advertising, giving the effort the appearance, at the very least, of a high-toned money grab.

I cannot be sure what motivated the show, ''The Search for Jesus.'' Evidently, Peter Jennings and staff spent months preparing for it, conducting interviews, researching, and traveling to Biblical sites. But viewers were certainly done a disservice by the encapsulated version that the network provided. As much as any journalist may try to let others do the talking, to give the experts the floor, and to present a rounded, unbiased view, when it comes right down to it, the finished piece—except on very rare occasions—reflects the decisions, good or bad, of producers and editors who must slice and trim to make their program fit into the time frame relegated to it by the network.

The show's conclusion—that Jesus was a man, that he existed—comes as no revelation to anyone who has lost someone dear and found solace only in the Trinity. As the program noted, there were others before and during His time who professed to be the messiah. They came and went, sometimes by execution, and their followers were either executed alongside their leaders or they found new ''messiahs'' in whom to place their faith. But, as the ABC show noted, Jesus was an exception. There was something extraordinary—one might say miraculous—in the way that His death promoted the proliferation of His teachings, and in the fact that, nearly 2,000 years after His crucifixion, He continues to inspire followers around the world.

There is, indeed, no need to go to the Middle East to find Jesus. He can be found in any West Virginia hamlet or hollow. He can be found in the arid West, among towering urban buildings, and along peaceful ocean shores.

In the words of Job, that ancient man of Uz, ''Oh that my words were now written! Oh that they were printed in a book! That they were graven with an iron pen and lead in the rock for ever! For I know that my Redeemer liveth, and that He shall stand at the latter day upon the earth.''

I do not judge the intentions or the views of those who helped to put together ''The Search for Jesus'' program, but I know exactly where to place my faith.

Mr. President, I ask unanimous consent that an article entitled ''He's everywhere but here,'' be printed in the RECORD.

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

[From the Washington Post, June 25, 2000]

HE'S EVERYWHERE BUT HERE

(By Tom Shales)

An essentially thankless task that proves also to be a pointless one, ''The Search for Jesus'' is likely to anger many of those who see it—and merely bore others. A two-hour ABC News special, the documentary proceeds from a foolhardy premise and, in the end, doesn't accomplish much more than a dog chasing its tail.

And it's not much more illuminating to watch.

''Peter Jennings Reporting: The Search for Jesus''—yes, Jennings gets top billing over even the Messiah—supposedly aims to discover what can be learned about ''Jesus, the man,'' in historical rather than religious terms. But can those two aspects of Jesus's life really be separated? The danger is that what you'll end up with is an exercise in myth-debunking potentially offensive to devout members of the Christian faith. And that is precisely what happens.

The program, at 9 tonight on Channel 7, is peppered with disingenuous disclaimers. ''We are very aware of our limitations,'' Jennings says at one point, though much about the program suggests journalistic arrogance and hauteur. He concedes that it is difficult for a reporter ''to get the story right'' in this case, but isn't it rather presumptuous even to try? A little later, when Jennings says the question of Jesus's divinity is ''a matter of taste,'' he sounds ridiculously nonchalant about a topic of the deepest spiritual profundity.

Devout Christians may not be the only ones taking umbrage. Whenever Jennings parades into the Middle East, warning flags are raised by American Jewish groups that have objected several times to what they see as a pro-Palestinian, anti-Israeli bias evident in some of the anchor's past work.

Thus one can only groan and shudder when Jennings, later in the broadcast, opens the old can of worms about whether ''the Jews'' or the Romans are more responsible for the crucifixion of Christ. Oh how we don't need to get into that again. As it turns out, the issue is rather diplomatically skirted by one of several guest theologians who says, tiptoeing carefully, that ''a very narrow circle of the ruling Jewish elite'' probably did collaborate with the ruling Roman elite in nailing Jesus to the cross.

As for the resurrection of Christ, upon which the entirety of Christian faith rests, Jennings notes in his cavalier style that there is ''a wide range of opinions'' about whether it occurred. Come, now. You believe it or you don't. That's the range of ''opinions.'' Anyone looking for scientific or historical ''proof'' is flamboyantly Missing the Point.

''All but the most skeptical historians believe Jesus was a real person,'' Jennings is willing to concede. But one by one he sets about discrediting what Matthew, Mark, Luke and John say about the miracles and divinity of Jesus, making a big fuss, for one thing, over the fact that the four New Testament books contain inconsistencies in their recountings of the story.

Did a star in the east guide the Three Wise Men to the manger where Jesus was born? ''I don't think there were Three Wise Men,'' a biblical scholar huffs, and that's supposed to dispel that detail. Jesus may not even have been born in Jerusalem but rather in Nazareth, Jennings says; does it make a particle of difference to the spiritual essence of the matter?

Sometimes Jennings is content with ''analysis'' of the most innocuous sort. Jesus ''must have been a controversial figure'' in his own time, Jennings says. No kidding. But mostly we get specious debunkery. Stories of Jesus performing miracles were most likely ''invented'' by ''the gospel writers,'' Jennings tells us. Even as relatively mundane a detail as Jesus getting a hero's welcome when he entered Jerusalem on Palm Sunday is dismissed: The crowd ''may have been singing and shouting, but not necessarily for Jesus,'' one of the ''experts'' opines.

It's also suggested, despite the daring Jennings pronouncement that Jesus was ''controversial,'' that Jesus may in fact have been ''a rather minor character'' in the political turmoil of the era.

To the credit of producer Jeanmarie Condon, ''The Search for Jesus'' does contain many visually arresting images, and the program was for the most part beautifully shot by Ben McCoy. There are such piquant ironies as a sign warning ''Danger! Mines!'' near a spot where it is believed John the Baptist and Jesus himself once preached. The first image on the screen is striking: a silhouette of the Bethlehem skyline today, a cross atop one building and a satellite dish atop another.

Thus the program is handsomely produced yet stubbornly wrongheaded and bogus, often seeming a gratuitous effort to cast doubt on deeply and widely held beliefs. This isn't really proper terrain for journalists to traverse. It was a bad idea to do the show and it came out as flawed and muddled as anyone might have dreaded.

Some of the padding in the two-hour time slot is filled with modern, hip and usually dreadful recordings of hymns and religious songs. A lot of territory, physically as well as thematically, is covered, but for little purpose. At several of the shrines in the Holy Land, we see tourists with video cameras making their own personal documentaries about a visit to the Middle East. Some viewers would be quite justified in wishing they could look at those tapes rather than at ABC's misbegotten and misguided ''Search.''

It is a search that leads nowhere. Slowly.

Mr. BYRD. Mr. President, I yield the floor.

THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION AND RELATED AGENCIES APPROPRIATIONS, 2001 —Resumed

Mr. BROWNBACK. Mr. President, I yield up to 15 minutes to the Senator from New Mexico, the chairman of the Budget Committee.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Thank you very much. I hope I don't use all of the time and that I can yield Senator BROWNBACK time because he started this great discussion with his amendment, on which I support and commend him—the Ashcroft Medicare lockbox.

I have a pretty good suspicion that sometime soon it is going to be adopted by the Senate. The Senator can take great credit, being one who from the very beginning wanted to have a lockbox on Social Security—and even joined in the real lockbox bill, which, incidentally, was not the lockbox we are considering for Social Security today. He has been on the cutting edge of new ways to save both the Social Security trust fund and today on the Medicare HI part of the trust fund.

I rise to talk a little bit about the Social Security lockbox.

First of all, everybody should think for a minute. What kind of lockbox must the Democrats have when they have resisted a lockbox five times? That was a lockbox we came up with that the distinguished Senator from Michigan, Mr. ABRAHAM, introduced with me and others. And five times the Democrats have resisted it and have not let us pass it. That ought to put up a little bit of a question: what is the difference between the two, since all of a sudden today on an appropriations bill—which probably means amendments are going to go nowhere other than to make a little racket here—we have two distinguished and good colleagues of mine adopting a Democrat lockbox for Social Security.

First, let me change that to six occasions when we have offered a lockbox we put together. Most people who check for a real lockbox, in the sense of what that word means, say ours will do it and that others are questionable. Others are, in one degree or another, more easy to use in terms of violating the lockbox and spending the money elsewhere.

The reason they are different is that ours is real. In the very sense of a lockbox written into law, ours is real.

Let me essentially tell you what we did. We calculated where the debt of the United States would be if all of the Social Security money were left in, if we knew the numbers, and if we put in law and statute the level of debt each year for the foreseeable future. Then we said that statute locks that money in, except in the case of war or the case of economic emergency—we defined that as most economists do—and great national disaster.

That is a lockbox. In order to spend it, we have to have a statute, a law that will change that level of debt that is related to Social Security.

My friend on the Budget Committee, Senator CONRAD, has for a long time been a proponent of making sure we have the debt down, and I commend the Senator. He has been concerned about Social Security, as have many of us.

Essentially their lockbox is an invitation to waive the lockbox or, by a 60-vote majority, get rid of it. Thus, whatever you want you spend.

I urge, instead of the lockbox they have before the Senate, serious consideration of accepting the lockbox that Senator ABRAHAM, Senator DOMENICI, and Senator ASHCROFT have tendered on six occasions. It is truly what the senior citizens deserve when speaking about lockbox. We should not be telling them it is a lockbox, but it can be waived simply on the floor of the Senate.

How simple is it? We have just waived, for the two bills before the Senate, the Budget Act, which precluded doing what they were doing. We got up and said: Let's waive it. We could reach the point where we want to spend Social Security and Members could come to the floor with a vital program and say, just as we waived the Budget Act in order to take this off budget, let's waive it to spend it.

If you do the Abraham-Domenici-Ashcroft lockbox for Social Security, you have to introduce a bill, say we want to change the debt limit as Social Security impacts it. Frankly, I am very proud to have come up with that idea. I think my friend from Michigan would acknowledge I came up with it. I am very proud of him. For a long time, he has been trying to get that voted on. He has told people what he was for, as Senator ASHCROFT has. We have not had a vote.

We tried six times to get a lockbox vote, and we were denied it by this institution, by our fellow Senators on the other side. Then all of a sudden, on an appropriations bill, with a pretty positive chance that the amendments aren't going anywhere because we cannot pass this kind of an amendment on an appropriations bill when it gets to the House—you can take it out the door and send it to the House, but you are pretty sure if it is not dropped before getting to the House, it is probably dropped when you open the doors to the conference because it does not belong on this bill. I am not suggesting that either amendment is being offered knowing full well it is not going anywhere, but I am asking why doesn't the Senate vote on the real lockbox for Social Security.

We are going to have our vote today. I am wondering whether the Senator might give consideration to offering the real lockbox and see where we stand. I ask Senator ABRAHAM what he thinks of that idea in terms of being a chief proponent.

Mr. ABRAHAM. I spoke on the floor a few minutes ago and raised many of the same inquiries the Senator has raised. I am disappointed, after so many efforts on our part to get a vote, that we couldn't.

On the other hand, I indicated I was heartened that today at least there seems to be a willingness to begin to give people votes on issues relating to the lockbox. I want to have the votes.

There is a clear distinction between the lockbox we have authored together and we want to have an opportunity for that stronger lockbox to be considered. I want it done soon. It ought to be done on a vehicle that becomes a law.

Mr. DOMENICI. One last point in reference to the Medicare lockbox off-budget proposal that my friends on the other side of the aisle have offered.

There is a giant loophole that we have never considered in the Social Security trust fund lockbox, nor is it considered in their lockbox on Social Security. Current HI law permits all kinds of additions on the expenditure side of Medicare.

If we leave that language in, we are opening that trust fund instead of closing it. When we take it off budget we open it to spend it, which, to me, seems almost inconsistent with why we are doing it.

I am not going to vote for either of the Democratic lockboxes because I think the Medicare does not work and the Social Security is not a real lockbox.

I yield the floor.

The PRESIDING OFFICER (Mr. SMITH of New Hampshire). The Senator from North Dakota.

Mr. CONRAD. I say to my colleague and my friend from New Mexico, his last reference is to a provision that says you can spend Medicare money for Medicare programs. That is so we can have a BBA add-back, a balanced budget add-back, for Medicare, as we did last year. There is nothing mysterious about that.

The Senator from New Mexico asked why we weren't supporting the lockbox proposal he made previously. There are two reasons: No. 1, we got a letter from the Secretary of the Treasury saying that could threaten default on the debt of the United States; No. 2, our analysts indicated that could threaten Social Security payments to those who are eligible for Social Security. Those are the reasons we have not accepted that lockbox proposal.

I didn't just come here today proposing a lockbox. For 2 years, I have proposed a Social Security and Medicare lockbox as a senior member of the Senate Budget Committee. Frankly, our friends on the other side of the aisle have resisted.

If the choice is between the lockbox proposal I have made today and the lockbox proposal of the Senator from Missouri on the question of which is stronger, there is no question which is stronger. The amendment I have offered is stronger. That is because there is a fatal flaw in the amendment of the Senator from Missouri. He provides no enforcement mechanism for the provision taking Medicare surpluses off budget.

Under the amendment of the Senator from Missouri, no point of order would apply against legislation that could use Medicare surpluses for other purposes. Under the Ashcroft amendment, the Medicare trust fund could be depleted for any purpose as long as the overall budget remained in balance. That is the fact. That is the reality.

I notice the chairman of the Budget Committee never referenced the amendment the Senator from Missouri has before the Senate today. Never referenced it. He talked about a lockbox proposal they have had previously—not about the lockbox proposal before us today.

I yield the floor.

Mr. ASHCROFT. Mr. President, I yield to the Senator from New Mexico 4 minutes.

Mr. DOMENICI. For 10 years, we have had a written proposal with reference to the lockbox for Social Security and never have we put in language that said what their Medicare lockbox amendment says, that the surpluses can be used for spending related to the programs currently in HI. As a matter of fact, we have used the money for Social Security with a lockbox, a "verbal'' like theirs, that never included such language, and we have spent the money on Social Security.

What I am saying is this is an invitation to expansion and spending, rather than an invitation to protecting it. We could be making HI less solvent under this language rather than more solvent.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. ASHCROFT. Mr. President, I yield to the Senator from Michigan so much time as he may consume up to 5 minutes.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. ABRAHAM. Mr. President, I want to comment, in response to the comments of the Senator from North Dakota, the following: The Senator from North Dakota has characterized the stance of those of us who have not supported his proposal for a Medicare and Social Security lockbox as resisting his efforts for 2 years. Resisting his efforts is not, in my judgment, a proper characterization. We have not supported those efforts. But what we have done today is provided the Senator from North Dakota a chance to have a vote on a proposal he has worked on and for which he has sought support. I would like to distinguish that from what I consider to be the accurate definition of resistance, which is to not even give a vote to people who have a legitimate proposal to bring to the floor of the Senate, and I consider the amendment Senators DOMENICI and ASHCROFT and I drafted with respect to a Social Security lockbox to be a legitimate piece of legislation that deserves the same consideration that we will soon give the Senator from North Dakota.

I say to the Senator from North Dakota and his colleagues, I hope, in the spirit with which a vote is being offered on the proposal that he has today, we will get a straight up-or-down vote on the proposal we have been offering because now that you have had this chance we will see what happens, obviously, both here and in the conference that will follow the passage of this legislation. I would like to have the opportunity to get a straight up-or-down vote on the legislation that on five or six or whatever number it is separate occasions has been prevented from happening. That to me would be the difference between resistance and lack of support.

