation along with the other unadjudicated claims, in the wake of the unfavorable rulings on the Basic and Forest claims in 1979 and 1984. The Tribe contends that the Court of Claims did however recognize, in dicta, this claim as a potential breach of trust claim. 607 F.2d 1335, 1346-47. The hearing officer has not heard this claim. The United States does not concur in the Tribe's assessment of the facts or law underlying this claim. Despite their differing positions, the parties nevertheless agree the claim is appropriate for inclusion in an overall compromise and settlement of all the Reference claims. The Tribe's valuation of this claim is \$3,952,307 including principal and lost interest.

(VI) *Road Right-of-Way Taking*.—Under the Treaty of 1854, the United States held, in trust for the Menominee Tribe, fee title to all land within the Menominee Reservation. The State of Wisconsin built two highways and smaller roads throughout the reservation in the early 1920's. As the 1961 Termination date approached, the State requested and the BIA agreed that the roads on the reservation be brought up to State standards and transferred to the State, and to the future Menominee Town and County. On April 26, 1961, the United States transferred by quitclaim deed for \$1.00, a right-of-way over the existing road system on the Reservation as well as additional acreage for the widening of the roads as requested by the State. The Secretary allegedly obtained no compensation for the transfer of the easement or the timber located on the additional right-of-way, nor did the Secretary reserve to the Tribe the right to log that timber.

The Tribe claims that this transfer was a taking under the Fifth Amendment. In the original claim, the trial judge found the transfers were a taking but reserved damages to a later date. The claim was subsequently dismissed by stipulation. As a taking claim, the Tribe maintains that the claim constitutes an equitable claim within the context of the Congressional Reference. The United States does not concur in the Tribe's assessment of this claim. Despite their different positions, the parties nevertheless agree the claim is appropriate for inclusion in an overall compromise and settlement of all the Reference claims. The hearing officer has not heard this claim. The Tribe's valuation of this claim is \$1,664,996 including principal and interest.

(VII) *Power Contract and Right-of-Way Breach of Trust*.—This claim is properly considered included as one of the subclaims in the Mill Mismanagement (count III) count

and damages are included in that total figure.

(VIII) *Water and Sewer Breach of Trust*.—This is a claim that BIA failed to ensure that adequate water and sewer facilities were in place on the Reservation between the period 1951 and 1961. In the original claim, the trial judge found the BIA had breached its fiduciary duty to maintain properly and to upgrade these facilities but reserved damages to a later time. The government disagrees with that ruling. Despite their differing positions, the parties nevertheless agree the claim is appropriate for inclusion in an overall compromise and settlement of all the Reference claims. The hearing officer has not yet heard this claim. The Tribe examined the claim in the context of the current case and decided to drop the claim.

(IX) *Mismanagement of Funds Breach of Trust*.—This is a breach of trust claim for the improper expenditure of tribal trust funds by the BIA between 1951 and 1961 and the loss of interest on the money removed from the trust funds. The Tribe claims there were four types of improper expenditure, and asserts the following arguments in support of its position:

(1) The BIA used tribal funds to pay for the BIA's own agency administrative expenses. Since administrative expenses are considered to be for the benefit of and therefore the responsibility of the Government, use of tribal funds for these expenses was a breach of the Secretary's trust duty to manage the Tribe's funds as a trustee would. *Sioux Tribe v. United States*, 105 Ct.Cl. 725 (1946). Moreover, by expending these funds, the Tribe lost interest it would otherwise have earned.

(2) Tribal funds were also used to pay for law and order expenses on the reservation. These expenses are also the responsibility of the Government and not the tribe, and are also not allowed. *Blackfeet Tribe v. United States*, 32 Ind. Cl. Comm. 65 (1973); *Red Lake Band v. United States*, 17 Ct.Cl. 362 (1989).

(3) Tribal funds were used for the expenses of the tribal council in administering Termination. Since Termination was for the benefit of the Government, the Government should have borne the expense based on the same principles stated in (1) and (2) above;

(4) Tribal funds were used to pay for tribal health, education, and welfare expenses while the Government routinely paid for these services for other tribes with Government funds. The Tribe alleges that it was a breach of trust to spend the Tribe's money on such expenses particularly when the Tribe's funds were depleted far below the amount necessary for the Tribe to operate its mill and forest profitably before Termination, and to have the necessary capital on hand to make repairs and rehabilitation after Termination.

The total amount of funds the Tribe alleges were imprudently spent in these four claims is \$2,553,180. Had those funds remained in the Tribe's trust fund, and had the Secretary invested those funds as required by 15 U.S.C. 162a, the Tribe alleges that it would have received additional interest. In the Tribe's view, the lost interest is a valid claim. *Cheyenne-Arapahoe Tribes v. United States*, 206 Ct.Cl. 340 (1975). The Tribe's valuation of lost interest to date is \$27,388,973. Its total valuation on the accounting claim is therefore \$29,942,153. The Tribe maintains that the claim for improper expenditures would be an equitable claim within the context of a reference. The government disagrees with the Tribe's assessment of this claim. Despite their differing positions, the parties nevertheless agree the claim is appropriate for inclusion in an overall compromise and settlement of all the Reference claims. The hearing officer has not heard this claim.

(X) *Loss of Government Programs*.—The Tribe considers that the damages of this claim are properly included within the damages of Count I. No separate claim is stated herein.

(XI) *Imposition of Bond Debt*.—As part of the Termination Plan approved by the Secretary of the Interior, each tribal member received an income bond at \$3,000 face value bearing four percent interest. The Tribe argues that, while normally bonds are issued in return for financial capital, in MEI's case a debt was incurred but it received no corresponding funds or assets. Furthermore, the Tribe argues that there was no practical way for MEI to avoid paying the interest on the bonds even when it did not have the funds to do so. The Tribe argues that, although tribal revenues had been sufficient to make stampage payments to tribal members before Termination, the Secretary knew that MEI would become subject to a massive tax burden, as well as other new expenses after Termination, and that the Secretary also knew, or should have known, that the imposition of such a massive debt burden in addition to these other expenses would undermine the viability of MEI and cause great hardship to the Menominee.

The Tribe argues that the Secretary was required to ensure that the provisions of the Termination Plan which he approved were in the best interest of the Tribe and its members. See *Cheyenne Arapaho Tribes v. United States*, 512 F.2d 1390, 1396 (1975) (BIA required to make "an independent judgment that the tribe's request was in its own best interest"); *Oglala Sioux Tribe v. United States*, 21 Cl. Ct. 176, 193 (Cl. Ct. 1990) (BIA not permitted to place responsibility for poor decisions on Tribe, since tribal decisions subject to final BIA approval).

For these reasons, the Tribe argues, the Secretary breached his duty to the Menominee Tribe by approving the bond provisions of the Termination Plan. If the Secretary breached his trust duty to the Tribe as alleged, it would, in the Tribe's view, be the proper basis for a equitable claim. The hearing officer has not heard this claim. The United States disputes the legal and factual bases for this claim. Despite their differing positions, the parties nevertheless agree the claim is appropriate for inclusion in an overall compromise and settlement of all the Reference claims. The Tribe's valuation of this claim is \$20,574,000.

(XII) *Taking of Tribal Property*.—Upon Termination, the tribal office building was transferred to Menominee County by the Secretary of the Interior. The Tribe alleges that The Termination Act, which required the Secretary to approve and put into effect a plan for the management of tribal assets after Termination, contemplated that such transfers of property from control of the Tribe to other entities would take place. The Secretary issued a deed transferring title to the tribal office building to the County. Despite restoration of the Tribe to federal status in 1973, this property was never returned to the Tribe. Further, according to the Tribe, at no time has the Tribe received any compensation for this property taken by the United States, despite the fact that recognized tribal title, including land and buildings, is protected by the Fifth Amendment, and cannot be taken by the Government without just compensation. The United States does not concur in the Tribe's assessment of this claim. Despite their differing positions, the parties nevertheless agree the claim is appropriate for inclusion in an overall compromise and settlement of all the Reference claims.

This claim, then an undefined part of the accounting claim, was not heard in the original case and it has not been heard by the

hearing officer in this Congressional Reference. The Tribe's valuation of this claim is \$87,688 including principal and interest.

In summary, the Tribe values its 12 claims at \$141 million. The United States does not concur in the Tribe's assessment of the claims. However, as mentioned above, both parties agree that the Reference overall is appropriate for settlement.

5. There has been a full and extensive development of the record in the prior adjudication before the Court of Claims as to many of these claims. Further extensive development of the facts occurred before the hearing officer in the present proceeding including the filing of supplemental evidence in the record of additional plaintiff expert reports, affidavits, and depositions. The parties agree that, after over thirty years of dispute, including seventeen years of litigation in the first case and some thirteen more years of seeking and litigating this Congressional Reference, there has been a sufficient development of all of the claims to support a compromise and settlement. Further, while the parties are each confident in their positions, they each recognize that the outcome with respect to each claim, if fully litigated, is not certain.

6. The hearing officer issued a detailed opinion on the first three claims as well as on the issue of whether the statute of limitations should be removed. This opinion prompted the parties to enter into extensive settlement negotiations.

7. The stipulations herein are based upon an exhaustive review of the evidence by the parties and these stipulations are justified and supported by competent evidence.

Now therefore the parties stipulate and agree,

(a) That the Congress directed the Court through this Reference to determine whether the Menominee Tribe has legal or equitable claims against the United States as a result of "(a) the enactment and implementation by the United States of the Menominee assets held in trust by the United States prior to April 30, 1961 . . .";

(b) That this Reference overall is a proper one for compromise and settlement, given the extensive development of the legal and factual record that has already occurred in this and prior litigation between the parties, and given the parties' careful consideration and negotiation of the legal and factual issues in this matter;

(c) That, recognizing that the parties reserve their positions on these matters, the legal and factual record developed with respect to the Menominee in this and prior litigation establishes a basis for equitable claims against the United States within the scope of this Reference, including a potential basis for removal of the bar of the statute of limitations;

(d) That it would be fair, just, and equitable, under the terms of the Reference, to pay the Menominee Tribe of Wisconsin the sum of \$32,052,547 as a final settlement of all claims that the Tribe has stated in this action, and that that amount is supported by the record in this and prior litigation;

(e) That, as demonstrated by the record in this and prior litigation, and as acknowledged by President Richard Nixon and members of Congress, the policy of forced termination as applied to the Menominee Tribe, was "wrong";

(f) That the hearing officer in this matter, the Review Panel, and the Chief Judge should approve this Stipulation and recommend to Congress the above-stated sum as the appropriate amount to be paid to the Menominee Tribe;

(g) That the compromise and settlement of these claims include any and all claims which were, or could have been, alleged—either directly or indirectly—pursuant to S.

1355, including, but not limited to, claims for attorney's fees and other expenses:

(h) That any and all claims encompassed by S. 1335 will, consistent with Paragraph (i), below, be fully and finally resolved upon a recommendation of payment of \$32,052,547 as consistent with the overall merit of the claims;

(i) That, upon the tendering of a recommendation by the hearing officer in approving the compromise and settlement of any and all claims encompassed by S. 1335 for the amount agreed to by the parties, and the transmission to Congress by the Chief Judge of the Court's Report to the same effect, the Reference under S. 1335 to the Court of Federal Claims shall be fully and finally resolved; and

(j) That this compromise and settlement derives from the unique circumstances of the Menominee Tribe with respect to the Act of June 17, 1954, and the Tribe's continuous effort since 1967 to obtain relief, and that this compromise and settlement shall not be cited for, and does not constitute, precedent in any fashion with respect to any other dispute.

(k) That, if this stipulation is accepted by the hearing officer, the parties waive their right under RCFC Appendix D ¶9 to file within 30 days a notice of acceptance or exception to the hearing officer's report. They herewith accept such a report.

(l) That, if the hearing officer accepts this stipulation and so reports to the review panel, and if the review panel adopts the report of the hearing officer, the parties waive the right under Appendix D ¶11 to seek rehearing within ten days, and instead request that the matter be promptly filed with the Clerk for transmission by the Chief Judge to Congress.

Stipulated and signed this 11th day of August, 1998.

CHARLES A. HOBBS,
Attorney for the plaintiff.
JAMES BROOKSHIRE,
Attorney for the
United States.

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC, April 22, 1999.
Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S.
Senate, Washington, DC.
Hon. PATRICK LEAHY,
Ranking Member, Committee on Judiciary, U.S.
Senate, Washington, DC.

DEAR CHAIRMAN HATCH AND SENATOR LEAHY: This letter concerns a Congressional reference made by the United States Senate during the 103rd Congress concerning the Menominee Tribe of Wisconsin. Through Senate Resolution 137, the Senate directed the United States Court of Federal Claims to hear a series of claims of the Menominee Tribe and, based on its findings, make recommendations to Congress.

Senator Kohl has indicated that he will soon introduce legislation based upon the findings, recommendations, and conclusions reached by the Court of Federal Claims on August 11, 1998. I understand that the proposed legislation would authorize the settlement of all of the claims referred by Congress in return for a payment of approximately \$32 million. This settlement amount is based on an agreement reached between the Menominee Indian Tribe of Wisconsin and the United States Department of Justice.

On August 12, 1998, the U.S. Court of Federal Claims reported to the Senate that it "recommends that Congress adopted legislation paying to the Menominee Tribe of Wisconsin \$32,052,547 in settlement of the claims

embraced in this congressional reference." It is significant that the hearing officer independently concluded that the settlement was "fair and reasonable" and that the Court's Review Panel concluded that "the stipulated agreement between the parties is a just and equitable resolution of the lengthy dispute that it resolves.

Accepting the recommendations of the Court of Claims provides a means for bringing closure to this painful chapter in our Nation's treatment of the Menominee Tribe. The legislative and judicial path to restitution has been a long road for this Tribe. This journey can and should be brought to an appropriate conclusion during the 106th Congress.