I do not ask the Senator from North Dakota to vote for my proposal. I hope he and his colleagues would at least give us an opportunity to let all of us cast our votes up or down on it. I hope we get that chance. I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, I am running out of time. The Senator from Missouri informs me he has 20 minutes left. I have 2 minutes left. Under the rules, if neither of us uses time right now, the remaining time of each of us is used equally, which means I would run out of time. He has indicated that is what he would do. If I do not take this time for my final argument, we just lose the time. Those are the rules of the Senate. That is fair.

I say this. I am saying this for the benefit of colleagues on my side who are wondering if there is additional time available. Clearly, there is not.

The Senator from Michigan and the Senator from New Mexico have again raised the question of the lockbox they offered previously; not the lockbox on which we are about to vote, but what they offered previously. The reason our side resisted that lockbox approach is because we received a letter from the Secretary of the Treasury from which I quote:

> Our analysis indicates that the provisions Senators Domenici and Abraham and Ashcroft were previously offering could preclude the United States from meeting its financial obligations to repay maturing debt and to make Social Security benefit payments, and could also worsen a future economic downturn.

That is the reason we resisted those plans, because they were flawed. That is the same reason I believe the amendment I have offered today, to have a Social Security and Medicare lockbox—something I have proposed for 2 years—is superior to the option we are actually voting on today. The reason our proposal is superior, I believe, is because it protects Medicare. It protects it in the same way we protect Social Security: by points of order to make certain that it is not raided.

Unfortunately, the amendment of the Senator from Missouri does not have that level of protection. He has less protection for Medicare than for Social Security. He does not have a point of order that can apply against legislation that would use Medicare surpluses for other purposes. The problem with that is under the Ashcroft amendment the Medicare trust fund could be raided, could be depleted for any purpose as long as the overall budget remained in balance.

I thank the Chair.

The PRESIDING OFFICER. All time under the control of the Senator from North Dakota has expired. Who yields time? The Senator from Missouri.

Mr. ASHCROFT. Mr. President, how much time remains?

The PRESIDING OFFICER. There remain 17 minutes.

Mr. ASHCROFT. I yield to the Senator from Michigan as much time as he may consume up to 5 minutes.

Mr. ABRAHAM. Mr. President, I thank the Senator from Missouri. I cannot resist responding to the closing remarks by the Senator from North Dakota. I have to say, I interpret his comments as saying he and his colleagues, because they oppose or would vote against the lockbox proposal we have offered so many times, would not even let us have an up-or-down vote on it. I think that is unfortunate.

I think the way the Senate works, they certainly have an ability to prevent votes. But so do we. I hope we will not have to get to the point where we have to engage both sides in those kinds of tactics. We have certainly demonstrated today a willingness to have a vote on his Social Security lockbox proposal. The concerns he raised in the letter that was written by Secretary Rubin, the long-since departed Secretary of the Treasury, were in fact responded to by us in the modifications that we brought in the most recent version of this lockbox.

Certainly I am not going to get into the merits of that at this point, but the notion that because the Secretary of the Treasury argues that something could cause problems should prevent us from having a chance to vote on an issue—there are plenty of issues we vote here where Cabinet members have raised the specter of problems if such votes or legislation were passed.

It is pretty clear to me that notwithstanding the seemingly positive steps taken today to give the Senator from North Dakota an opportunity to have his Social Security lockbox voted on, we are still going to meet impediments in the effort to get ours voted on. I would put the Presiding Officer and the Senate on notice, we are going to keep trying. We, unfortunately, may have to go into the sorts of tactical approaches that cause a lot of time to be taken when it seems to me we could accommodate both sides on this fairly easily. In any event, we will keep pressing forward on it.

I close by complimenting the Senator from Missouri whose steadfast efforts on both the Social Security lockbox as well as the Medicare lockbox front predated the efforts of anyone else of whom I am aware, certainly on the Medicaid issue. He has certainly demonstrated his commitment to that. Certainly his efforts to bring these issues to the floor deserve all our praise and thanks.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. ASHCROFT. Mr. President, I thank the Senator from Michigan for his kind remarks and for his commitment to maintaining the integrity of our Social Security and Medicare trust fund. Frankly, I thank the Senator from North Dakota for coming to the floor to engage in the debate about a very important issue, as well as the other Senators who have come forward to indicate their support for discontinuing—or stopping—what has become a rather traditional exercise of this Congress: spending money out of the Medicare trust fund for other purposes.

It is time for us to cease that kind of expenditure. It is time for us to say the trust fund, which is made up of taxes specifically paid by working people—you have to work to pay the Medicare tax; it is a specific tax paid by working people—should be off limits to other expenditures.

I thank the Senator from North Dakota. I thank the Senator from Michigan. I thank the Senator from New Mexico. I am grateful for the others—the Senator from New Jersey and others—who have talked about this issue. It is a major step forward.

There are a lot of folks who have come to the floor talking about how they wanted this for a long time. Frankly, we have not had this kind of debate on protecting the Medicare trust fund in my memory. When I filed this legislation last November, I was not aware of any, and I still do not know that there is, any other legislation similar to this that had been filed at that time. I am delighted we are making this progress. I commend people on both sides of the aisle for this progress.

My amendment protects the Social Security surplus as well. Social Security is off budget already. My amendment prohibits on-budget deficits.

The Senator from North Dakota is talking about how durably he protects the Medicare trust fund with a point of order that takes 60 votes in the Senate. I am pleased for him to embrace that and to talk about it and say how good it is, in part because that is the budget rule which I proposed.

Mr. DASCHLE. Will the Senator from Missouri yield for 30 seconds? If he will yield for a couple of seconds, I want to yield 5 minutes of my leader time to the senior Senator from North Dakota.

Mr. ASHCROFT. I yield the floor for 5 minutes of leader time for the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota is recognized for 5 minutes.

Mr. CONRAD. Mr. President, I will not take 5 minutes at this point. I want to make the point that I appreciate the Senator from Missouri. He is serious and sincere about an effort to provide a Social Security and Medicare lockbox, but when you look at the specifics of what he has proposed, it falls short. There is a fatal flaw.

Let's look at fiscal year 2000. There is projected a $150 billion Social Security surplus. That is protected. There is a $24 billion projected Medicare surplus. Under the proposal of the Senator from Missouri, every penny of the Medicare surplus could be taken for other purposes because the protection he provides is aimed at the overall budget being in surplus, not at the Medicare component being in surplus. So he has a lockbox that leaks. That is the problem.

The reason the amendment I have offered, along with Senator LAUTENBERG, the ranking member of the Budget Committee, is superior is that it solves that problem. We do not have a leak. We have a budget point of order that prevails.

In addition, the Senator from Missouri does not have Social Security protection. We do. We have additional points of order that apply to make sure nobody raids Social Security.

Our colleagues are going to have a defining vote in just a few minutes: Do you want to have the strongest protection for Social Security and Medicare, or do you want a weak tea version? That is going to be the choice, and all of us are going to be held accountable for our votes. That is the point.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Missouri is recognized.

Mr. ASHCROFT. Mr. President, I ask unanimous consent that I be allowed to finish my remarks on this measure without further interruption.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ASHCROFT. Mr. President, I begin——

Mr. REID. I am sorry, I was talking with someone else. What was the request?

Mr. ASHCROFT. Mr. President, I believe I have the floor.

Mr. REID. I am sorry, I could not hear the Senator's request.

The PRESIDING OFFICER. The Senator from Missouri has the floor, but the Chair will repeat the unanimous-consent request, which was, he be allowed to finish the remainder of his time uninterrupted.

Mr. REID. I apologize.

Mr. ASHCROFT. Mr. President, I tried to accommodate the Senators on the other side. When the leader from the other side asked for 5 additional minutes, I interrupted my own remarks, and I thought it would be fair for me to have an opportunity to spend my time without being interrupted. I will start over.

I commend the Senator from North Dakota for his concern and for coming to the floor to debate this issue. I am delighted we have now come to a place where we are debating ''hows'' instead of if we are going to do it—how we are going to do it. Both of these measures provide a 60-vote point of order, which is a pretty high hurdle to climb over, as a way of protecting Medicare. As a matter of fact, that is the mechanism that is used in the protection for Social Security.

The Senator from North Dakota has commended that as durable, strong, vigorous, robust protection. It happens to be the protection which I placed in the law as a result of an amendment I offered in the budget process in previous budget years so that we would find ourselves incapable of infringing the Social Security surplus. When we adopted that amendment and embraced it, we had tremendously good results.

This year, it looks as if there may be as many as $175 billion we will save, not spend; that we will respect instead of invade in terms of the Social Security surplus. That is a big positive. Really, what both sides of the aisle are talking about is getting the kind of robust, strong protection for Medicare that we have for Social Security.

I have to say how much I appreciate the remarks of the Senator from New Mexico, the chairman of the Budget Committee, who talked about the fact we need protection in the statute, not just in the budget rules. It is lamentable that each time we have sought to upgrade that protection from the budget rules to a statute, there has been a filibuster on the other side.

They now say the reason they were filibustering—one time they said it is because of Medicare; another time they waved an opinion that came from the Secretary of the Treasury. One of the reasons the Secretary of the Treasury indicated he would not want to support what we were offering was they might need to do additional spending in certain times in our economy. I understand there are those who believe wanting to spend more is a reason not to do this, but the real reason for wanting to do this is to spend less, especially to spend less of the money that is in the lockbox.

The Senator from North Dakota has raised issues regarding the security of the lockbox which I have proposed. A good debate on these issues is important and appropriate. As a matter of fact, we want to have the strongest lockbox we can. I would not come to this Chamber and offer lockbox legislation that is not durable and not strong. I do not think the Senator from North Dakota would either. There are problems with the proposal of the Senator from North Dakota. This particular phrase on the fifth page of his amendment beginning with the words:

> This paragraph shall not apply to amounts to be expended from the hospital insurance trust fund—

That is, Medicare trust fund——

> for purposes relating to programs within part A of the Medicare as provided in law on date of enactment of this paragraph.

Frankly, they may have a durable lock on that box; they may have reinforced corners on the box; they may have a stout handle on the box; but if there is a hole in the side of the box, we have problems.

I appreciate the Senator from New Mexico raising this issue about potential leakage from the box. What we should be about, though, is not trying to find ways in which our proposals are inadequate or whether there is a hole in his box or whether my supermajority point of order is as durable as his supermajority point of order. We should be about the business of protecting the Social Security surplus and the Medicare surplus and doing it in a durable way and a way which means this Congress will not relapse into habits that Congress engaged in for decade after decade. It is time for us to respect the need for a lockbox.

I filed the measure last November. Last month, Vice President GORE endorsed the concept of a lockbox. This week, 2 days ago, the President of the United States said we ought to have a lockbox to secure the Medicare box so that it would not be available for spending. I do not know what the Treasury said last year, but I know what the President said last week. And I agree with that.

So it is possible to quibble here or there about one aspect of this or the other. It is instructive for me to know that these amendments were not proposed until I came to the floor to propose this.

I am delighted that for the first time in my memory we are debating a Medicare lockbox, in conjunction with a Social Security lockbox, that is durable.

May I inquire as to the time remaining?

The PRESIDING OFFICER. The Senator has 4 minutes 15 seconds remaining.

Mr. ASHCROFT. So with that in mind, I commend to the Members of the Senate, generally, the concept of a lockbox: a durable, secure, mechanism that keeps this Congress from reengaging in activities it has engaged in over time.

As this measure moves forward, let's do what we can to improve it in every way possible. Let's talk about a lockbox for Social Security that is statutory.

I was delighted to be able to put it in the budget rules of the Senate so that it is out of order for someone to propose spending Social Security income trust funds for non-Social Security purposes. But I would like to see it enshrined into law.

We have talked about waiving budget points of order. Obviously, I would like to have this be beyond a point of order. I would be very pleased to have a law enshrined for the way in which we would enforce these rules.

It is with that in mind that I express my appreciation to the Members of the Senate and say that our objective here is relatively uniform. From what I can tell from arguments made on the other side, to arguments made on this side, we both want a lockbox. We both want a lockbox that is durable. We want one that does not leak. We want one that is enforceable.

The lockbox—I think we are agreeing today—should be one that protects not only Social Security but Medicare. When we get this close to this kind of agreement on an issue that is this important, I think it is time for us to work together.

I do not want to fight with my colleagues on the other side of the aisle. I want to work with them. If we are close to having a durable Social Security lockbox and if we are close to having one that protects Medicare, I want to do it.

I have been working on this for over 2 years. Early in 1999, S. 502, the Social Security Safe Deposit Act, was incorporated in the fiscal year 2000 budget resolution, and again in the fiscal year 2001 budget resolution, with those kinds of rules. That is why we have the durability of at least the rules.

Finally, the Conrad amendment does not offer stronger protection for Social Security than the Ashcroft budget rule. It is the same thing. It is codified. I think we can even do better than that. I would like to do better than that with a statute.

While both offer the same point of order protection for Medicare, my amendment does not have the hole in the side of the box and, as a result, I think it is stronger. But, very frankly, I want to work with folks on the other side of the aisle who agree with me on this issue. I am not opposed to the idea of our working together to get it done.

So I announce to my colleagues in the Senate, I do not think it is a difficult thing to vote for my amendment. I think it is a very good amendment. I do not think it is a difficult thing to vote for the amendment on the other side of the aisle.

I hope if we vote for these amendments, and they are enacted, that we will be able to work together toward a solution that really helps the American people, that protects senior citizens from having the Medicare trust fund violated, and from having the trust fund for Social Security violated as well.

I would like to see that done in statute as well as in the rules of the Senate. It is with that in mind that I thank the Members of the opposition and those who have spoken on behalf of this amendment. I think we can work together for a really important purpose.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

All time on the Conrad amendment and the Ashcroft amendment has expired.

Mr. CONRAD. Mr. President, I had 3 minutes of leader time remaining.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. CONRAD. Mr. President, first, I assure my colleague that my amendment was not in response to his. I had filed for an amendment yesterday. I offered this amendment in the Finance Committee yesterday. I have offered a lockbox for Social Security and Medicare for 2½ years—a different Medicare-Social Security lockbox than is advocated here today by the Senator from Missouri because I believe there is a fatal flaw in the amendment of the Senator from Missouri.

That fatal flaw is that his protection does not work. It does not work because, under the Ashcroft amendment, no point of order would apply against legislation that would use Medicare surpluses for other purposes. The result of that is, under the Ashcroft amendment, the Medicare trust fund could be depleted for any purpose as long as the overall budget remained in balance. That is the problem with the amendment of the Senator from Missouri.

That is the reason the amendment that I have offered is superior. It is stronger. It provides real protection for Medicare, by way of special points of order against a budget resolution that would violate the off-budget status of Medicare Part A.

The fact is, the amendment of the Senator from Missouri does not provide the same protection to Medicare that we provide to Social Security.

Now, why would we do that? If we are serious about protecting Medicare, wouldn't we have the same points of order apply to protect Medicare in the same way that we protect Social Security? I would hope so. Because if we do not, the hard reality is the amendment of the Senator from Missouri would permit us to go and raid every penny of the Social Security surplus or every penny of the Medicare surplus this year and use it for another purpose. That is a mistake.

In addition, the Ashcroft amendment is silent on Social Security, while the amendment that I have offered adds a point of order against violating the off-budget status of Social Security.

I hope my colleagues will vote for the Conrad-Lautenberg-Reid amendment so we really protect Medicare in the same way we protect Social Security. That is what we ought to do here today. That is the opportunity we have here today. We ought to take it. We ought to protect Medicare and Social Security. We ought to adopt this lockbox proposal.

Mr. President, I ask unanimous consent that Senator FEINGOLD be added as a cosponsor of my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CONRAD. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

All time on the Conrad amendment and the Ashcroft amendment has expired.

Mr. REID. Mr. President, I ask unanimous consent that the yeas and nays be ordered on both amendments.

The PRESIDING OFFICER. Without objection, it will be in order to order the yeas and nays on both amendments.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask unanimous consent that the second vote be limited to 10 minutes.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

Mr. SPECTER. On the time of the votes that are about to occur, I remind my colleagues of what Senator LOTT said earlier today in response to what the Senator from Nevada said, that Senators need to be prepared to have the time limits enforced.

VOTE ON AMENDMENT NO. 3690

The PRESIDING OFFICER. The question is on agreeing to Conrad amendment No. 3690. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Hampshire (Mr. GREGG and the Senator from Kentucky Mr. MCCONNELL) are necessarily absent.

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUYE) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?—

The result was announced—yeas 60, nays 37, as follows:

[Rollcall Vote No. 162 Leg.]

YEAS—60

Abraham
Akaka
Ashcroft
Baucus
Bayh
Biden
Bingaman
Boxer
Breaux
Bryan
Burns
Byrd
Campbell
Chafee, L.
Cleland
Collins
Conrad
Daschle
DeWine
Dodd
Dorgan
Durbin
Edwards
Feingold
Feinstein
Fitzgerald
Gorton
Graham
Harkin
Hollings
Hutchison
Jeffords
Johnson
Kennedy
Kerrey
Kerry
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Mikulski
Moynihan
Murray
Reed
Reid
Robb
Rockefeller
Roth
Sarbanes
Schumer
Smith (OR)
Snowe
Specter
Torricelli
Voinovich
Wellstone
Wyden

NAYS—37

Allard
Bennett
Bond
Brownback
Bunning
Cochran
Coverdell
Craig
Crapo
Domenici
Enzi
Frist
Gramm
Grams
Grassley
Hagel
Hatch
Helms
Hutchinson
Inhofe
Kyl
Lott
Lugar
Mack
McCain
Murkowski
Nickles
Roberts
Santorum
Sessions
Shelby
Smith (NH)
Stevens
Thomas
Thompson
Thurmond
Warner

NOT VOTING—3

Gregg
Inouye
McConnell

The amendment (No. 3690) was agreed to.

Mr. LOTT. Mr. President, I move to reconsider the vote.

Mr. SPECTER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senate will now proceed to vote on the Ashcroft amendment No. 3689. The yeas and nays have been ordered.

The Chair reminds the Senate that this is a 10-minute vote by previous order. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUYE and the Senator from Vermont (Mr. LEAHY) are necessarily absent.

Mr. NICKLES. I announce that the Senator from New Hampshire (Mr. GREGG) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 54, nays 43, as follows:

[Rollcall Vote No. 163 Leg.]

YEAS—54

Abraham
Allard
Ashcroft
Bennett
Bond
Brownback
Bunning
Burns
Campbell
Chafee, L.
Cochran
Collins
Coverdell
Craig
Crapo
DeWine
Domenici
Enzi
Feingold
Fitzgerald
Frist
Gorton
Gramm
Grams
Grassley
Hagel
Hatch
Helms
Hutchinson
Hutchison
Inhofe
Jeffords
Kyl
Lott
Lugar
Mack
McCain
McConnell
Murkowski
Nickles
Roberts
Roth
Santorum
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Thomas
Thompson
Thurmond
Voinovich
Warner

NAYS—43

Akaka
Baucus
Bayh
Biden
Bingaman
Boxer
Breaux
Bryan
Byrd
Cleland
Conrad
Daschle
Dodd
Dorgan
Durbin
Edwards
Feinstein
Graham
Harkin
Hollings
Johnson
Kennedy
Kerrey
Kerry
Kohl
Landrieu
Lautenberg
Levin
Lieberman
Lincoln
Mikulski
Moynihan
Murray
Reed
Reid
Robb
Rockefeller
Sarbanes
Schumer
Stevens
Torricelli
Wellstone
Wyden

NOT VOTING—3

Gregg
Inouye
Leahy

The amendment (No. 3689) was agreed to.

Mr. SPECTER. Mr. President, I move to reconsider the vote. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask unanimous consent that a Jeffords amendment be modified to be formatted as a first-degree amendment. I further ask unanimous consent that at a time determined by the majority leader, after consultation with the minority leader, a vote occur in relation to the Daschle amendment No. 3688, to be followed by a vote in relation to the Jeffords amendment, with no other amendments in order to either amendment prior to the votes.

I further ask consent that the time for debate prior to votes in relation to the amendments be the following: Senator JEFFORDS, 25 minutes; Senator DASCHLE, 25 minutes.

Mr. DASCHLE. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. I ask if the distinguished manager of the bill would modify the request to allow for votes to take place immediately following the disposition of the debate on the two amendments. The unanimous consent did call for that. I assume that is the understanding of the proponent of the unanimous consent request.

Mr. SPECTER. Mr. President, it would be my preference to stack these votes at the end. We always run into delays. We have a number of amendments. If we vote in between, it is going to add considerable time to the bill. We will have three or four votes. It will be my hope—it requires the Senator's consent, of course—that we stack the votes.

Mr. DASCHLE. Mr. President, I was asked to delay the consideration of this amendment this morning. I said I would. I have been attempting to accommodate Senators all the way through. We have lost a couple of Senators already. I would be compelled to object to this unless we were able to get the two votes immediately following the debate on the two amendments.

Mr. SPECTER. Mr. President, it appears it will be faster to accept Senator DASCHLE's recommendation, so I do so.

Mr. DOMENICI. Reserving the right to object—I will not object—I ask if you could add 5 minutes for the Senator from New Mexico on this general subject, your amendment. I ask 5 minutes be set aside for me.

Mr. DASCHLE. Mr. President, I ask that Senator JEFFORDS and I be given 30 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

AMENDMENT NO. 3691

(Purpose: To prohibit health discrimination on the basis of genetic information or genetic services)

Mr. JEFFORDS. Mr. President, I call up my amendment, amendment No. 3691, and ask unanimous consent Senators FRIST and SNOWE be added as cosponsors. I ask unanimous consent also Senator ASHCROFT be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. JEFFORDS], for himself, Mr. FRIST, Ms. SNOWE, and Mr. ASHCROFT, proposes an amendment numbered 3691.

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. JEFFORDS. Mr. President, may I inquire of the Chair as to the amount of time I have?

The PRESIDING OFFICER. The Senator from Vermont has 30 minutes.

The Senator from South Dakota has 30 minutes.

Mr. JEFFORDS. Mr. President, this week's announcement of the completion of the rough draft of the human genetic map is cause for both celebration and concern.

One of the challenges that comes to mind immediately is that we must protect Americans against genetic self-incrimination. What we are, should not be used against us.

This vast new storehouse of knowledge must be used to advance, not retard, individuals' health and welfare.

In 1998, the Senate Labor and Human Resources Committee held a hearing on genetic information and health care which proved to be one of the most important of the 105th Congress.

Following the hearing, I and Senator FRIST, with the other members of the HELP Committee, together with Senator MACK and Senator SNOWE, began drafting legislation that builds on Senator SNOWE's bill, S. 89, to ensure that individuals would be able to control the use of their predictive genetic information.

After a lot of hard work, we agreed to a set of strong protections against the use of genetic information to discriminate in health care. The results of these efforts are reflected in the genetic information provisions of The Patients' Bill of Rights Plus.

As Dr. Francis Collins, director of the public genomic effort, pointed out this week:

> Most of the sequencing of the human genome by this international consortium has been done in just the last fifteen months.

The pace of change is rapid, and this issue has increased in importance since our hearing two years ago.

Everyone in this Chamber and outside of it agrees we need to guard genetic privacy and guard against genetic discrimination.

Citing a study that found that 46 percent of Americans thought that the consequences of the Human Genome Project would be negative, Dr. Craig Venter said:

> New laws to protect us from genetic discrimination are critical in order to maximize the medical benefits from genome discoveries.

That's why it's included in the Bill of Patients' Rights passed by the Senate as our body of scientific knowledge about genetics increases, so, too, do the concerns about how this information may be used.

There is no question that our understanding of genetics has brought us to a new future. Our challenge as a Congress is to enact legislation to help ensure that our society reaps the full health benefits of genetic testing, and also to put to rest any concerns that the information will be used as a new tool to discriminate against specific ethnic groups or individual Americans.

Our amendment which is already in the Patients' Bill of Rights, addresses the concerns that were raised at our hearing two years ago:

First, it prohibits group health plans and health insurance companies in all markets from adjusting premiums on the basis of predictive genetic information;

Second, it prohibits group health plans and health insurance companies from requesting predictive genetic information as a condition of enrollment.

Finally, it bars health plans from requiring that an individual disclose or authorize the collection of predictive genetic information for diagnosis, treatment, or payment purposes. A plan or insurer may request such information, but if it does, it must provide individuals with a description of the procedures in place to safeguard the confidentiality of the information.

Our amendment is identical to the provision adopted by the Senate last July. We should adopt it again today.

Technology and scientific developments, stimulated by the Human Genome Project, have led to remarkable progress in genetics and better understanding of alterations in genes that are associated with diseases in humans. We should witness extraordinary opportunities to diagnose, treat, and prevent disease.

With the enactment of this amendment, we will be able to ensure that these breakthroughs will be used to provide better health for all members of our society.

A second challenge that we face is the possibility that employers might use genetic information to screen employees for various purposes, discriminating against one group or another based on genetic information. This, too, I think we should prevent.

I am not sure, and I do not think anyone in this Chamber can be sure, that we do not already do so. It was my understanding that the Americans With Disabilities Act already outlawed genetic discrimination in employment.

That was certainly Congress' intent when we enacted the ADA.

I am not alone in my belief. The Equal Employment Opportunity Commission has interpreted the ADA as including genetic information relating to illness, disease or other disorders and the Supreme Court issued a decision that provided further support for this position.

As recently as March of this year, EEOC Commissioner Paul Miller stated that the ADA does indeed cover genetic discrimination. However, if I am mistaken, then this just highlights the need for further examination of the issue.

I am also concerned that Senator DASCHLE's amendment contains new statutory language that is different from the ADA, which would result in treating genetics differently than other health care information.

More and more, I think this will be an increasingly difficult line to draw.

If that is not confusing enough, there is yet another definition of genetic information that is part of the rule being promulgated by the Department of Health and Human Services to protect individually identifiable health information.

I want to guard against employment discrimination, but I want to do it right.

The Health, Education, Labor, and Pensions Committee will hold a hearing in the next month or two on genetic discrimination in the workplace.

In the hearing, the committee will explore whether the ADA adequately covers genetic discrimination in the workplace. If we find that the ADA does not provide adequate coverage for genetic discrimination in the workplace then we will work to enact legislation that will provide adequate protection.

However, I think it is important that any law we enact is in parity with the ADA and our other employment discrimination laws.

Senator DASCHLE's amendment has good intentions, but putting provisions regarding genetic discrimination in employment into an appropriations bill, without studying the issue further, is inappropriate. This issue deserves and requires a thorough discussion in its own forum.

Again, I urge adoption of my amendment. It has already been agreed to by the Senate, and it is the product of two years of thought and hard work.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, we now know what this is all about. Some of our Republican colleagues are going to try to convince a majority in this body that employment ought not be included when we consider discrimination based upon genetic character. I do not think employment discrimination should be treated differently from insurance discrimination. I do not think people who have experienced discrimination, as we have already seen in so many illustrations, ought to be told they have to be concerned about their job simply because of some genetic defect.

That has already happened. We have already seen that happen in case after case. I described a case this morning where Terri Seargent, who had moved up the corporate ladder and was given promotion after promotion, was asked to resign when it was learned that she had the genetic marker for ''Alpha 1''. No woman, no man, no person, no employee, should be subjected to discrimination based upon genetic characteristics, and that is happening today.

ADA passed a long time ago. That law did not envision the challenges science presents us today. We are simply proposing that we clarify that it should be unlawful to discriminate on the basis of genetic information.

The bottom line question is, when it comes down to these two proposals, whether we should prohibit both health insurers and employers from using predictive genetic information in a discriminatory fashion? There is agreement, at least with regard to one issue: we should prohibit health insurers from doing it, but our Republican colleagues—at least the senior Senator from Vermont—are saying we just should not cover employers. We should not do it because he would like to have us believe it is already being done. Tell that to Terri Seargent. Tell that to myriad other people who already have had difficulty explaining their situation, in large measure because they have found some genetic defect.

We agree that insurance companies should not discriminate. We agree there should not be any tests for conditions of coverage. We simply disagree at this moment about whether or not we ought to take what we have already done for virtually every other form of discrimination in this country and extend it to genetic information.

The senior Senator from Vermont says no, he does not want to do that. But I cannot imagine that in this day, in this age, given what we are doing with the genome project and our recognition of what it will mean, both good and bad, for this country and for our people that now is not the time to ensure that, regardless of circumstance, we will not allow this to be used as a means of discrimination in the workplace.

Listen to what Francis Collins, one of the key people who headed the international research team that makes up the human genome project, said about this very issue:

> Genetic discrimination in insurance and the workplace is wrong and it ought to be prevented by effective Federal legislation.

This is from the head of the research unit. He does not have any question about whether or not ADA covers genetic discrimination. He has already decided. He is the head of the research team. He said this ought to be a wake-up call; let's ban it today. He did not say let's wait for more hearings. He did not say let's get out there and try to figure out a way to do it through regulation. He said this ought to be a wake-up call. That is not TOM DASCHLE; that is not Terri Seargent who has been discriminated against; that is Francis Collins, the head of the international research project calling upon the Senate today to ban discrimination based upon employment. It cannot be any clearer than that, Mr. President.

I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Vermont.

Mr. JEFFORDS. I yield the Senator from Tennessee 7 minutes.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 7 minutes.

Mr. FRIST. Mr. President, earlier this week we received tremendously exciting news in that we essentially had completion of the mapping of the human genome. It is tremendously exciting to me, both as a policymaker but also as a physician, as someone who has spent his life taking care of thousands of patients because it introduces a whole new way of thinking that in the history of mankind we just simply have not had. Now there will be whole new ways of thinking.

I think we should salute both Craig Venter from Celera and Francis Collins for pioneering, for leading this great effort, which will totally change the way we do such things as engineer drugs, the so-called gene drugs. Now and into the future, we can begin to think how we use our own genes, our own proteins, our own metabolites in such a way that they become the pharmaceutical agent instead of a manufactured drug.