After reviewing this matter, it is clear that the settlement proposal is consistent with past practices and precedents.

Sincerely,

BEN NIGHTHORSE CAMPBELL.

By Mr. DORGAN (for himself, Mr. CONRAD, and Mr. WELLSTONE):

S. 1022. A bill to authorize the appropriation of an additional \$1,700,000,000 for fiscal year 2000 for health care for veterans; to the Committee on Veterans' Affairs.

VETERANS EMERGENCY HEALTH CARE ACT OF 1999

Mr. DORGAN. Mr. President, this country made a promise years ago to the men and women who risked their lives in defense of this nation. They were promised that their health care needs would be provided for by a grateful nation. That promise is not being kept, and it is time to stop paying lip service to those who served this country so well.

The current state of veterans' health care funding is shameful. Spending on veterans' health care has seen no significant increase for three consecutive years, at the very time that more and more of our World War II and Korean war veterans are relying on the VA health care system.

In a memo to VA Secretary Togo West, Under Secretary for Health Dr. Kenneth Kizer expressed concern that a fourth year with a stagnant health care budget "poses very serious financial challenges which can only be met if decisive and timely actions are taken." If increased funding is not secured even deeper cuts will be required such as "mandatory employee furloughs, severe curtailment of services or elimination of programs, and possible unnecessary facility closures."

Today, veterans' health care facilities are laying off care-givers and other critical staff.

It is unlikely that the Senate will increase normal appropriations for veterans health care funding enough to correct three years of neglect. That is why Senator CONRAD and I are proposing an additional \$1.7 billion in emergency spending to address the health care needs of our country's veterans. We need to keep our promises to those who have served our country and risked their lives to preserve our freedoms. This bill is a step in the right direction.

This legislation will help the Veterans' Administration keep up with

medical inflation, provide cost of living adjustments for VA employees, allow new medical initiatives that the VA wants to begin (Hepatitis C screenings and emergency care services), address long-term health care costs, provide funding for homeless veterans, and aid compliance with the Patients Bill of Rights.

In light of other emergency measures this Congress is considering, it is our opinion that preventing a health care catastrophe for our veterans is of equal, if not greater, importance than funding items like the NATO infrastructure fund and overseas military construction projects. Congress is debating right now, many new emergencies, new programs, and new initiatives. I'm not passing judgment on those decisions.

What I am saying, is that because of insufficient funding, and unforeseen health care needs, we have an emergency right now, in our ability to honor our commitment to this nation's veterans. We must not break our promise.

Mr. President, I urge my colleagues to swiftly approve this legislation. The veterans who proudly served their country deserve no less.

Mr. CONRAD. Mr. President, I am very pleased to join my distinguished colleague from North Dakota, in introducing legislation to authorize \$1.7 billion in emergency funding for FY 2000 Veterans Health Administration programs. Since the release of the Administration's FY 2000 budget for the Department of Veterans Affairs, I have been deeply concerned by the level of funding—\$17.3 billion—for the Veterans Health Administration.

This concern was heightened by comments in an internal memo by Dr. Kenneth Kizer, VA Undersecretary for Health, in February, regarding the FY 2000 veterans health care budget. In that memo, Dr. Kizer warned VA Secretary Togo West that the Administration budget for FY 2000 "poses very serious challenges which can only be met if decisive and timely actions are taken."

Dr. Kizer went on to say that unless the VA acts soon, "**** we face the very real prospect of far more problematic decisions, e.g. mandatory employee furloughs, severe curtailment of services or elimination of programs and possible unnecessary facility closures."

Indeed, Mr. President, I can confirm, that concern over VA health care funding in FY 2000, and the possibility of severe curtailment of services, and the furlough VA employees is a very real concern for North Dakota veterans and DVA officials at the Fargo VA Medical Center in North Dakota. Veterans health care funding in FY 2000, and the hope that funding can be authorized this year to undertake critical environmental improvements at the Fargo DVA Medical Center are high priorities for North Dakota veterans. These key priorities were discussed during a visit

to the Fargo DVA Medical Center earlier this year, at my request, by Deputy Secretary Hershel Gober. In fact, so concerned are members of the Disabled American Veterans nationwide, including North Dakota members, about funding for VA medical programs, that a rally has been scheduled on May 30th at the Fargo DVA Medical Center to heighten public awareness of the FY 2000 budget for veterans medical care and to press for additional funds.

Mr. President, over the past few months, Members of the Senate Committee on Veterans' Affairs and many of my colleagues have been working hard to increase funding for veterans medical care in FY 2000. I have strongly supported these efforts. During consideration of the FY 2000 budget resolution in committee, and when the resolution was reported to the Senate for consideration, I voted to increase funding for VA medical care by \$3 billion, the figure recommended in the FY 2000 Independent Budget supported by the AMVETS, Disabled American Veterans, the Veterans of Foreign Wars, and the Paralyzed Veterans of America. House and Senate conferees eventually agreed to increase veterans health care funding by \$1.66 billion in FY 2000. Most recently, I cosigned a letter to Members of the Senate Appropriations Committee urging the committee to provide \$1.7 billion above the administration's request for the Veterans Health Administration. Although Senate appropriators have not made a decision on how much to increase funding for veterans medical care, initial reports for a significant increase are not encouraging.

Because of concerns that the FY 2000 appropriations for veterans health are not expected to be adequate, and may result in unnecessary furloughs and disruptions of health care services for veterans, Senator DORGAN and I are introducing legislation to provide an emergency authorization of \$1.7 billion in funding above the administration's request for \$17.3 billion for the Veterans Health Administration. This figure also represents the level of additional health care funding recommended for the VA to Senate appropriators by Senate Veterans' Committee Chairman ARLEN SPECTER and Ranking Member JOHN D. ROCKEFELLER. We must make every effort to find these emergency FY 2000 funds for veterans medical care, and to include them in appropriate legislation to avoid disruptions in critical health care. We can do no less for our veterans.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

DEPARTMENT OF VETERANS AFFAIRS,
Date: Feb. 8, 1999
From: Under Secretary for Health (10)
Subj: FY 99/2000 VHA Budget

To: Secretary (00)

1. As you know, current VHA program projections indicate that the FY 99 budget is adequate to meet demands. However, the President's FY 2000 requested budget, and especially the 1.4 billion of management efficiencies, pose very serious financial challenges which can be met only if decisive and timely actions are taken.

2. Strategic planning initiatives undertaken by VHA networks over the past year are culminating in recommendations for a variety of program adjustments, including facility integrations, bed reductions, program consolidations and mission changes, which reflect necessary shifts in patient care service delivery and practices.

3. In most cases, these changes are, or will be, accompanied by requests for reductions-in-force and staffing adjustments which will better configure our workforce to meet the changing needs of our patients and programs. While difficult, these changes are absolutely essential if we are to prepare ourselves for the limitations inherent in the proposed FY 2000 budget.

4. Please know that I believe we are in a serious and precarious situation and that if we do not institute these difficult changes in a timely manner, then we face the very real prospect or far more problematic decisions, e.g., mandatory employee furloughs, severe curtailment of services or elimination of programs, and possible unnecessary facility closures.

5. In short, the earlier we act in this fiscal year to take the necessary steps to position ourselves for next year's budget, the less likely we will be to face far more drastic and untenable actions in FY 2000.

6. I therefore request that we quickly establish a protocol for rapidly processing requests for actions to right-size the VHA healthcare system. Such a process should identify specific steps and associated timelines for assessing such requests, ensuring proper Congressional notification and issuing approval so that implementation actions can begin.

7. Again, I cannot overstate the need for timely action so as to avoid far more severe actions in the next fiscal year. I am prepared to discuss this with you at your convenience.

KENNETH W. KIZER, MD., M.P.H.

ADMINISTRATORS WARN OF VA HOSPITAL CLOSINGS

(By Katherine Rizzo, Associated Press, February 25, 1999)

Washington (AP)—Veterans' hospitals may have to reduce staff and services next year unless Congress comes up with more money than the president has proposed, say administrators and interest groups.

"When your drug costs go up 15 percent a year and employee salaries go up 4 percent a year and our employees are 70 percent of our budget, at some point there are choices that have to be made," said Laura Miller, who oversees hospitals in Ohio and northern Kentucky.

"Administering this budget would be like trying to build a house of cards in an Oklahoma tornado," added recently retired Veterans Health Administration official Tom Trujillo.

Trujillo, Miller and other administrators appeared before the House Veterans' Affairs subcommittee on health Wednesday to answer lawmakers' questions about a spending request that all present deemed was insufficient.

Miller said the no-growth budget proposal has her bracing for a cut of 200 positions next year, most likely achieved by closing hospital wards and suspending plans for new outpatient clinics.

Other administrators said they either expected to reduce staff in 2000 or had requests pending to start reducing staff this year.

James Farsetta, director of the VA region that operates seven medical centers in New Jersey and southern New York, said he has already submitted a request to eliminate 400 jobs.

William Galey, who oversees services in Alaska, Washington, Oregon and Idaho, told the subcommittee he's considering staff reductions of anywhere from 300 to 800.

Veterans groups offered their own denunciations.

"It is unfair that in the presence of the largest budget surplus in recent history, while other federal agencies will have double-digit increases, veterans are being asked to once again sacrifice," said the Veterans of Foreign Wars.

The Paralyzed Veterans of America accused the Clinton administration of crafting a budget that kills the VA health system "through intentional budget strangulation."

"Nobody on either side of the aisle likes this budget," said Rep. Mike Doyle, D-Pa. "I don't know how we can flat-line a budget from 1997 to 2002 and not expect the system to collapse."

Deputy Under Secretary for Health Thomas Garthwaite said the administration was aware of "significant financial challenges ahead" but that plans still was being made to prepare for the possibility that Congress might not add money to the administration's spending request.

The veterans' organizations made public an internal Department of Veterans Affairs memo written by Under Secretary Kenneth Kizer, who heads the hospital system.

"I believe we are in a serious and precarious situation and that if we do not institute these difficult changes in a timely manner, then we face the very real prospect of far more problematic decisions, e.g., mandatory employee furloughs, severe curtailment of services or elimination of programs, and possible unnecessary facility closures," Kizer wrote.

The veterans' groups did not say how they obtained the memo, but Garthwaite did not dispute its authenticity. He said he believed it was intended to outline the importance of moving quickly because "it will cost more later if we don't take the administrative actions early."

By Mr. MOYNIHAN (for himself, Mr. KENNEDY, Mr. SCHUMER, Mr. HELMS, Mr. KERRY, Mr. TORRICELLI, Mr. DURBIN, Mr. SANTORUM, Mr. LIEBERMAN, Mr. KERREY, Mr. LEVIN, Mrs. MURRAY, Mr. SPECTER, Mr. CLELAND, and Mr. EDWARDS):

S. 1023. A bill to amend title XVIII of the Social Security Act to stabilize indirect graduate medical education payments; to the Committee on Finance.

GRADUATE MEDICAL EDUCATION PAYMENT RESTORATION ACT OF 1999

By Mr. MOYNIHAN (for himself, Mr. SCHUMER, Mr. SPECTER, Mr. KERRY, Mr. KERREY, Mr. SANTORUM, Mr. DURBIN, Mr. CLELAND, and Mr. CHAFEE):

S. 1024. A bill amend title XVIII of the Social Security Act to carve out from payments to Medicare+Choice organizations amounts attributable to disproportionate share hospital payments and pay such amounts directly to those disproportionate share hospitals in which their enrollees receive care; to the Committee on Finance.

MANAGED CARE FAIR PAYMENT ACT OF 1999

By Mr. MOYNIHAN (for himself, Mr. BREAUX, Mr. DASCHLE, Mr. SANTORUM, Mr. DURBIN, Mr. SCHUMER, Mr. KERRY, Mr. SPECTER, Mr. CONRAD, Mr. BAUCUS, Mr. CHAFEE, Mr. KERREY, and Mr. CLELAND):

S. 1025. A bill to amend title XVIII of the Social Security Act to ensure the proper payment of approved nursing and allied health education programs under the medicare program; to the Committee on Finance.

NURSING AND ALLIED HEALTH PAYMENT IMPROVEMENT ACT OF 1999

• Mr. MOYNIHAN. Mr. President, today I am introducing three bills that will provide much needed financial support for America's 144 accredited medical schools and 1,250 graduate medical education (GME) teaching institutions. These institutions are national treasures; they are the very best in the world. Yet today they find themselves in a precarious financial situation as market forces reshape the health care delivery system in the United States.

The growth of managed for-profit care combined with GME payment reductions under the Balanced Budget Act of 1997 (BBA) have put these hospitals in dire financial straits. Hospitals are losing money—millions of dollars every year. And these losses are projected to increase, as additional scheduled Medicare payment reductions are phased in. Many of the teaching hospitals that we know and depend on today may not survive—including those in my state of New York—if these additional GME payment reductions are not repealed.

To ensure that this precious public resource is maintained and the United States continues to lead the world in the quality of its health care system, the three bills I am introducing today—the Graduate Medical Education Payment Restoration Act of 1999, the Managed Care Fair Payment Act of 1999, and the Nursing and Allied Health Payment Improvement Act of 1999—will provide critically required funding for teaching hospitals.

Everyone in America benefits from the research and medical education conducted in our medical schools and affiliated teaching hospitals. They are what economists call public goods—something that benefits everyone but which is not provided for by market forces alone. Think of an army. Or a dam.

The Medicare program is the nation's largest explicit financier of GME, with annual payments of about \$7 billion. In the past, other payers of health care have also contributed to the costs of GME. However, in an increasingly competitive managed care health care system, these payments are being squeezed out.

Earlier this year, I reintroduced the Medical Education Trust Fund Act of 1999. This legislation requires the public sector, through the Medicare and

Medicaid programs, and the private sector, through an assessment on health insurance premiums, to contribute broad-based and equitable financial support for graduate medical education. I hope that one day Congress will see the wisdom of enacting such a measure. However, our teaching hospitals need help now.