It changes the way we will think about organ replacement. Before I came to the Senate, I would make an incision, remove a diseased heart, and have to put in a new heart. Hopefully, 10 years from now, or 15 years from now, when we transplant kidneys or a pancreas, or other organs, we will be able to engineer them based on what we have uncovered.

A third area which this human genome project opens up, as we look to the future, is that of genetic testing. We have been talking about and debating the issue of genetic testing over the last couple hours. That is where you can take a swab, and by rubbing that swap over an array, a pattern of DNA that is lined up, you will be able to predict that a person has a 75-percent chance of getting prostate cancer 10 years from now or a 90-percent chance a person will have breast cancer.

The potential good is the change in behavior, the change in lifestyle, the change in the intervention that can come about to preempt, preclude, stop the progress of cancer.

Unfortunately, as has been laid out and debated today, there are potential dangers, potential harm, if that information is misused. Should policymakers address this potential abuse of genetic information in the workplace? There is no question; yes, we have a responsibility.

Technology has given us new tools which give us new ways to think about gene therapy, organ replacement, genetic testing, and the treatment of cancers and heart disease. We are obligated to make sure the barriers are lowered to take the good in the development of science but also minimize whatever harm there might potentially be.

But to do that, what is our responsibility? Not to have a knee-jerk reaction and accept a proposal which very few people in this body have even read, much less studied, discussed, and debated. But first, we should focus on the issues that we have studied, that we have addressed in committee, that we have debated, including the input we have solicited from doctors, physicians, scientists, and consumer groups, with both sides of the aisle coming to certain agreements.

Let us start there and systematically address these ethical-type issues which have been introduced by this new science just 3 days ago. Let's not have a knee-jerk reaction until every Senator can ask the important questions.

I agree 100 percent that we should not discriminate in any way using predictive genetic information in the workplace. That needs to be put first. I think it is unfair for the other side to say we are for discrimination in the workplace by genetic testing. It is just unfair. It is just unfair because we are against that.

But to address the policies, in looking at this amendment that has been offered today by Senator DASCHLE and his colleagues, there is a health insurance section. I have read most of that because I have had several hours to do that. I read a little of the employment section. The genetic privacy is very complicated. I can tell you, we need to discuss that a lot more.

As to the various definitions of what a predictive genetic test is, I would have to say, the genetic tests they are talking about, where they are actually talking about metabolites, I don't know, I will have to go out and talk to the real experts, but they may go too far.

So I do not want to pass a major reform bill that will potentially totally underwrite or change the way we treat people in the workplace based on definitions that I do not fully agree with now. But I do not know enough about it until we can talk to people broadly.

This whole expansion of penalties in the fourth section of the bill, I do not know exactly what we are penalizing, if it is just that one statement of penalizing people who use genetic information. First of all, it depends on what that definition is—which I do not agree with—but if it goes beyond that—and I don't know whether it does—I need to know that.

I say all that because this amendment Senator DASCHLE has offered simply has not been vetted. It has not been discussed. I have been involved in the genetic debates with my colleagues on both sides of the aisle—some initial discussions—but I can tell you, we have not gone into any sort of detail on this whole issue of expanding penalties in this expanded, complicated field of genetic privacy and employment.

The one area that has been mentioned is that of health care quality and the use of genetic information in health care, in the health insurance arena.

It is very clear that patients need to be free to undergo genetic testing because that can influence, in a positive way, the outcome of their health care. If they receive information that there is an 80-percent chance they will develop breast cancer, that is likely to change how many times they do self-exams a week, how often they go to the doctor, how often they get a mammogram. That information should be used. There should be no chance that information will be used by an insurance company to discriminate against them in denying them insurance.

It can change lifestyle. If there is a test with an 80-percent chance that you will develop lung cancer, you will want to know that. Why? Because it can change lifestyle.

We have a bill we have debated extensively since 1996 which does just that. Our bill, the Jeffords-Frist bill, prohibits health insurers from requiring patients to undergo genetic testing and prohibits health insurers from using genetic information to deny coverage or set rates for currently healthy individuals who may be at risk for a future disease.

Again, this issue has been vetted through the process, has been vetted through Chairman JEFFORDS' committee. Discussion has gone on. In 1995, the debate in the markup of the Kassebaum-Kennedy bill was extensive in numerous areas.

Mr. President, I urge our colleagues to adopt the amendment Chairman JEFFORDS has offered.

The PRESIDING OFFICER. The time has expired.

The Democratic leader.

Mr. DASCHLE. Mr. President, let me just respond to a few of the arguments posed by the Senator from Tennessee.

First of all, with regard to the technicalities to which he made reference, I do not know what technicalities and what information could be murky about what it is we are trying to do.

We simply say there should not be any employment discrimination based on genetic information. That is it. He talked about these discrimination actions being subjected to a mysterious penalty. All we have said in section 4 of the bill is that if you think you were discriminated against, you can go to court and have a court make some decision with regard to whether there is discrimination or not. That is the penalty. We do not prescribe any penalties. We prescribe some degree of accountability. We simply say, if you think you were discriminated against, you get to sue, period. That is all.

On another point, let me say that the legislation proposed by our Republican colleagues has already been analyzed in some detail as part of their Patients' Bill of Rights, as the Senator from Vermont has said.

On April 12, Senator HARKIN received a letter from 59 health organizations that wrote with concern about the language propounded in this amendment by the Senator from Vermont. Fifty-nine health organizations have already said: This is not the way we ought to do it.

They don't need more hearings. They don't need more information. They have looked at the bill. They have come to the conclusion that if we are going to write public policy regarding genetic discrimination, this isn't it.

I ask unanimous consent that the letter and names of all 59 organizations be printed in the RECORD.

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

APRIL 12, 2000.

Hon. TOM HARKIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR HARKIN: In the very near future, scientists will have deciphered the entire human genetic code, providing human beings with more information about our health than ever before. Tests are already available that can detect genetic traits associated with particular diseases, and the use of such tests is expected to increase dramatically in coming years.

Genetic testing will improve our lives by providing information on how we can prevent future health problems, and cope more effectively with unavoidable conditions. But the ability to predict diseases through genetic testing and family history opens troubling questions about discrimination, particularly in employment and health care.

As you begin to consider the House and Senate versions of managed care reform, we write to draw your attention to Title III of S. 1344, the Senate bill. We commend the Senate for including provisions intended to protect individuals from discrimination in health insurance based on genetic information. However, we believe that the provisions in the Senate bill as currently crafted are inadequate to meet the challenges raised by the extraordinary scientific advances of our time.

Without comprehensive protections covering both employment and health care, patients have reason to fear that their genetic information could be used as a basis for discrimination. Many health care professionals report that because of these fears many patients are reluctant to participate in important clinical studies that require genetic testing, slowing medical and scientific progress.

The undersigned organizations, representing patients, people with disabilities, consumers, women's and civil rights organizations and many others, urge the conferees to retain and improve Title III of the Senate Bill in the final conference bill, by incorporating the following changes.

1. Add meaningful penalties and sanctions. As currently drafted, the provision for punishing violators is tremendously weak. Without meaningful mechanisms for holding violators accountable, even the strongest genetic discrimination protections become meaningless. Victims of discrimination must have the ability to enforce their rights in state or federal court and to receive appropriate legal and equitable relief.

2. Add protections from discrimination in employment. As currently drafted, the Senate bill bans discrimination by group health plans and issuers, but provides no protection against job-based discrimination. Thus, even if group health plans and issuers are prevented from misusing genetic information, the very same information could be used against individuals in employment. Genetic information must not be misused to deny people employment opportunities.

3. Prevent unauthorized disclosure of genetic information. One of the best ways to protect people against discrimination is to prevent the disclosure of information to those in a position to misuse it. There is no federal law that prohibits group health plans or issuers from disclosing people's genetic information. We urge the committee to add strong protections against disclosure of genetic information.

4. Clarify plans' limited ability to request predictive genetic information. S. 1344 provides that a plan can request (but not require) that an individual disclose predictive genetic information for purposes of ''diagnosis, treatment, or payment.'' We are concerned that this formulation makes it possible for plans to obtain an individual's genetic information in an overly broad set of circumstances. This language should be rewritten to clarify that when plans are seeking information related to payment for genetic services received, they may only request such evidence as is minimally necessary to verify that an individual received the services. In such circumstances, only individuals within the plan or insurance company who need access to the information for purposes of that claim should have access to it.

5. Clarify definition of ''Predictive Genetic Information.'' As currently drafted, S. 1344's definition of predictive genetic information is potentially confusing. The legislation states that ''predictive genetic information'' means information ''in the absence of symptoms, clinical signs, or a diagnosis of the condition related to such information.'' This phrasing is potentially troubling, because ''diagnosis'' is a fairly broad and imprecise term. In fact, as doctors and scientists learn more about genetics, it is possible that someday they will consider the presence or absence of a particular genetic trait a ''diagnosis.'' Thus, we suggest that this phrase be rewritten to read ''in the absence of symptoms or clinical signs, and a diagnosis'', in order to clarify that the presence or absence of a genetic trait should not be considered a ''diagnosis'' if the individual has no symptoms or clinical signs, and genetic information would not be excluded from protection under those circumstances.

The definition of predictive genetic information in S. 1344 also specifically excludes information derived from ''physical tests, such as the chemical, blood, or urine analyses of the individual including cholesterol tests; and information about physical exams of the individual.'' This language should be clarified so that it is clear that genetic information derived from either physical tests or physical exams is considered protected information. This can be accomplished by adding language such as ''unless the physical test [or physical exam] reveals genetic information.''

We would like to discuss these issues with you further at your convenience. Please feel free to contact Susannah Baruch at the National Partnership for Women & Families (202) 986–2600 if you have any questions about this letter. We commend you on your willingness to take on these critical and complex issues, and we wish you well as the conference continues its work.

American Association of Occupational Health Nurses, Inc.
American Association of People with Disabilities
American Association on Mental Retardation
American Cancer Society
American College of Nurse-Midwives
American Civil Liberties Union
American Health Information Management Association
American Heart Association
American Hemochromatosis Society
American Jewish Congress
American Nurses Association
Association of Women's Health, Obstetric and Neonatal Nurses
Beckwith-Wiedemann Support Network
Canavan Foundation
CARE Foundation (Cardiac Arythmia Research and Education Foundation)
Center for Patient Advocacy
Coalition for Heritable Disorders of Connective Tissue
Crohn's and Colitis Foundation of America
Digestive Disease National Coalition
DNA Dynamics
Dystonia Medical Foundation
The Ehlers-Danlos National Foundation
Genetic Alliance
Great Lakes Regional Genetics Group
Hadassah
Hemochromatosis Foundation
Intestinal Multiple Polyposis and Colorectal Cancer (IMPACC)
Little People of America, Inc.
National Medical Journeys Network
National Association for Pseudoxanthoma Elasticum (NAPE, Inc.)
National Association of People with AIDS
National Coalition for Cancer Survivorship
National Hemophilia Foundation
National Incontinential Pigmenti Foundation
National Marfan Foundation
National Multiple Sclerosis Society
National Organization for Rare Disorders (NORD)
National Osteoporosis Foundation
National Ovarian Cancer Alliance
National Partnership for Women & Families
National Pemphigus Foundation
National Society of Genetic Counselors
National Tay-Sachs & Allied Diseases Association
National Tuberous Sclerosis Association
National Women's Health Network
National Workrights Institute
Nationl Women's Law Center
Oncology Nursing Society
Polycystic Kidney Foundation
Religious Action Center of Reform Judaism
Ruth G. Gold
Spondylitis Association of America
Susan G. Komen Breast Cancer Foundation
The Sturge-Weber Foundation
The Title II Community AIDS National Network

Tourette Syndrome Association
Union of American Hebrew Congregations
University of North Dakota School of Medicine and Health Science, Division of Med. Genetics, Dept. of Pediatrics
Xavier University Health Education Program

Mr. DASCHLE. We have the director of the National Human Genome Research Institute who has said we have to pass a bill immediately to bar discrimination in the workplace. We have a bill pending that will allow us to do just that. We have another bill pending that does not provide that protection in terms of discrimination. Fifty-nine health organizations, including the American Association of Occupational Health Nurses, the Genetic Alliance, the CARE Foundation, the Oncology Nursing Society have said: Please, do more than the legislation offered by the Senator from Vermont.

So it isn't just Dr. Collins, it isn't just Terri Seargent, it is a list of health organizations, the likes of which you rarely see, who have come together to say: We ought to do better than this.

I yield 5 minutes to the distinguished senior Senator from the State of Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 5 minutes.

Mr. SPECTER. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Massachusetts will withhold.

Mr. SPECTER. Isn't it the rule of the Senate that the first person seeking recognition gets recognition and the Senator does not have the authority to yield to another Senator without unanimous consent?

The PRESIDING OFFICER. The time is under the control of the Senator from South Dakota. He had the floor and is in control of the time, and he may yield time since he is on the floor and has recognition.

Mr. SPECTER. Mr. President, does that ruling supersede the rule that the first Senator seeking recognition gets it?

The PRESIDING OFFICER. The Senator was recognized and had the floor at the time that he yielded.

The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I want the record to show that I was on my feet seeking recognition at the time the Senator from South Dakota yielded the time.

I want to take a moment of the Senate's time to review what has happened in terms of this policy issue in the Human Resource Committee so there is no confusion about it. We had a hearing on genetic discrimination in health insurance on 21 May 1998. That was a good hearing. That was in 1998.

Then, in May of 1998, a number of us asked the chairman of the committee to have a further hearing about discrimination in the workplace. We have not received it. So I don't take kindly to those who suggest that when we raise this issue on the Senate floor, we are somehow acting out of order. Our committee, the committee of jurisdiction, has tried to focus attention on the dangers of the utilization of genetic information toward possible discrimination for health insurance and employment, and we have been unable to do so. Thankfully, with the Daschle amendment, we will have the opportunity to do so this afternoon.

The Jeffords amendment pretends to be a half a loaf because it addresses insurance, but does not address employment. But it is not a half a loaf. It is no more than a thin crust or a thin slice. It will not deal with the central problem of people failing to get needed genetic tests because of unfair discrimination. That is the issue. As long as they can lose their job and as long as their children can be denied jobs, this protection is no protection at all. This program is as full of holes as Swiss cheese. They can still require genetic information. They can still disclose it, and there is still no meaningful enforcement. An insurance company can still get the information to the employer. There is no prohibition on that in the amendment of the Senator from Vermont. They can still do that.

The fact is, they are doing that. In a 1990 survey by the American Management Association, 20 percent of employers collected family medical history information on applicants, including genetic information. Five percent of the employers acknowledged using that information in hiring decisions. We already know that employers are using genetic information to make employment decisions. We must ensure that employees and applicants are not discouraged against getting those kinds of tests. That is what this is all about.

I ask for 1 more minute.

Mr. DASCHLE. I yield the Senator 1 more minute.

Mr. KENNEDY. As Senator DASCHLE pointed out, there is a group of more than 60 organizations that support the Daschle amendment. The National Breast Cancer Coalition is, once again, supporting the Daschle amendment:

> Passage of this amendment, and the protections it offers, are essential not only for women with a genetic predisposition to breast cancer, but also for women living with breast cancer, their families, and the millions of women who will be diagnosed with breast cancer. We strongly urge you to support this legislation.

Let us stand with the patients. Let us stand with the victims. Let us not stand only with the insurance companies.