We are in the midst of a great era of discovery in medical science. It is certainly no time to close medical schools. This great era of medical discovery is occurring right here in the United States, not in Europe like past ages of scientific discovery. And it is centered in New York City.

It started in the late 1930s. Before then, the average patient was probably as well off, perhaps better, out of a hospital as in one. Progress since that point sixty years ago has been remarkable. The last few decades have brought us images of the inside of the human body based on the magnetic resonance of bodily tissues; laser surgery; micro surgery for reattaching limbs; and organ transplantation, among other wonders. Physicians are now working on a gene therapy that might eventually replace bypass surgery. One can hardly imagine what might be next—but we do know that much of it will be discovered in the course of ongoing research activities in our teaching hospitals and medical schools. That is a process which is of necessity unplanned, even random—but which regularly produces medical breakthroughs. To cite just a few examples:

At Memorial Sloan-Kettering Cancer Center, the world renowned teaching hospital in New York City, researchers in 1998 discovered among many other things a surgical biopsy technique that can predict whether breast cancer has spread to surrounding lymph node tissue. This technique will spare 60,000 to 80,000 patients each year from having to undergo surgical removal of their lymph nodes.

In 1997, at Mount Sinai-NYU Medical Center, it was discovered that malignant brain tumors in young children can be eradicated through the use of high-dose chemotherapy and stem-cell transplants.

And in May of last year, a doctor at Children's Hospital in Boston created a global media sensation with his discovery that a combination of the drugs endostatin and angiostatin appeared to cure cancer in mice by cutting off the supply of blood to tumors. Although the efficacy of this therapy in humans is not yet known, the research holds great promise that a cure for cancer may actually be within reach. And it was discovered in a teaching hospital.

The Graduate Medical Education Payment Restoration Act, with a total of 15 cosponsors, will freeze the current schedule of BBA reductions to the indirect portion of GME funding. Congressman RANGEL today is introducing a similar bill in the House. Under the BBA, the indirect payment adjustor is scheduled to be reduced from 7.7 per-

cent to 5.5 percent by FY 2001. This bill will maintain the current payment adjustor at its current level of 6.5 percent, thereby rolling back about half of the indirect GME funding cuts in the BBA. In total, this provision restores about \$3 billion over 5 years and \$8 billion over 10 years in indirect GME funding for teaching hospitals.

The Managed Care Fair Payment Act, with nine cosponsors, will redirect more than \$2.5 billion over 5 years of Medicare Disproportionate Share Hospital (DSH) funds from the Medicare managed care payment rates to the more than 1,900 hospitals that qualify for DSH funding. Congressman RANGEL introduced a similar bill in the House this past March. More than two-thirds of teaching hospitals also qualify for DSH funds. Under the current payment method, payments to managed care plans include these DSH funds, but unfortunately, these funds are not necessarily passed-on to DSH hospitals. Managed care plans often do not contract with DSH hospitals, and when they do the negotiated payment rates often do not include these DSH payments. Like GME funding under current law, this bill would carve out DSH funds from the managed care rates and require the Health Care Financing Administration to pass them on directly to qualifying hospitals.

The third bill I am introducing today, which has 13 cosponsors, is the Nursing and Allied Health Payment Improvement Act. This bill was introduced by Congressmen CRANE and BENTSEN on April 20 of this year. While Congress in the BBA of 1997 recognized the need to carve-out GME funding from managed care rates, it unintentionally did not carve out the funding for the training of nurses and allied health professionals. Like DSH funds, without the carve-out, funding for these education programs is unlikely to reach the more than 700 hospitals that provide training to these vitally important health professionals. This bill seeks to correct this problem by carving out the funding for the training of nurses and other allied health professionals and directing them to the hospitals that provide these training programs.

Combined, these three bills will strengthen our nation's teaching hospitals and ensure that the United States will continue to be in the forefront of developing new cures, new medical technology, and training of the world's finest medical professionals. Without these bills, the state of our nation's teaching hospitals and the delivery of health care will remain in jeopardy.

I ask that the text of the bills, along with two articles from the New York Times, be included in the RECORD.

The material follows:

S. 1023

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Graduate Medical Education Payment Restoration Act of 1999".

SEC. 2. TERMINATION OF MULTIYEAR REDUCTION OF INDIRECT GRADUATE MEDICAL EDUCATION PAYMENTS.

Section 1886(d)(5)(B)(ii) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)(ii)) is amended—

(1) by adding "and" at the end of subclause (II); and

(2) by striking subclauses (III), (IV), and (V) and inserting the following:

"(III) on or after October 1, 1998, 'c' is equal to 1.6.".

S. 1024

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Managed Care Fair Payment Act of 1999".

SEC. 2. CARVING OUT DSH PAYMENTS FROM PAYMENTS TO MEDICARE+CHOICE ORGANIZATIONS AND PAYING THE AMOUNTS DIRECTLY TO DSH HOSPITALS ENROLLING MEDICARE+CHOICE ENROLLEES.

(a) IN GENERAL.—Section 1853(c)(3) of the Social Security Act (42 U.S.C. 1395w-23(c)(3)) is amended—

(1) in subparagraph (A), by striking "subparagraph (B)" and inserting "subparagraphs (B) and (D)";

(2) by redesignating subparagraph (D) as subparagraph (E); and

(3) by inserting after subparagraph (C) the following:

"(D) REMOVAL OF PAYMENTS ATTRIBUTABLE TO DISPROPORTIONATE SHARE PAYMENTS FROM CALCULATION OF ADJUSTED AVERAGE PER CAPITA COST.—

"(i) IN GENERAL.—In determining the area-specific Medicare+Choice capitation rate under subparagraph (A) for a year (beginning with 2001), the annual per capita rate of payment for 1997 determined under section 1876(a)(1)(C) shall be adjusted, subject to clause (ii), to exclude from the rate the additional payments that the Secretary estimates were made during 1997 for additional payments described in section 1886(d)(5)(F).

"(ii) TREATMENT OF PAYMENTS COVERED UNDER STATE HOSPITAL REIMBURSEMENT SYSTEM.—To the extent that the Secretary estimates that an annual per capita rate of payment for 1997 described in clause (i) reflects payments to hospitals reimbursed under section 1814(b)(3), the Secretary shall estimate a payment adjustment that is comparable to the payment adjustment that would have been made under clause (i) if the hospitals had not been reimbursed under such section.".

(b) ADDITIONAL PAYMENTS FOR MANAGED CARE ENROLLEES.—Section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)) is amended—

(1) in clause (ii), by striking "clause (ix)" and inserting "clauses (ix) and (x)"; and

(2) by adding at the end the following:

"(x)(I) For portions of cost reporting periods occurring on or after January 1, 2001, the Secretary shall provide for an additional payment amount for each applicable discharge of any subsection (d) hospital that is a disproportionate share hospital (as described in clause (i)).

"(II) For purposes of this clause, the term 'applicable discharge' means the discharge of any individual who is enrolled with a Medicare+Choice organization under part C.

"(III) The amount of the payment under this clause with respect to any applicable discharge shall be equal to the estimated average per discharge amount (as determined

by the Secretary) that would otherwise have been paid under this subparagraph if the individual had not been enrolled as described in subclause (II).

"(IV) The Secretary shall establish rules for an additional payment amount for any hospital reimbursed under a reimbursement system authorized under section 1814(b)(3) if such hospital would qualify as a disproportionate share hospital under clause (i) were it not so reimbursed. Such payment shall be determined in the same manner as the amount of payment is determined under this clause for disproportionate share hospitals.".

S. 1025

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Nursing and Allied Health Payment Improvement Act of 1999".

SEC. 2. EXCLUSION OF NURSING AND ALLIED HEALTH EDUCATION COSTS IN CALCULATING MEDICARE+CHOICE PAYMENT RATE.

(a) EXCLUDING COSTS IN CALCULATING PAYMENT RATE.—

(1) IN GENERAL.—Section 1853(c)(3)(C)(i) of the Social Security Act (42 U.S.C. 1395w-23(c)(3)(C)(i)) is amended—

(A) by striking "and" at the end of subclause (I);

(B) by striking the period at the end of subclause (II) and inserting "and"; and

(C) by adding at the end the following new subclause:

"(III) for costs attributable to approved nursing and allied health education programs under section 1861(v).".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) apply in determining the annual per capita rate of payment for years beginning with 2001.

(b) PAYMENT TO HOSPITALS OF NURSING AND ALLIED HEALTH EDUCATION PROGRAM COSTS FOR MEDICARE+CHOICE ENROLLEES.—Section 1861(v)(1) of such Act (42 U.S.C. 1395x(v)(1)) is amended by adding at the end the following new subparagraph:

"(V) In determining the amount of payment to a hospital for portions of cost reporting periods occurring on or after January 1, 2001, with respect to the reasonable costs for approved nursing and allied health education programs, individuals who are enrolled with a Medicare+Choice organization under part C shall be treated as if they were not so enrolled.".

[From the New York Times, May 6, 1999]

TEACHING HOSPITALS BATTING CUTBACKS IN MEDICARE MONEY

(By Carey Goldberg)

BOSTON, May 5—Normally, the great teaching hospitals of this medical Mecca carry an air of whitecoated, best-in-the-world arrogance, the kind of arrogance that comes of collecting Nobels, of snaring more Federal money for medical research than hospitals anywhere else, of attracting patients from the four corners of the earth.

But not lately. Lately, their chief executives carry an air of pleading and alarm. They tend to cross the edges of their palms in an X that symbolizes the crossing of rising costs and dropping payments, especially Medicare payments. And to say they simply cannot go on losing money this way and remain the academic cream of American medicine.

Dr. Mitchell T. Rabkin, chief executive emeritus of Beth Israel Hospital, says, "Everyone's in deep yogurt."

The teaching hospitals here and elsewhere have never been immune from the turbulent

change sweeping American health care—from the expansion of managed care to spiraling drug prices to the fierce fights for survival and shotgun marriages between hospitals with empty beds and flabby management.

But they are contending that suddenly, in recent weeks, a Federal cutback in Medicare spending has begun putting such a financial squeeze on them that it threatens their ability to fulfill their special missions: to handle the sickest patients, to act as incubators for new cures, to treat poor people and to train budding doctors.

The budget hemorrhaging has hit at scattered teaching hospitals across the country, from San Francisco to Philadelphia. New York's clusters of teaching hospitals are among the biggest and hardest hit, the Greater New York Hospital Association says. It predicts that Medicare cuts will cost the state's hospitals \$5 billion through 2002 and force the closing of money-losing departments and whole hospitals.

Dr. Samuel O. Thier, president of the group that owns Massachusetts General Hospital, says, "We've got a problem, and you've got to nip it in the bud, or else you're going to kill off some of the premier institutions in the country."

Here in Boston, with its unusual concentration of academic medicine and its teaching hospitals affiliated with the medical schools of Harvard, Tufts and Boston Universities, the cuts are already taking a toll in hundreds of eliminated jobs and pockets of miserable morale.

Five of Boston's top eight private employers are teaching hospitals, Mayor Thomas M. Menino notes. And if five-year Medicare cuts totaling an estimated \$1.7 billion for Massachusetts hospitals continue, Mayor Menino says, "We'll have to lay off thousands of people, and that's a big hit on the city of Boston."

Often, analysts say, hospital cut-backs, closings and mergers make good economic sense, and some dislocation and pain are only to be expected, for all the hospitals' tendency to moan about them. Some critics say the hospitals are partly to fault, that for all their glittery research and credentials, they have not always been efficiently managed.

"A lot of teaching hospitals have engaged in what might be called self-sanctification—'We're the greatest hospitals in the world and no one can do it better or for less'—and that may or may not be true," said Alan Sager, a health-care finance expert at the Boston University School of Public Health.

But the hospital chiefs argue that they have virtually no fat left to cut, and warn that their financial problems may mean that the smartest edge of American medicine will get dumbed down.

With that message, they have been lobbying Congress in recent weeks to reconsider the cuts that they say have turned their financial straits from tough to intolerable.

"Five years from now, the American people will wake up and find their clinical research is second rate because the big teaching hospitals are reeling financially," said Dr. David G. Nathan, president of the Dana-Farber Cancer Institute here.

In a half-dozen interviews, around the Boston medical-industrial complex known as the Longwood Medical Center and Academic Area and elsewhere, hospital executives who normally compete and squabble all espoused one central idea: teaching hospitals are special, and that specialness costs money.

Take the example of treating heart-disease patients, said Dr. Michael F. Collins, president and chief executive of Caritas Christi Health Care System, a seven-hospital group affiliated with Tufts.

In 1988, Dr. Collins said, it was still experimental for doctors to open blocked arteries by passing tiny balloons through them; now, they have a bouquet of expensive new options for those patients, including springlike devices called stents that cost \$900 to \$1,850 each; tiny rotobladers that can cost up to \$1,500, and costly drugs to supplement the reaming that cost nearly \$1,400 a patient.

"A lot of our scientists are doing research on which are the best catheters and which are the best stents," Dr. Collins said. "And because they're giving the papers on the drug, they're using the drug the day it's approved to be used. Right now it's costing us about \$50,000 a month and we're not getting a nickel for it, because our case rates are fixed."

Hospital chiefs and doctors also argue that a teaching hospital and its affiliated university are a delicate ecosystem whose production of critical research is at risk.

"The grand institutions in Boston that are venerated are characterized by a wildflower approach to invention and the generation of new knowledge," said Dr. James Reinertsen, the chief executive of Caregroup, which owns Beth Israel Deaconess Medical Center. "We don't run our institutions like agribusiness, a massively efficient operation where we direct research and harvest it. It's unplanned to a great extent, and that chaotic fermenting environment is part of what makes the academic health centers what they are."