That is what this issue is about. I hope the Jeffords amendment will be defeated.

Mr. President, I ask unanimous consent to print in the RECORD a letter from the National Breast Cancer Coalition.

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

NATIONAL BREAST CANCER COALITION,
Washington, DC, June 29, 2000.
Senator EDWARD KENNEDY,
Senate Committee on Health, Education, Labor and Pensions (Minority), Washington, DC.

DEAR SENATOR KENNEDY: On behalf of the National Breast Cancer Coalition (NBCC), I am writing to urge you to support Senators Daschle, Kennedy, Dodd and Harkin's Genetic Nondiscrimination in Health Insurance and Employment Act, S. 1322, being offered today as an amendment to the Fiscal Year 2001 Labor, Health and Human Services, and Education Departments appropriations bill.

NBCC is a grassroots advocacy organization made up of over 500 organizations and tens of thousands of individuals, their families and friends. We are dedicated to the eradication of the breast cancer epidemic through action and advocacy. Addressing the complex privacy, insurance and employment discrimination questions raised by evolving genetic discoveries is one of our top priorities.

In light of the recent announcement by the White House about the completion of initial sequencing of the human genome, the National Breast Cancer Coalition is cautiously optimistic about this important step in learning more about disease, prevention, treatment and cure. However, while the mapping of the ''genetic blueprint'' has potential for great advancements in healthcare, there is also the potential for great harm. NBCC is committed to working to ensure that employers and health insurers do not use genetic information to discriminate. Information learned from one's genetic blueprint should only be used to cure and prevent various genetic diseases and cancer.

Discrimination in health insurance and employment is a serious problem. In addition to the risks of losing one's insurance or job, the fear of potential discrimination threatens both a woman's decision to use new genetic technologies and seek the best medical care from her physician. It also limits the ability to conduct the research necessary to understand the cause and find a cure for breast cancer.

The Kassebaum-Kennedy Health Insurance Reform Act (1996) took some significant steps toward extending protection in the area of genetic discrimination in health insurance. But it did not go far enough. Moreover, since the enactment of Kassebaum-Kennedy, there have been incredible discoveries at a very rapid rate that offer fascinating insights in the biology of breast cancer, but that may also expose individuals to an increased risk of discrimination based on their genetic information. For instance, because of the discovery of BRCA1 and BRCA2, breast cancer susceptibility genes, we now face the reality of a test that can detect the risk of breast cancer. Genetic testing may well lead to the promise of improved health as we better learn how genes work. But if women are too fearful to get tested, they won't be able to benefit from the knowledge genetic testing might offer.

We commend the efforts of Senators Daschle, Kennedy, Dodd and Harkin to go beyond Kassebaum-Kennedy toward ensuring that all individuals—not just those in group health plans—are guaranteed protection against discrimination in the health insurance and employment arenas based on their genetic information. S. 1322 would also guarantee individuals important protections against rate hikes based on genetic information, would prohibit insurers from demanding access to genetic information contained in medical records or family histories, and would restrict insurers' release of genetic information.

Passage of this amendment, and the protections it offers, are essential not only for women with a genetic predisposition to breast cancer, but also for women living with breast cancer, their families, and the millions of women who will be diagnosed with breast cancer. We strongly urge you to support this legislation.

Thank your for your support. Please do not hesitate to call me or NBCC's Government Relations Manager, Jennifer Katz at (202) 973–0595 if you have any questions.

Sincerely,

FRAN VISCO,
President.

Mr. JEFFORDS. I yield 5 minutes to the Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I had sought a parliamentary inquiry a few minutes ago. I am glad to wait 5 minutes until Senator KENNEDY has finished his comments. I have asked the Parliamentarian to review his rules.

There was a very heated exchange for more than an hour back in 1987, shortly after Senator BYRD had Senator Packwood arrested, as to the practice of having one Senator, the leader, yield time to other Senators. I believe the correct application of the rule is that the first Senator who seeks recognition is recognized and then the question arises as to whether time will be yielded to him when there is a time agreement. That is the point I was making. I have no concern about waiting 5 minutes or longer for another Senator. I do have a concern about the propriety of a Senator being recognized who first seeks recognition.

I have sought recognition to comment briefly about this legislation. I believe the Jeffords amendment is a solid amendment. His committee has looked into this issue very extensively with respect to eliminating discrimination based upon genes and medical information and research with respect to health care.

I do think the objectives of the Daschle amendment are sound, in seeking to avoid discrimination in employment as well as in health care. I have had an opportunity to review the Daschle amendment very briefly. From the review which I have made and which staff has made, I have some grave concerns about some of the provisions which are very complicated and which have not been subjected to hearings.

Again, I think its objectives are laudable. I think the American people do expect protection and confidentiality on these issues on employment as well as on health care.

I express my concern about our ability to handle this matter in conference on this state of the record. I think it is more than a matter of people's rights and obligations and objectives and what we ought to have. We need to have a bill which sticks together, which makes sense, and which will stand the kind of scrutiny and examination and analysis to which it will be subjected.

One of the grave problems our legislation has, when subjected to judicial review, is that it is hard to figure out sometimes, especially when there are no hearings, no markups, and no analysis. I have discussed with the Senator from Vermont the possibility of his committee having hearings in July. He may have a problem with that. My subcommittee will have hearings on this subject so that if the Daschle amendment passes and we have in conference its consideration, we will try to work through the complexities of this legislation.

Again, I think the objectives of what Senator DASCHLE looks to are exactly right. I do think those people who vote against the Daschle amendment are going to be questioned for not having concerns about privacy on a very important matter.

Last week we had a motion to recommit this bill for prescription drugs. If that motion had passed, I, frankly, don't know what my subcommittee would have done on prescription drugs. Our subcommittee is a very competent subcommittee, but I don't know that our competence extends to legislating on prescription drugs, taking that into account and working that through, which is really a matter for the Finance Committee. I have been questioned about why I was unwilling to have the recommitment. I have said, because I have the responsibility for dealing with it as the manager of the bill.

So there is a lot to recommend the Daschle amendment in terms of objectives and moving along, but I caution my colleagues about where we end up in terms of this bill without the hearings, without the refinement, without the analysis. I am not making any critique or criticism of the author of the bill. Any bill which is constructed without hearings and without markup and without that kind of rigorous analysis has natural problems. Even with hearings and with markup, there are still problems that have to be worked out.

I express my agreement with the Senator from Vermont on his legislation, express my agreement with the objectives of the legislation of the Senator from South Dakota, and say that if we have it in conference, we will do our best to try to work through the kinds of problems and deal with this very important issue.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. DASCHLE. Mr. President, I have immense respect for the Senator from Pennsylvania and consider him a very able legislator. I am disappointed that he will be opposing my amendment when we have our vote.

Mr. SPECTER. If the Senator will yield, I ask him what makes him think I am going to oppose his legislation?

Mr. DASCHLE. I thought he announced he intended to oppose it because we didn't have hearings. If there is still an opportunity to gain his support, I will give him all the time he needs to further discuss the issue.

Mr. SPECTER. Mr. President, I am very much inclined to support the Daschle legislation, but I recognize the job ahead of trying to work it through for the reasons I have said. I think the objectives are admirable. I am not committed yet. I want to hear the balance of his argument. I have not stated an intention to oppose it.

Mr. DASCHLE. Mr. President, I appreciate the clarification. I am delighted to hear that there is still some hope I can persuade him with the merits of our legislation.

To ensure that everybody understands—I think it is pretty basic—three-fourths of the people in this country obtain their health insurance through their employer. Whether or not employers may discriminate against employees and potential employees on the basis of genetic information, in large measure, will be determined by whether or not we write into law a pretty simple concept. It doesn't take any complex legalism to say, look, you should not discriminate based upon genetic information, period. If you think you are discriminated against, you ought to have recourse in a court of law. That is all we are saying.

Now, the Jeffords amendment provides no protection against employment discrimination. That is clear. It does not prohibit insurers from disclosing the results of genetic tests without consent. That is clear. It does not prohibit the use of predictive genetic information for hiring, advancement, salary, or other workplace rights and privileges. That is clear. It doesn't provide persons who have suffered genetic discrimination in either arena with the right to seek redress through a legal action. That is clear.

It is no wonder that 59 health organizations have said: We have looked at what Senator JEFFORDS is proposing and we think you can do better. That is no accident. They are asking us not to support this legislation because there is no meaningful protection in the Jeffords amendment.

I am all for more hearings, but it is ironic—how many times has the majority bypassed a committee to go straight to the floor without hearings on bills of great import? We are going to do that as soon as we come back from the Fourth of July recess. We are going to vote on an estate tax provision that will cost, in the full 10-year period, three quarters of $1 trillion; we are going to vote on it without one hearing, without one committee markup. I will bet you we are not going to hear the argument by the other side that we ought to have hearings on that. This is pretty simple. This is basic math. If you don't want discrimination in the workplace, vote for the Daschle amendment.

Mr. President, I yield 5 minutes to the distinguished Senator from Iowa, Mr. HARKIN.

The PRESIDING OFFICER (Mr. GORTON). The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I am supporting the amendment of the Senator from South Dakota because I have been involved in this issue for a long time. In 1989, when I was chairman of the subcommittee that my good friend, Senator SPECTER, chairs now, we started funding for the Human Genome Center at NIH. So I have been involved in this effort for a long time and am very supportive of it.

I could not have been happier with the announcement that came out this week that we have now completed the map, and they will be completing the sequencing of the human genome. With that, we are going to have a very powerful diagnostic tool that will allow medical practitioners to more accurately assess the health of an individual and their proclivity to come down with an illness or a disease, or to be more predictive of what kind of illnesses to which a person might be subject.

Well, that is a very powerful diagnostic tool, and it is going to do a lot to help millions of people all over this world. There may be other spinoffs in terms of gene therapy, and things such as that, but I wish to focus on the diagnostic tool that will help people get better control over their health care. That is the upside.

The downside is that in the hands of the wrong person this information could then be used to discriminate against a person who may have a genetic predisposition toward a certain illness. As I understand it, both of the amendments we have before us—the one by the Senator from Vermont and the one by the Senator from South Dakota—prohibit discrimination when it comes to insurance. Well, that is all well and good, but that is only a part of it.

Why the amendment of the Senator from South Dakota is the one we need to adopt is that it also prohibits discrimination in the workplace. Why is that important? I understand that earlier my friend from Vermont said we didn't have to be too concerned about this because the Americans With Disabilities Act covered the workplace. Well, as the chief sponsor of the Americans With Disabilities Act, and one who has lived with it since its inception back in the 1980s, I say to my friend from Vermont that some lower courts have ruled, for example, that breast cancer is not a disability, so the ADA really does not cover the workplace when you come to genetic discrimination. Some lower courts have held that breast cancer is not a disability and not covered by the ADA. If they rule that, are they then going to rule that the gene for breast cancer is covered? Hardly.

So that is why I wanted to take this time to make it clear that genetic predispositions and disorders should be covered in employment, because of some of these lower court rulings regarding the Americans With Disabilities Act. So that is why it is so important that we have it in the workplace.

Secondly, we need to have better enforcement. The penalties that are in the amendment offered by the Senator from Vermont are toothless—$100 a day. Well, a large business concern can factor that into their cost of doing business. That is not really a stiff enough penalty.

It seems to me that if I am discriminated against, under the law, I ought to have a private right of action; I ought to be able to go to court and say, wait a minute, my rights are being abused, my civil rights are being abused. And if we have this law that says you can't discriminate against someone because of their genetic predisposition, that person ought to have a right of action. That person ought to be able to go to court and seek redress. So that is why I say the Daschle amendment is the only one that really protects people both in the workplace and in insurance.

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

Mr. DASCHLE. Mr. President, I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. JEFFORDS. Mr. President, I yield myself such time as I may consume.

Although many of us came into today's debate believing that the ADA did in fact cover genetic discrimination in the workplace, we certainly understand the importance of this issue and of the need to hold a hearing on this issue. However, I would like to emphasize that as recently as a few months ago experts in employment law and, in particular, EEOC Commissioner Paul Miller is quoted as stating that

> * * * discrimination against an employee on the basis of diagnosted genetic predispositions toward an asymptomatic condition or illness is covered under the ADA's ''regarded as disabled'' prong.

So it is not as if we approached this debate believing that employees should not be protected against genetic discrimination in the workplace. We simply thought that they already were covered.

I want to reassure my colleagues that the HELP Committee will hold a hearing in the near future on this issue and that if we find that the ADA is not providing protection to workers we will develop and pass legislation to ensure that genetic information is properly protected. I yield 4 minutes to the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. I thank the Senator from Vermont.

Mr. President, I rise today with the Senator from Vermont, chairman of the Health, Education, Labor, and Pensions Committee. The matter of genetic discrimination in employment has taken on new relevance given a number of recent events. Most notably, the Human Genome Project announced this week that the ''rough draft'' of the map of some 3 billion human genes has just been completed. This just became a sexy issue. While there are months, if not years, of research still required to realize the potential of this information, we must be responsive to the range of pros and cons regarding its use.

The committee has spent a lot of time developing a bill to address where there do appear to be gaps in preventing discrimination. Those gaps are most apparent in health insurance, where a person's health information, as well as his family's health history, are a determinant in their access to coverage. This is an immediate concern that requires our immediate response. That is why I strongly support the amendment being offered by Senator FRIST, which would prohibit insurance companies from discriminating based on a person's genetic makeup.

The amendment Senator DASCHLE has offered also attempts to address genetic discrimination in employment. Unfortunately, this issue is not nearly as clear cut. Until very recently, the prevailing opinion among employment discrimination experts was that genetic discrimination was already captured under the Americans with Disabilities Act (or ''ADA''). In fact, it is still not clear that the ADA does not cover genetic discrimination. Even as recently as March 24 of this year, the Commissioner of the Equal Employment Opportunity Commission, Paul Miller, told the American Bar Association genetic discrimination was covered under title I of the ADA. Specifically, Commissioner Miller said protect against genetic discrimination was provided by the prong of the act which prevents discrimination against people who are regarded as disabled.

However, because no court has ever ruled definitively on this issue and because of some related—but not controlling—recent Supreme Court cases, I understand that there may now be some insecurity about whether genetic discrimination is covered by the ADA. And understandably, this insecurity is being increased by the recent announcement of the Human Genome Project.

We are sympathetic to this insecurity, and I think we can all agree that employers should not be permitted to discriminate against employees based on genetic information in the same manner that employers may not discriminate based on disability, gender, race, age, and other characteristics. I believe our committee needs to evaluate the conflicting evidence as to whether or not genetic discrimination is already covered under current law, particularly in light of the recent scientific developments. I support holding a hearing on this issue as soon as possible and I understand my colleague Senator JEFFORDS has scheduled a hearing on this issue for July 11. We should examine not only the question of whether the ADA captures genetic discrimination, but also what the implications are for the numerous workplace and work force issues that will arise based on the availability of genetics. Safety concerns and privacy concerns being the most important. Also, I believe we should consider genetic discrimination in employment in the broader context of the cultural implications and evaluate the historical experience with genetic information. Researching this issue has been a 10-year priority of the Human Genome Project's Ethical, Legal and Social Implications (ELSI) program. I welcome my colleagues to join the hearing process in a bipartisan effort to address this matter.