"There wouldn't have been a plan to do what Judah Folkman has done over the last 20 years," Dr. Reinertsen said of the doctor-scientist at Children's Hospital in Boston who has developed a promising approach to curing cancer.

Federal financing for research is plentiful of late, hospital heads acknowledge. But they point out that the Government expects hospitals to subsidize 10 percent or 15 percent of that research, and that they must also provide important support for researchers still too junior to win grants.

A similar argument for slack in the system comes in connection with teaching. Teaching hospitals are pressing their faculties to take on more patients to bring in more money, said Dr. Daniel D. Federman, dean for medical education of Harvard Medical School. A doctor under pressure to spend time in a billable way, Dr. Federman said, has less time to spend teaching.

The Boston teaching hospitals generally deny that the money squeeze is affecting patients' care (a denial some patients would question), or students' quality of medical education (a denial some students would question), or research—yet.

The Boston hospitals' plight may be partly their fault for competing so hard with each other, driving down prices, some analysts say. Though some hospitals have merged in recent years, Boston is still seen as having too many beds, and virtually all hospitals are teaching hospitals here.

Whatever the causes, said Dr. Stuart Altman, professor of national health policy at Brandeis University and past chairman for 12 years of the committee that advised the Government on Medicare prices, "the concern is very real."

"What's happened to them is that all of the cards have fallen the wrong way at the same time," Dr. Altman said. "I believe their screams of woe are legitimate."

Among the cards that fell wrong, begin with managed care. Massachusetts has an unusually large quotient of patients in managed-care plans. Managed-care companies, themselves strapped, have gotten increasingly tough about how much they will pay.

Boston had already gone through a spate of fat-trimming hospital mergers, closings and cost cutting in recent years. Add to the trou-

blesome complaints that affect all hospitals: expenses to prepare their computers for 2000, problems getting insurance companies and the Government to pay up, new efforts to defend against accusations of billing fraud.

But the back-breaking straw, hospital chiefs say, came with Medicare cuts, enacted under the 1997 balanced-budget law, that will cut more each year through 2002. The Association of American Medical Colleges estimates that by then the losses for teaching hospitals could reach \$14.7 billion, and that major teaching hospitals will lose about about \$150 million each. Nearly 100 teaching hospitals are expected to be running in the red by then, the association said last month.

For years, teaching hospitals have been more dependent than any others on Medicare. Unlike some other payers, Medicare has compensated them for their special missions—training, sicker patients, indigent care—by paying them extra.

For reasons yet to be determined, Dr. Altman and others say the Medicare cuts seem to be taking an even greater toll on the teaching hospitals than had been expected. Much has changed since the 1996 numbers on which the cuts are based, hospital chiefs say; and the cuts particularly singled out teaching hospitals, whose profit margins used to look fat.

Frightening the hospitals still further, President Clinton's next budget proposes even more Medicare cuts.

Not everyone sympathizes, though. Complaints from hospitals that financial pinching hurts have become familiar refrains over recent years, gaining them a reputation for crying wolf. Critics say the Boston hospitals are whining for more money when the only real fix is broad health-care reform.

Some propose that the rational solution is to analyze which aspects of the teaching hospitals' work society is willing to pay for, and then abandon the Byzantine Medicare cross-subsidies and pay for them straight out, perhaps through a new tax.

Others question the numbers.

Whenever hospitals face cuts, Alan Sager of Boston University said, "they claim it will be teaching and research and free care of the uninsured that are cut first."

If the hospitals want more money, Mr. Sager argued, they should allow in independent auditors to check their books rather than asking Congress to rely on a "scream test."

For many doctors at the teaching hospitals, however, the screaming is preventive medicine, meant to save their institutions from becoming ordinary.

Medical care is an applied science, said Dr. Allan Ropper, chief of neurology at St. Elizabeth's Hospital, and strong teaching hospitals, with their cadres of doctors willing to spend often-unreimbursed time on teaching and research, are essential to helping move it forward.

"There's no getting away from a patient and their illness," Dr. Ropper said, "but if all you do is fix the watch, nobody ever builds a better watch. It's a very subtle thing, but precisely because it's so subtle, it's very easy to disrupt."

[From the New York Times, May 6, 1999]

NEW YORK HOSPITALS BRACED FOR CUTS

(By Randy Kennedy)

The fiscal knife that has begun to cut into teaching hospitals in Boston and other cities has not yet had the same dire effects—lay-offs or widespread operating deficits—in hospitals around New York State.

But hospital executives and health-care experts alike say that if the Federal cuts to Medicare are not softened, the state will lose much more than any other—\$5 billion and

23,000 medical jobs—by 2002. And they warn that those cuts, a result of the Balanced Budget Act, pose a huge economic threat to New York, which has the nation's greatest concentration of medical schools and teaching hospitals and trains about 15 percent of the nation's medical residents.

"The carnage which is created by the Balanced Budget Act," said Kenneth Raske, president of the Greater New York Hospital Association, a trade group of 175 hospitals and nursing homes, "will totally disrupt the health care system in New York when it's fully implemented. It goes at the heart of the infrastructure."

The cuts, now in their second year, come at the same time as sharp increases in uninsured patients and the growing dominance of managed care, which have prompted all hospitals in the New York region to brace for what they say will be one of the most difficult fiscal years ever.

But with critics complaining that New York still has too many hospital beds and administrative fat that should be trimmed, those who run the prestigious teaching hospitals in the city find it hard to make their case that the Medicare cuts put them in real peril.

"I know this sounds like wolf, wolf, wolf because of the successes generally in the health care industry," said Dr. Spencer Foreman, president of Montefiore Hospital in the Bronx, which lost \$24 million in Medicare money in fiscal 1999. "But New York teaching hospitals are in trouble."

His own hospital did \$750 million in business in 1993 and ended that year with a \$3 million profit margin. This year, it will do \$1 billion in business and end with a \$6 million margin.

"Those are supermarket margins," Dr. Foreman said, adding that the hospital has "managed to keep a razor-thin margin every year by every year cutting costs and cutting again."

"But you can only cut so far before things begin to happen," he said. "The industry is touching bottom in a lot of areas, and the difference between profit and loss in this atmosphere is an eyelash. This is not the way normal billion-dollar enterprises are conducted."

Because the teaching hospitals have traditionally served a high percentage of poor patients, the threat to their future is even more important, Dr. Foreman and others said.

While he and other teaching hospital administrators avoid talking about it, the only way to keep from going into the red is to cut jobs and either shrink or close money-losing departments—which usually means emergency rooms, outpatients clinics, psychiatric and rehabilitation departments and maternity wards, among others.

"The so-called low-hanging fruit has all been picked," said Dr. David B. Skinner, the chief executive of New York Presbyterian Hospital, where every department has been asked to cut spending by 5 percent. The Greater New York Hospital Association projects that New York Presbyterian will lose more money over the courts of the Balanced Budget Act than any other American hospital—about \$320 million.