Given the complexity of this issue, I believe it is critical that we not rush to accept Senator DASCHLE's amendment without resolving all of these important issues. We may determine that new legislation is necessary to protect against genetic discrimination—and if it is necessary, we will work hard to pass it. But Senator DASCHLE's amendment simply goes too far. We must be certain that any new legislation is comparable to existing discrimination legislation. Senator DASCHLE's amendment is not comparable, it is much broader.

For example, Senator DASCHLE's amendment would permit unlimited damages for genetic discrimination. It would also permit parties to completely bypass the Equal Employment Opportunity Commission—the federal body set up to deal with employment discrimination disputes—and go straight to federal court. This is significantly more extensive than the ADA, the ADEA and title VII discrimination protections. This just makes no sense at all. Under Senator DASCHLE's amendment, an individual with a genetic marker showing he may at some future point develop a genetic disease or condition would have more protection than a paraplegic. Again I say this makes no sense at all. And it will overtax federal courts and juries with highly complex genetic issues and give opportunistic trial lawyers a jackpot.

If Senator DASCHLE has a valid reason why genetics should have such substantial additional protections, I welcome him to come to our committee hearing and explain them, but we should be very careful not to rush into such significant legislation and treat genetic information differently than existing diseases, disorders, and illnesses. If we accept Senator DASCHLE's amendment, we are simply not doing our job. Again, I think we can all agree that genetic discrimination should not be permitted, but I think we should also be able to agree not to pass legislation on such a significant and important issue without having all the proper information before us. I urge my colleagues to vote against Senator DASCHLE's amendment so that we can examine this issue through the proper procedural channels and pass responsible, reasonable legislation if such legislation is necessary.

There isn't anybody here who wants to have any discrimination done on a genetic basis, or any other basis, in the workplace or in health care. We are being lead to believe that this is a very simple bill, and that we ought to accept it. ''Simple'' is not 50 pages. Simple is the statement that the Senator from South Dakota made. But 50 pages to explain that means it is a lot more complicated than the explanation we are being given. We don't want discrimination. Quite frankly, I think one of the reasons we are being presented with this is a good example of why you don't legislate on appropriations bills and avoid the entire process. It is a handy way to do it. If I had a bill, that is how I might try to do it too. But it isn't the right way to do it.

I hope we will step back a minute and go through the procedure for doing a 50-page bill that covers something as important to people as discrimination in the workplace, or discrimination in any other place.

If this bill passes, a person who can find and accidentally disclose a genetic marker will have greater protection in the workplace than a paraplegic would. Not only that—this allows people to bypass the legal system. You can go immediately to court.

This will become a turnstile for trial attorneys. This becomes a jackpot proposition. This will clog the courts, if it passes. It will be a heyday. Every single trial attorney will have their own slot machine. That is not what we are trying to do.

This isn't an area that just comes under the workplace safety and training subcommittee that I chair. It also comes under the health committee that Senator FRIST chairs.

It is a topic that our entire committee needs to address and will address. But it has to be done through a hearing process so we don't wind up with some of the unintended consequences that I have just mentioned.

As far as the Americans With Disabilities Act, on March 24 of this year, the commissioner of the Equal Employment Opportunity Commission, Paul Miller, told the American Bar Association that genetic discrimination was covered under title I of the ADA. I guess that is why this 50-page ''simple'' bill bypasses the Equal Employment Opportunity Commission. We shouldn't bypass that group. That is a bill for protection and for having a hearing process for individuals. The commissioner of the Equal Employment Opportunity Commission says it is covered under title I of the ADA. Maybe there have been some decisions that have come out since.

We can't just be doing knee-jerk legislation on an appropriations bill. This is an issue that deserves time and consideration, and a hearing that will produce the kind of bill of which we can be proud—the kind of bill that has some opportunity for amendment.

I know if we were trying to pass a bill of that magnitude and precluded the minority from having any say-so, or any amendment, they would raise a little bit of a fuss, as they have on other occasions, and as we do on occasion.

I don't believe there should be legislation on appropriations bills.

I yield the floor.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I have great admiration for the Senator from Wyoming. I have worked with him on many issues. I never find it easy to disagree with a colleague, but let me say with regard to his argument that this is going to be a turnstile to more lawsuits; that is the same argument used on so many occasions and that was used against the ADA.

I was on the floor. I remember those debates so well. I participated in them. They said this was going to cause a flurry of lawsuits.

Who today would vote to repeal the ADA? I daresay not one Senator—Republican or Democrat.

He made reference to the EEOC's position on whether the ADA covers genetic discrimination. I hope they are right. But what is wrong with making absolutely sure they are right? That is what this bill does. This bill isn't complicated. I know some of our colleagues would like to point to the volume of this amendment and say that bulk is clear evidence of complication.

We are simply saying, as simply as we can, that you shouldn't discriminate in the workplace; and, if you do, you ought to have some opportunity to redress that problem.

I have a real concern as well about what inaction means for research. Dr. Craig Venter was on the Hill on several occasions and has made several public statements. His concern about discrimination is one that we ought to be truly appreciative of as well. Dr. Venter, president of Celera Genomics, said:

> The biggest concern I have is genetic discrimination. This would be the biggest barrier against having a real medical revolution based on this tremendous new scientific information.

Dr. Venter is worried, if we see discrimination, that automatically and almost immediately it is going to bottle up his opportunity to continue the research.

I go to the next chart, and look at what others have said. Dr. Collins, somebody I have quoted on several occasions, says:

> Genetic information and genetic technology can be used in ways that are fundamentally unjust . . . Already, people have lost their jobs, lost their health insurance, and lost their economic well-being because of the misuse of genetic information.

It doesn't get any clearer than that. First, you have the top researcher saying they are concerned about the ramifications of a lack of congressional action, not only for job discrimination, but for research. Then you have Dr. Collins who says we have already seen cases where people have lost their jobs and lost their health insurance as a result of this.

The Secretary's Advisory Committee on Genetic Testing was equally as concerned in their public statement. Keep in mind that this isn't some Democratic advocate; this is the Advisory Committee on Genetic Testing. This is a quote:

> Federal legislation should be enacted to prohibit discrimination in employment and health insurance based on genetic information. . ..Without these protections, individuals will be reluctant to participate in research on, or the application of, genetic testing.

How much more information do we need? How many more hearings do we have to have when you have the most credible experts anywhere to be found, here or anywhere else, who are pleading with the Congress to do something before it gets even worse, before more people lose their jobs and their health insurance, and before we see some real ramifications with regard to medical testing?

That is what we are doing. That is what this amendment does. That is why it needs to be passed this afternoon.

I retain the remainder of my time and yield the floor.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that Senator MACK be added as a cosponsor of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. SNOWE. Mr. President, I rise to speak in support of the amendment being offered by Senators JEFFORDS and FRIST on genetic nondiscrimination in health insurance. This amendment, based on language I authored with Senator JEFFORDS and Senator FRIST, provides strong protection to all Americans against the unfair and improper use of genetic information for insurance purposes.

> This amendment will:
>
> Prohibit insurers from collecting genetic information
>
> Prohibit insurers from using predictive genetic information, such as family background or the results of a genetic test, to deny coverage or to set premiums and rates, and
>
> Require insurers to inform patients of their health plan's confidentiality practices and safeguards.

The need for this legislation is clear. As Senators DASCHLE and DODD pointed out this morning the announcement this week that scientists have completed their mapping of the human gene is a remarkable and historic event. It opens the door to new scientific breakthroughs that may well help lead us one day to the cause and the cure for cancer, for Parkinson's and for Alzheimer's disease.

This remarkable new tool has the potential, unfortunately, to become a dangerous tool. Because knowledge is power—Mr. President—and an insurance company could use genetic information to deny insurance to an individual because they know that the person is predisposed to a particular disease or health problem.

Consider a letter that I received from a constituent, Bonnie Lee Tucker, of Hampden, Maine, who wrote:

> I'm a third generation [breast cancer] survivor and as of last October I have nine immediate women in my family that have been diagnosed with breast cancer . . . I want my daughter to be able to live a normal life and not worry about breast cancer. I want to have the BRCA test [for breast cancer] done but because of the insurance risk for my daughters future I don't dare.

Another of my constituents, Dr. Tracy Weisberg, Medical Director of the Breast Cancer at the Maine Medical Center Research Institute, told me that while she has offered screening for the breast cancer gene to approximately 35 women in 1997, only two opted for the test. She said that many of these women did not undergo testing because of their fear of discrimination in health insurance.

Dr. Weisberg emphasized the need for legislation to protect patients from this type of discrimination, so that they could make genetic testing decisions based on what they believe is best for their health, and not based on fear.

As a legislator who has worked for many years on the issue of breast cancer, and as a woman with a history of breast cancer in her family, I am delighted with the possibilities for further treatment advances based on the discoveries of two genes related to breast cancer—BRCA 1 and BRCA2. Women who inherit mutated forms of either gene have an 85 percent risk of developing breast cancer in their lifetime, and a 50 percent risk of developing ovarian cancer.

Although there is no known treatment to ensure that women who carry the mutated gene do not develop breast cancer, genetic testing makes it possible for carriers of these mutated genes to take extra precautions—such as mammograms and self-examinations—in order to detect cancer at its earliest states. This discovery is truly a momentous breakthrough.

But the tremendous promise of genetic testing is being significantly threatened by insurance companies that use the results of genetic testing to deny or limit coverage to consumers. Unfortunately, this practice is not uncommon. In fact, one survey of individuals with a known genetic condition in their family revealed that 22 percent had been denied health insurance coverage because of genetic information.

And consider that people may be unwilling to participate in potentially ground-breaking research trials because they do not want to reveal information about their genetic status. At NIH, 32 percent of women eligible for genetic testing for the breast cancer gene declined to undergo testing—the majority of those who declined cited privacy issues and a fear of discrimination as their reason.

Mr. President, this is simply unacceptable. The Jeffords, Frist, Snowe amendment before us today will go a long way toward putting a halt to the unfair practice of discriminating on the basis of genetic information, and to ensure that safeguards are in place to protect the privacy of genetic information. Now it's up to us to act by passing this amendment, and I urge my colleagues to join me in doing just that.

Mr. JEFFORDS. Mr. President, I yield to the Senator from New Mexico. I believe he has 5 minutes.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. JEFFORDS. I point out that is all of my time. So the Senator from Alabama will have to ask for additional time.

Mr. DOMENICI. He and I are going to share a little time.

Before I do that, I say to Senator DASCHLE, believe it or not, I was the first Senator involved in genome. Whether people know it or not, it was not the National Institutes of Health that started this program. It was the Department of Energy. In fact, the National Institutes of Health did not want the program, and a very distinguished doctor left them and went to DOE. They came to me. The first bill was introduced and Senator Lawton Chiles funded it. That is the origin, which I am going to talk with my friend, Senator SESSIONS, about in a minute.

Let me suggest that I don't know what is in the Senator's amendment. But I do know from the very beginning that there has been concern about the effect of discrimination. I don't believe we should go from being concerned about the effects of discrimination to a 30- or 40-page bill that we—how big is it? Ten. Frankly, we need to make sure that what we are not doing is putting genome research into a vulnerable position where it is not stable and people do not know precisely what they can do on it.

That is all I have to say about the amendment.

I yield to Senator SESSIONS for a question.

Mr. SESSIONS. I know the Senator has been involved in this. I am excited so many others are involved with the possibility that we can have a detailed map of the human genome through the identification of the 3 billion nucleotide basis that make up the human genome, helping to cure diseases.

It is an exciting time. This Congress has played an important role. I know Dr. Charles DeLisi has played a key role. I know Senator DOMENICI, perhaps more than any other official in government, saw the possibilities of this several years ago, and used the power and leverage he had to make it a governmental project of the highest priority. I know he cares about it.

Would the Senator share with the Senate his insight as to where we are in the human genome at this time.

Mr. DOMENICI. But whether it is Congress or the President, someone should recognize formally a Ph.D. named Dr. Charles DeLisi, the dean of engineering at Boston University. In the year 1986, he left the National Institutes of Health in protest over their unwillingness to proceed with a genome project of national significance.

He went to the Department of Energy. He said there were a lot of big brains in the Department of Energy, and maybe they would listen and come to the same conclusion.

They were researching genetic projects because they were charged with deciding the extent of radiation incapacity generationally as a result of the two bombs that were dropped in Japan. The Department has all the scientists. He went there. They put together a team in DOE. I am very fortunate because they came to see me. They said: Why don't we do this since the National Institutes of Health doesn't want to? Why don't you start it?

I got a little tiny bit of a bill through, saying the DOE will run the program. That was the beginning for the National Institutes of Health. As soon as they saw the bill introduced saying DOE would do it, they came running to me saying: We told Lawton Chiles we would like to get in on it. Of course, then we passed legislation that said both DOE and the National Institutes of Health would run this program.

Since then, it has been a scientific marvel. The entire chromosome system of human beings is mapped. Pretty soon it will be available for scientists investigating grave diseases. They will have them at their fingertips in terms of transmutation.

Perhaps we have just laid before the public and the people of the world the greatest wellness potential in the history of mankind. We may find locked up genetically the secret to most diseases. The scientists may pick it up and find solutions in the next 25 or 30 years that nobody thought possible.

Sooner or later I will have somebody recognize Dr. Charles DeLisi. I have spoken to him. He is a marvelous educator at a great university. President Clinton is now aware of this and very interested. I am very hopeful he will be recognized. It is important people understand.

Mr. DASCHLE. How much time do I have remaining?

The PRESIDING OFFICER. Five minutes.

Mr. DASCHLE. I compliment the Senator from New Mexico. He truly has been one of those leaders in the field. In fact, I have before me S. 422 which he introduced in the 105th Congress. Title IV of his bill, discrimination by employers or potential employers, is almost exactly what is in the Daschle amendment this afternoon.

He was one of the first to be out there. I give him great credit for what he has already done with his leadership on this issue. He has given some history this afternoon about how this started. He was here in the last Congress advocating that this body oppose discrimination in the workplace.

So that everyone knows prior to the time they vote what it is we are talking about, the Jeffords amendment does not prohibit insurers from discriminating on the basis of genetic information in the workplace. The Jeffords amendment does not prohibit the disclosure of test results without consent. It does not prohibit the use of predictive genetic information for hiring. It does not ensure that those who suffer from genetic discrimination have the right to seek redress through legal action. It fails on a basic level with regards to what we ought to do with respect to genetic discrimination.

It is on that basis I remind my colleagues that 59 organizations have come forward to urge Members to say no to legislation that fails to regulate the workplace. Don't listen to me. Listen to those organizations. Listen to Craig Venter of the Clera Genomics. Listen to Francis Collins, the director of the National Human Genome Research Institute. Listen to the editorial writers from papers across this country who have said, again and again, we must pass legislation quickly before it is too late.

This is a no-brainer. This is our opportunity today to say yes to Craig Venter, to say yes to Dr. Collins, to say yes to the organizations, and to say yes to Terri Seargent, who has already been victimized as a result of this. This is our opportunity to say no to discrimination in the workplace, to say the Senate will go on record for the first time that we will not allow any genetic discrimination regardless of circumstances.