Dr. Skinner said that as the Hospital plans its year 2000 budget "we're going to have to look very closely at staffing ratios."

"Something's got to give here," he said. "You then look at where can you downsize departments that are losing money. And we're looking at that now. I don't want to say which ones because I don't want to unnecessarily panic the troops."

While the refrain in health-care politics in New York is usually for hospitals to cry poverty and many experts and budget analysts

to cry hyperbole, experts said yesterday that the teaching hospitals were probably not exaggerating their problems much.

"This certainly appears to be putting real strains on teaching hospitals throughout the country and especially in New York," said Edward Salsberg, director of the Center for Health Workforce Studies at the State University in Albany. "They seem to be building a case that this year it is more real than other years."•

• Mr. LEVIN. Mr. President, I am proud to be an original cosponsor of the bill introduced today by Senator MOYNIHAN which will help to reduce some of the financial strain that teaching hospitals are currently experiencing due to Graduate Medical Education (GME) cuts put in place under the Balanced Budget Act of 1997 (BBA).

The teaching hospitals in this nation are the very best in the world. There are over 1,200 teaching hospitals in the United States, 57 of which are in my own state of Michigan. Although these hospitals are providing excellent care while training residents, they are currently facing dire financial circumstances brought about by the growth of managed care combined with GME payment reductions. Additional Medicare payment reductions are currently scheduled to be phased in as per the BBA.

A major teaching hospital in my own state, the Detroit Medical Center (DMC), trains over 1,100 residents each year. The DMC stands to lose a total of \$53.8 million from IME reductions for Fiscal Years 1998-2002. It is important that we continue to support the DMC and other teaching hospitals, not turn our back on them.

I believe that the survival of our valuable teaching hospitals is at stake if we do not act now which is why I have cosponsored this legislation. This bill will freeze the Indirect Medical Education (IME) adjustment factor (the IME is the part of the GME payment that reflects the higher costs, such as more intensive treatments, of caring for patients at teaching hospitals) at the FY 1999 level of 6.5 percent, thereby rolling back about half of the IME funding cuts in the BBA. In total, this provision restores about \$3 billion over 5 years and \$8 billion over 10 years in IME funding for teaching hospitals.

Our medical schools and affiliated teaching hospitals conduct a great deal of the research and medical education which benefits everyone in America. The University of Michigan is one of the most prominent teaching institutions in the country. The UM is currently doing important prostate cancer research while providing health care to citizens from every county in the state. It is imperative that we allow this research to continue while we are on the verge of new discoveries in medical science.

Mr. President, I hope the Senate will pass this important legislation. •

By Mr. SMITH of Oregon (for himself and Mr. WYDEN):

S. 1027. A bill to reauthorize the participation of the Bureau of Reclama-

tion in the Deschutes Resources Conservancy, and for other purposes; to the Committee on Energy and Natural Resources.

DESCHUTES RESOURCES CONSERVANCY
REAUTHORIZATION ACT OF 1999

• Mr. SMITH. Mr. President, today I am introducing legislation, cosponsored by my colleague from Oregon, to reauthorize participation by the Bureau of Reclamation in the Deschutes Resources Conservancy for an additional five years.

The Deschutes Resources Conservancy, also known as the Deschutes Basin Working Group, was authorized in 1996 as a five-year pilot project designed to achieve local consensus around on-the-ground projects to improve ecosystem health in the Deschutes River basin. This river is truly one of Oregon's greatest resources. It drains Oregon's high desert along the eastern front of the Cascades, eventually flowing into the Columbia River. It is the state's most intensively used recreational river. It provides water to both irrigation projects and to the city of Bend, which is one of Oregon's fastest growing cities. The Deschutes Basin also contains hundreds of thousands of acres of productive forest and rangelands, serves the treaty fishing and water rights of the Confederated Tribes of Warm Springs, and has Oregon's largest non-federal hydroelectric project.

By all accounts, the Deschutes Basin Working Group has been a huge success. It has brought together diverse interests within the basin, including irrigators, tribes, ranchers, environmentalists, an investor-owned utility, local businesses, as well as local elected officials and representatives of state and federal agencies. Together, the Working Group was able to develop project criteria and identified a number of water quality, water quantity, fish passage and habitat improvement projects that could be funded. Projects are selected by consensus, and there must be a fifty-fifty cost share from non-federal sources.

From October 1998 to March 1999, the Deschutes Resources Conservancy has leveraged 272,180 dollars of its funds to complete 777,680 dollars in on-the-ground restoration projects. These projects include: piping irrigation district delivery systems to prevent loss; securing water rights to be left instream to restore flows to Squaw Creek; providing riparian fences to protect riverbanks; working with private timberland owners to restore riparian and wetlands areas; and seeking donated water rights to enhance instream flows in the Deschutes River Basin. They have been very successful at finding cooperative, market-based solutions to enhance the ecosystem in the basin.

The existing authorization provides for up to one million dollars each year for projects. Funding is provided through the Bureau of Reclamation, the group's lead federal agency. The

group did not actually receive federal funding until this fiscal year, but it has already successfully allocated these funds. The Deschutes Resources Conservancy enjoys widespread support in Oregon. It has very committed board members who represent diverse interests in the basin. The high caliber of their work, and their pragmatic approach to ecosystem restoration have been recognized by others outside the region.

I am convinced this pilot project needs to continue. That is why the legislation I am introducing today would extend the authorization for federal funds through fiscal year 2006, and increases the authorization for fiscal years 2002 through 2006 to two million dollars each year. I urge my colleagues to support this project. Not only is it important to central Oregon, but the Deschutes Resources Conservancy can serve as a national model for cooperative watershed restoration at the local level. •

ADDITIONAL COSPONSORS

S. 14

At the request of Mr. COVERDELL, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. 14, a bill to amend the Internal Revenue Code of 1986 to expand the use of education individual retirement accounts, and for other purposes.

S. 37

At the request of Mr. GRASSLEY, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 37, a bill to amend title XVIII of the Social Security Act to repeal the restriction on payment for certain hospital discharges to post-acute care imposed by section 4407 of the Balanced Budget Act of 1997.

S. 387

At the request of Mr. McCONNELL, the name of the Senator from Nevada (Mr. BRYAN) was added as a cosponsor of S. 387, a bill to amend the Internal Revenue Code of 1986 to provide an exclusion from gross income for distributions from qualified State tuition programs which are used to pay education expenses.

S. 409

At the request of Mr. DOMENICI, the names of the Senator from Vermont (Mr. JEFFORDS) and the Senator from Minnesota (Mr. GRAMS) were added as cosponsors of S. 409, a bill to authorize qualified organizations to provide technical assistance and capacity building services to microenterprise development organizations and programs and to disadvantaged entrepreneurs using funds from the Community Development Financial Institutions Fund, and for other purposes.

S. 424

At the request of Mr. COVERDELL, the names of the Senator from Minnesota (Mr. GRAMS) and the Senator from Arizona (Mr. KYL) were added as cosponsors of S. 424, a bill to preserve and protect the free choice of individuals and