I hope on a bipartisan basis our colleagues will join in support of this legislation. The time has come. It was introduced in the last Congress. It is now being offered in this Congress with every expectation and hope that we can send the clearest message possible that we will not tolerate discrimination. We will allow the research to go forward without any question that the information can be protected. That is what we want. That is what the health organizations want. That is what Terri Seargent wants. That is what we all should want in the Senate.

I ask unanimous consent to have printed in the Record editorials from around the country.

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

[From the Phoenix Gazette, Dec. 17, 1996]

DNA Dilemma: Gene Tests Can Cost You

Imagine the scene: A middle-age patient, visiting her doctor for her yearly physical, reminds him that her mother and aunt had breast cancer. With the patient's consent, her well-meaning physician decides to conduct a new test that will reveal whether she carries genetic mutations that could radically increase her chances of developing breast cancer.

The doctor submits a claim for the test to the woman's insurer. Before the results are back, the insurer, seeing what the test is for, triples the price of her coverage.

An impossible chain of events? Think again. Several companies have begun marketing tests that will tell women whether they have the recently discovered gene mutations that markedly increase their risks for breast and ovarian cancer.

A Utah biotechnology company, Myriad Genetics Laboratories, sent 100,000 cancer specialists a glossy ''resource kit,'' boasting of its new ''gold standard'' testing for the gene mutations. The company warns doctors about the risks of insurance and job discrimination.

But the promotional kit also tells doctors that the Equal Employment Opportunity Commission ''has in included language in the Americans with Disabilities Act making it unlawful to discriminate'' base on the results of genetic tests.

Peggy Mastroianni, the associate legal counsel for the commission, dismissed this claim, saying that it merely issued an opinion, which has yet to be tested in the courts.

Some scientists and medical ethicists say that Myriad and other companies are overselling these tests. Should a woman test positive for a gene mutation, there is still no way of knowing whether she will develop cancer. Even if that information was available, there is no sure-fire preventive treatment.

The Food and Drug Administration could regulate genetic tests, as it regulates new drugs. But so far the agency has declined to become involved. And where discrimination is concerned, many women would have little recourse if their health insurance skyrocketed in cost or they lost their jobs on the basis of a genetic test.

More than a dozen states have enacted limits on insurance or employment discrimination related to genetic testing. But even in New Jersey, where Gov. Christine Todd Whitman signed the country's most comprehensive law last month, almost half of the insured aren't protected, because they belong to self-financed plans, which aren't subject to stringent state regulations.

At the federal level, the new Kennedy-Kassebaum law, among other things, protects people moving between jobs from being dropped by health insurers because of their genetic information. But the law doesn't protect those with individual health insurance from seeing their premiums raised if they happen to carry an unlucky genetic fingerprint. It also does not protect against job bias.

Women are not the only ones affected by this problem. Genetic tests for other diseases have been developed. Others are on the way. Last month, scientists announced that they were zeroing in on the mutant gene in hereditary prostate cancer.

In the last Congress, a dozen bills would have guarded against genetic discrimination and protected medical privacy. But even those with some bipartisan support fell victim to a crammed legislative calendar and insurance industry resistance.

The 105th Congress has a chance to pass comprehensive laws protecting medical privacy and barring insurers and employers from discriminating on the basis of genetic information. For its part, the FDA should regulator genetic tests. Those charged with protecting the public welfare have to move quickly.

[From the Washington Post, Feb. 12, 2000]

Genetic Privacy

President Clinton has issued an executive order limiting the use of genetic test results in deciding whether to hire, promote or extend particular benefits to federal employees. For now, the order will have limited significance, since genetic testing is not yet as common as it is likely to become. But it sets the right example; in a not-yet-settled area of medical ethics and privacy, it's a pioneering step. The order includes a plug for a bill by Senate Minority Leader Tom Daschle and Rep. Louise Slaughter that would impose the same restraints on employers nationwide as well.

The problem is that people fear—and, it has been shown, avoid—being tested for a predisposition to a genetic disease because they think employers or other authorities might penalize them for the results even if they never develop the disease. This specific concern is symptomatic of a larger one: the danger that people may become less open with their own doctors—or avoid treatment altogether—for lack of confidence that information about their health is any longer veiled in the traditional confidentiality.

Federal rules to protect patients' privacy when they give sensitive information to their doctors are finally nearing completion; the public comment period ends this month. These, too, are only a start, though an energetic one. They give patients a right to see and correct their medical records, oblige all health care providers and insurers to follow confidentiality safeguards and set civil and criminal penalties for violations. There are holes that Congress ought to fill: The rules cover only electronic transactions, and allow a formidable array of exceptions where information may be shared without a patient's consent.

Lawmakers have been slow to recognize the broad political appeal of strengthening medical privacy, partly because of the many conflicting interests that are represented in the fight over medical records. But polls show privacy concerns rank high, and a bipartisan Congressional Privacy Caucus and a Democratic privacy task force both declared their existence Wednesday. There's plenty for these privacy advocates to do.

[From the Houston Chronicle, Feb. 15, 2000]

GENE SECRETS; CLINTON RIGHT TO OPPOSE GENETIC DISCRIMINATION

From the moment of conception, the lives and medical futures of human beings are greatly determined by the genes received from their mothers and fathers.

For the genes not only determine physical traits such as the color of a person's eyes and hair, but also a person's predisposition toward certain medical ailments, ranging from heart trouble and diabetes to cancer and Alzheimer's disease.

As the result of a national research effort, doctors are within a few years of completing a map of all the genes that make up human beings, carefully identifying which gene does what. The overall aim, of course, is that one day doctors will be able to use genetic information to treat people and make them healthier.

That's all well and good, as they say. Suffering from diabetes? Well, the doctors will just give you an injection of anti-diabetes genes, and you will soon become as healthy as a horse.

But this fascinating research, with all of its fine promise, has a terrible negative side if misused. Such genetic information on John and Jane Q. Citizen—information that they are likely to suffer from heart disease in their 40s or colon cancer in their 50s—could be used by employers, insurance companies or others to discriminate against them.

Employers might not hire or promote Jane or John Q. Citizen because of the potential displayed by their genes that some future medical condition might cost them lost time and higher insurance expenditures, as an example. Insurance companies, with a person's gene map in their hands, might refuse to sell that person insurance because of health risks.

President Clinton is acting correctly in signing an executive order barring federal agencies from discriminating against employees based on genetic testing. And he is also correct in urging Congress to pass legislation that would ban genetic discrimination in the private sector. Congress should attend to this matter as soon as possible and also to the problem of protecting individual gene maps.

Discrimination in the workplace is wrong, whether it is based on a person's personal genetic code or the color of his skin.

Genetic discrimination is un-American.

[From the St. Louis Post-Dispatch, Feb. 14, 2000]

DISCRIMINATION GOES HIGH-TECH

CIVIL RIGHTS

The frightened middle-aged woman was relieved she would not have to give her name. She handed over several $100 bills, counting them out with trembling hands. She had never done anyuthing like this before. She rolled up her sleeve and looked away, awaiting the needle.

It was not a street corner drug deal, although it felt like it. She was in a major teaching hospital undergoing genetic testing to see if she had an increased risk of contracting a life-threatening disease. Along with her fears that this glass tube identified by number might render a deadly warning in every unseen strand of her DNA, she also was afraid of other threats unseen: that the test alone might prevent her, or a family member, from getting health or life insurance, a job, a promotion, custody of her children, an organ transplant; or perhaps even something as simple as a home loan.

As technology soars forward in the Human Genome Project and computer science, we will know more about ourselves than ever before, and be less capable of keeping it to ourselves. Medical science already has hundreds of genetic tests that detect mutations putting a person at increased risk for such ailments as ovarian, breast, colon and prostate cancers, Alzheimer's and other, rarer diseases. The potential for good abounds in areas of prevention, early detection, treatment and, most spectacularly, cures.

But there is also tremendous potential for abuse. In California, a government laboratory had for years genetically tested government employees for diseases, including sickle cell anemia, without their knowledge following pre-employment physicals. Even though genetic testing does not render a diagnosis, only indicators of increased risk, it has been used to deny medical insurance and charge higher rates. Such cases led Congress to pass legislation in 1996 outlawing genetic discrimination in group health insurance plans serving 50 or more employees.

But according to a Senior White House official, many people who could benefit from genetic testing still are deciding not to have it, solely because they are afraid the results will be used against them by employers and insurers.

Last week President Bill Clinton took an important step, issuing an executive order that forbids federal agencies genetic testing in any decision to hire, promote or dismiss workers. The order protects 2.8 milllion federal employees.

There is much left to be done. Genetic information that can be gleaned from testing will only increase, through innovations like the biochip, which one day may be able to map from one strand of hair a person's entire identity, from hair color to inquisitiveness. Mr. Clinton challenged private sector employers to adopt similar non-discriminatory policies. Even better is his endorsement of Congressional legislation sponsored by Sen. Tom Daschle, D-S.D., and Rep. Louise M. Slaughter, D-N.Y., that would make it illegal for employers to discriminate on the basis of genetic testing.

All of us are predisposed to some illness. No one should be penalized for discovering what that illness might be.

[From the Chicago Tribune, Apr. 27, 1996]

GROUND RULES FOR DNA SAMPLING

Two Marine corporals were court-martialed in Hawaii recently and convicted of disobeying orders to give tissue samples for a Defense Department DNA registry.

The idea behind the registry is that should they become casualties in a future conflict, there would be a foolproof way of identifying their bodies. This is no frivolous concern, as the recent exhumation of an allegedly misidentified Vietnam War casualty in Ft. Wayne, Ind., demonstrated.

Despite their convictions, the two Marines got light penalties: seven days of restriction each, letters of reprimand and no dishonorable discharges.

This leniency may have stemmed from the fact that their concerns also were not frivolous: They feared that, somewhere down the line, the DNA samples could be used to their detriment. And the Defense Department, like the rest of American society, is only gradually evolving answers to such concerns.

Almost daily, it seems, scientists announce that they've found a new gene that causes or predisposes a person to some disease or trait. Almost as rapidly, biotechnology companies are developing tests to screen for those genes.

What those two Marines feared is what many Americans in many other walks of life fear: that samples given for one ostensibly benign purpose, or the data gleaned from such samples, may be put to other uses, not all necessarily benign.

Earlier this month, for example, researchers at Harvard and Stanford universities released a study citing more than 200 cases of ''genetic discrimination.'' Prominent among these were cases in which insurance coverage was denied because a member of a family had a gene-based disorder. Employment discrimination is another common fear, along with social ostracism.

What happens when DNA screenings become readily and routinely available for a whole range of diseases or conditions? Will insurers be able to demand that would-be customers submit to such screenings? Will they be free to grant or deny coverage on the basis of the results? (The essence of insurance is, after all, assessing and balancing risks.) What about employers—what will they be able to demand?

By comparison with civilian society, the military has it easy. The Pentagon can simply promulgate rules for its DNA repository, and it recently did. Among other things, those rules allow a service member to request that his or her DNA sample be destroyed immediately upon final separation from the military and require that the request be fulfilled within 180 days.

Civilian society must work the issue through the process of public discussion, legislative debate and legal enforcement. Laws will have to provide tough anti-discrimination strictures and confidentiality requirements, with severe penalties for anyone who violates either. Congress should get to work on such laws quickly, because science is not standing still.

I yield the floor and I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to amendment No. 3688. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUYE) and the

Senator from Vermont (Mr. LEAHY) are necessarily absent.

Mr. BYRD. Mr. President, may we have order, please.

Can we have the well cleared. Unless Senators are voting, Senators should not be in the well.

The PRESIDING OFFICER. The Senate will be in order.

Will those in the well vacate the well.

The result was announced—yeas 44, nays 54, as follows:

[Rollcall Vote No. 164 Leg.]

YEAS—44

Akaka
Baucus
Bayh
Biden
Bingaman
Boxer
Breaux
Bryan
Byrd
Cleland
Conrad
Daschle
Dodd
Dorgan
Durbin
Edwards
Feingold
Feinstein
Graham
Harkin
Hollings
Johnson
Kennedy
Kerrey
Kerry
Kohl
Landrieu
Lautenberg
Levin
Lieberman
Lincoln
Mikulski
Moynihan
Murray
Reed
Reid
Robb
Rockefeller
Sarbanes
Schumer
Specter
Torricelli
Wellstone
Wyden

NAYS—54

Abraham
Allard
Ashcroft
Bennett
Bond
Brownback
Bunning
Burns
Campbell
Chafee, L.
Cochran
Collins
Coverdell
Craig
Crapo
DeWine
Domenici
Enzi
Fitzgerald
Frist
Gorton
Gramm
Grams
Grassley
Gregg
Hagel
Hatch
Helms
Hutchinson
Hutchison
Inhofe
Jeffords
Kyl
Lott
Lugar
Mack
McCain
McConnell
Murkowski
Nickles
Roberts
Roth
Santorum
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Stevens
Thomas
Thompson
Thurmond
Voinovich
Warner

NOT VOTING—2

Inouye
Leahy

The amendment was rejected.

VOTE ON AMENDMENT NO. 3691

The PRESIDING OFFICER. The question now is on agreeing to amendment No. 3691.

Mr. JEFFORDS. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not been ordered.

Mr. JEFFORDS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUYE) and the Senator from Vermont (Mr. LEAHY) are necessarily absent.

The result was announced—yeas 58, nays 40, as follows:

[Rollcall Vote No. 165 Leg.]

YEAS—58

Abraham
Allard
Ashcroft
Bennett
Bond
Brownback
Bunning
Burns
Byrd
Campbell
Chafee, L.
Cochran
Collins
Coverdell
Craig
Crapo
DeWine
Domenici
Enzi
Feinstein
Fitzgerald
Frist
Gorton
Gramm
Grams
Grassley
Gregg
Hagel
Hatch
Helms
Hutchinson
Hutchison
Inhofe
Jeffords
Kyl
Lieberman
Lott
Lugar
Mack
McCain
McConnell
Murkowski
Nickles
Roberts
Roth
Santorum
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Voinovich
Warner

NAYS—40

Akaka
Baucus
Bayh
Biden
Bingaman
Boxer
Breaux
Bryan
Cleland
Conrad
Daschle
Dodd
Dorgan
Durbin
Edwards
Feingold
Graham
Harkin
Hollings
Johnson
Kennedy
Kerrey
Kerry
Kohl
Landrieu
Lautenberg
Levin
Lincoln
Mikulski
Moynihan
Murray
Reed
Reid
Robb
Rockefeller
Sarbanes
Schumer
Torricelli
Wellstone
Wyden

NOT VOTING—2

Inouye
Leahy

The amendment (No. 3691) was agreed to.

Mr. JEFFORDS. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from North Dakota is recognized.

Mr. SPECTER. Mr. President——

Mr. KENNEDY. Parliamentary inquiry, Mr. President. Wasn't the Senator from North Dakota recognized?

The PRESIDING OFFICER. The Senator from North Dakota was recognized. If the managers wish to pose an inquiry——

Mr. SPECTER. Mr. President, I ask the Senator from North Dakota to yield for a moment.

Mr. DORGAN. I am happy to yield for the purpose of a question.

Mr. SPECTER. What I would like to say for the record is that we hope to have a unanimous consent agreement here—we are not ready to propound it—where the Dorgan amendment and the Nickles amendment, which would be ordinarily a second-degree amendment, would be treated as first-degree amendments and try to seek a time limit of 45 minutes on each. But we understand that we are not in a position to do that because there has not been an adequate opportunity to review the Nickles amendment. I wanted to make that statement.

If the Senator from North Dakota wants to lay his amendment down, that is entirely appropriate. We just hope that when we have another amendment ready to go, either the Helms amendment or Wellstone amendment, we could set aside the Dorgan amendment and proceed with argument on something we can close debate on, and then come back at the earliest moment to the Dorgan amendment, just as a management matter.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

AMENDMENT NO. 3693

(Purpose: To require a federal floor with respect to protections for individuals enrolled in health plans)

Mr. DORGAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN], for himself, Mr. KENNEDY, Mr. DASCHLE, Mr. GRAHAM, Ms. MIKULSKI, Mr. LAUTENBERG, Mr. KERRY, Mr. EDWARDS, Mr. REID, and Mr. HARKIN, proposes an amendment numbered 3693.

The amendment is as follows:

On page 92, between lines 4 and 5, insert the following:

SEC. ____. Any Act that is designed to protect patients against the abuses of managed care that is enacted after June 27, 2000, shall, at a minimum—

(1) provide a floor of Federal protection that is applicable to all individuals enrolled in private health plans or private health insurance coverage, including—

(A) individuals enrolled in self-insured and insured health plans that are regulated under the Employee Retirement Income Security Act of 1974;

(B) individuals enrolled in health insurance coverage purchased in the individual market; and

(C) individuals enrolled in health plans offered to State and local government employees;

(2) provide that States may provide patient protections that are equal to or greater than the protections provided under such Act; and

(3) provide the Federal Government with the authority to ensure that the Federal floor referred to in paragraph (1) is being guaranteed and enforced with respect to all individuals described in such paragraph, including determining whether protections provided under State law meet the standards of such Act.

Mr. NICKLES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I ask unanimous consent that the Nickles amendment be modified to be formatted as a first-degree amendment and that a vote occur on the Nickles amendment, to be followed by a vote on the Dorgan amendment, with no amendments in order to the amendments prior to the votes. I further ask unanimous consent that the debate prior to the vote be 45 minutes for Senator NICKLES and 45 minutes for Senator DORGAN.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Mr. President, reserving the right to object, we are all operating in good faith and wanting to move ahead. I ask if our floor staff has seen this. I would like to, with all due respect, reserve a minute until our floor staff has an opportunity to see it.

Mr. SPECTER. Mr. President, I amend the request to 55 minutes on each side.

Mr. KENNEDY. Parliamentary inquiry: Is that on or in relation? Do I understand that it is their intention to have an up-or-down vote on both of these?

Mr. SPECTER. Up or down on both.

Mr. KENNEDY. No points of order.

Mr. NICKLES. If I may respond to my colleague, I have no objection personally. I understand the chairman of the Budget Committee doesn't want that waived. But it is not my intention to raise a point of order on the Senator's amendment, nor on our amendment. I think the Senator from New Mexico has a standing objection.

Mr. KENNEDY. If it is the understanding that we treat both of them the same way, is it agreeable with the floor manager that the point of order be on both so they are both treated the same way?

Mr. SPECTER. It is.

Mr. NICKLES. I have no objection to that.

Mr. DASCHLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I renew the request, and, as previously stated, I ask unanimous consent that there be 55 minutes on each side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from North Dakota.

Mr. DORGAN. Mr. President, let me begin by describing this amendment and why I have offered it to this bill.

Let me also say that the amendment is not subject to a point of order. This amendment deals with the Patients' Bill of Rights. Quite simply, it says that when this Congress enacts patient protection legislation, we should protect all 161 million Americans enrolled in private health insurance plans.

Many of us have been attempting to get this Congress to pass a meaningful Patients' Bill of Rights, and so far, we have not been successful in doing so.

As most Americans know at this point, more and more of the American people are being herded into HMOs and managed care organizations which has jeopardized the quality of health care they receive. Too often these days, decisions about their health care are being made not by doctors but by some accountant in an HMO or in a managed care organization 1,000 miles away.

We have all heard stories on the floor of this Senate about the problems patients experience when their health care is viewed as a function of someone's profit and loss, not of his or her health care needs.

We proposed a Patients' Bill of Rights to address these problems. It is rather simple legislation. It says that:

Patients should have the right to know all of their medical options—not just the cheapest medical options. That ought to be a fundamental right.

Patients ought to have the right to choose the doctor they want for the care they need, including specialty care when they need it. That ought to be a right of patients who believe they are covered with a health care policy.

Patients ought to have the right to emergency room treatment and emergency room care wherever and whenever they need it.

Patients ought to have a right to a fair and speedy process to resolve disputes with their health care plan. And they ought to be able to hold their health care plan accountable if its decision results in injury or death.

The Senate passed a piece of legislation last year that was called the Patients' Bill of Rights. Some of us called it a patients' bill of goods because it was a relatively empty shell.

The House passed a Patients' Bill of Rights that is a good bill. It is a bipartisan bill sponsored by Republican Congressman Norwood and Democratic Congressman Dingell. It passed by a 275–151 vote.

Since that time, the Senate appointed a set of conferees on October 15, and the House appointed its conferees on November 3. It wasn't until the end of February that there was a meeting of the conference committee. As I said previously, the conference committee isn't making much progress.

In this amendment, we deal with only one aspect of the Patients' Bill of Rights and that is the question of the number of Americans that a bill of rights should cover. If a Patients' Bill of Rights is enacted by this Congress, we propose with this amendment that Congress will cover all of the American people with private health insurance, rather than just the 48 million Americans proposed to be covered in the Republican Patients' Bill of Rights. We believe the Patients' Bill of Rights should cover all 161 million Americans in private health insurance plans, including the 75 million people whose employers provide coverage through an HMO or private insurance. Unfortunately, these folks are not covered in the Republican plan. The 15 million people with individual policies are not covered in the majority party's plan. The 23 million State and local government employees are not covered in the majority party's plan.

We propose that when and if Congress passes a Patients' Bill of Rights, that all 161 million Americans are covered by those provisions. Very simple.

We understand from the previous vote held a couple of weeks ago that the majority in the Senate do not want to pass our Patients' Bill of Rights. We understand that. They voted against it. But how about at least passing a part of our Patients' Bill of Rights, the part that says everybody ought to be covered? That is what I offer today as an amendment.

Senator REID and I held a hearing in his home state of Nevada on the issue of the Patients' Bill of Rights. At the hearing we had a mother come, the mother of Christopher Thomas Roe. She stood up and told us about her son. He died October 12 of last year. It was his 16th birthday. The official cause of Christopher's death was leukemia, but the real reason he died is because he was denied the kind of opportunity for patient care that he needed to give him a chance to live. He was diagnosed with leukemia, but he had to fight cancer and his HMO at the same time. It is one thing to tell a kid you have to fight a dreaded disease, you have to battle cancer. It is quite another thing to tell that young child and his family: Take on cancer and, by the way, take on your insurance company as well. That is not a fair fight. That is never a fair fight.

The Roe family was told that the kind of treatment he needed to send his cancer into remission was experimental. The family immediately appealed the health plan's decision. The review, which was supposed to take 48 hours during a very critical period of this young boy's life, took 10 days. As the appeal dragged on, Christopher's condition worsened. And as Chris's doctor had known, the traditional chemotherapy did not work.

At the hearing, Chris's mother, Susan, held up a very large picture of Christopher, about the size of this chart. It was a picture of a strapping, bright-eyed, 16-year-old boy. Susan told Senator REID and I, with tears in her eyes, how Chris turned to her one day not long before he died and said: Mom, I just don't understand how they could do this to a kid.

This is a 16-year-old boy who died who wanted that extra chance to be cured but whose insurance company said no, no, no. And he died.

We all know the stories. There is the woman who fell off a 40-foot cliff in the Shenandoah Mountains. She was hauled into an emergency room unconscious with broken bones and all kinds of physical problems. She survived and was later told by her insurance plan: We will not cover your treatment because you didn't have prior approval to get emergency room care.

Or how about this young child, born with a horrible cleft lip? It is hard to look at. Dr. GREG GANSKE, a Member of the House of Representatives in the Republican Party who supports this legislation, says in his practice that it is often not considered a ''medical necessity'' to fix this kind of problem. Let me show you how a child with this condition looks when he receives proper medical intervention by a skilled surgeon. Is there a difference? How can anyone look at these two pictures and say fixing this condition is not a ''medical necessity''?

The point we are making with this amendment is very simple. Managed care organizations hold the future of too many patients in the palm of their hands. Decisions are not being made by doctors in doctor's offices. Too often, they are made in accountants' offices 500 or 1,000 miles away. We are saying that it is wrong to make medical decisions a function of profit and loss. This country can do better than that. This ought to be a slam dunk. The legislation that provides real protection, a meaningful Patients' Bill of Rights, ought to get 100 votes in the Senate. But we can't get any movement on this at all from the conference committee charged with working out the differences between the House and Senate bills.

I know a few of the conferees and the chairman of the conference committee were saying we have made great progress. I describe that progress in glacial terms. At least glaciers move an inch or two a year. It is hard to see that this conference moves at all.

We are only asking today to say with this amendment that if we are going to pass a Patients' Bill of Rights, let's not create a hollow vessel. Let's create a Patients' Bill of Rights that provides real protection for 161 million Americans, not inadequate protection for 48 million Americans. If we are going to do this, let's do it right.

That is the amendment. We will have a chance to vote on it. We understand that the majority of the Senate decided they didn't want a real Patients' Bill of Rights. They wouldn't vote for the entire package, the one that provides protection for young kids such as Christopher, who are fighting leukemia, or for young people born with this severe cleft lip deformity. So all we ask is that whatever we are going to do with respect to patients' rights that we apply it to all Americans. Everyone ought to have the right and the opportunity to expect decent health care coverage if they have an insurance policy. What about a Patients' Bill of Rights for all Americans?

I yield to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the issue of providing protection for American families has been before the Senate for the past 3 years, but we have been unable to pass legislation that will guarantee to the families of this country that medical decisions that are going to affect them and the treatment of the family are going to be made on the basis of sound medical reasons rather than for the interests of the HMOs. That is what this issue is all about.

This chart indicates very clearly what has been happening. The Senate, in July 1999, about a year ago, passed legislation, the Republican bill, 53–47. This 47 was basically the Norwood-Dingell bill, virtually identical to the Norwood-Dingell bill, which is a party-line vote. The House passed the Norwood-Dingell bill 275–151 in October, 1999. Then the House and the Senate conferees appointed. Now 8 months have passed. We have nothing that has come out of that conference.

We are going to have something now before the Senate, offered as an alternative to the Dorgan proposal, that evidently has been drafted solely by Republicans. Whether it includes Republicans in the House of Representatives or not is something we will have to wait and see. I doubt it very much.

Why? Because just this afternoon Congressman NORWOOD, who was the principal sponsor of the Norwood-Dingell bill, said in a press conference: What is significant about today is that all 21 Republican sponsors of the Norwood-Dingell bill are standing behind me and each of us has declared that we will not support any bill that does not allow patients to choose their own doctor, that does not protect all Americans, and that does not hold the insurance industry accountable for its decisions. It doesn't matter what the Senate does today. The 25 us will vote against any bill that does not guarantee patients the protections they deserve. If the Senate passes anything less, they are killing the bill.

That isn't a statement made by Democrats; that was made by Republicans.

So let's understand it. Here are the leaders in the House of Representatives, in a bipartisan effort that got a third of the Republican Party to pass an effective bill that we should pass, and it failed by one vote only 2 weeks ago. We are being denied, week after week after week, from being able to protect American families from being harmed.

That statement is made by the Republican Congressman. The legislation we on this side of the aisle support is supported by 300 organizations, including every medical organization, every doctor organization, every patient organization, every organization that represents women, every organization that represents children, every organization that cares about cancer—you name it, they support our proposal.

Do you know who supports the other side? The insurance industry. They supported them before and they are supporting them tonight. So you will have a chance to show, on the floor of the Senate, whether you are going to cast your vote with those who have been dedicated to protecting the lives and well-being of the families in this country, or protecting the profits of the HMOs. That is the issue as plain and simple as can be stated.

That is why Congressman NORWOOD, I think, has been so courageous, because he understands it. He was there when the Senate considered 2 weeks ago the Norwood-Dingell bill that failed by one vote. He was supporting our efforts, as was the American Medical Association.

The particular amendment that Senator DORGAN has proposed is a very basic and fundamental amendment that affects the Patients' Bill of Rights. It is the question of scope. Are we going to cover 161 million Americans, or are we going to cover only a third of those, as was covered in the Senate Republican bill before and I daresay will be in the Republican bill tonight—although they have not shared that with us, only with the staff for a few minutes. I daresay that will be the fact.

Here it is. They cover 48 million—self-funded proposals. They do not cover those fully insured; those who are represented by Blue Cross or by Kaiser. They don't cover those 75 million.

They don't cover the individual markets, the self-employed, the farmers, child care providers, the truckers.

They don't cover the teachers and the firefighters and the police officers.

We cover all 161 million. They cover 48 million. Here is a picture of Frank Raffa, Vietnam veteran, decorated war hero, 21 years in the fire department of Worchester, MA. He has two children. Do you think he is covered? No, not covered under the Republican plan. Why should Frank Raffa not be covered? Why should his family not be covered, his wife and his children? He has dedicated his life to the people of Worchester, MA, as a firefighter and to this country in Vietnam. But, oh, no, the Republicans say we are not going to cover State and county officials.

No. 2, here we have Dave Morgan, with two of his 63 employees. He is a pharmacist in Boston. Tonya Harris right here, she is a pharmacy technician, a single mother of two, and Rhonda Hines, another of Dave's employees. She is married and has three children. Do you think working for a business they are going to be covered? Absolutely not. He is a community pharmacist. He worked hard building a business employing 63 members of the community. Some are in training, some are getting advanced degrees—are they covered? Absolutely not. Why not? Why do you exclude those? Norwood-Dingell did not exclude them, why should we?

Finally, Leslie Sullivan, a family nurse practitioner in the Quincy Mental Health Center, a Massachusetts employee. She is not covered under the Republican plan. She has worked hard all her life.

I want to hear a justification from Senator NICKLES tonight why these people are being excluded. They can't get it. We have insisted, in that conference, on three basic things: One, you are going to have coverage and cover all Americans; No. 2, you are going to have accountability; No. 3, you are going to have a definition of medical necessity that is going to protect American consumers.

At the end of 3 months of hearings, 3 months of meetings in the Nickles office—as much as I like and respect DON NICKLES and consider him a friend, the fact is, of the 22 differences, only 2 had been agreed to.

I will just take 3 more minutes. Here are the guarantees under the legislation that the Democrats support: 22

different protections here. I would like to hear from the other side: Which ones don't you want to guarantee to the American consumers? You don't want to protect all of them? You don't want to guarantee the specialists? You don't want to guarantee that women that are going to be able to go to an OB–GYN without first going to a general practitioner? You don't want to guarantee prescription drugs? You don't want to guarantee the emergency room? These are our guarantees. This is what we stand for. If the Republican bill embraces those without the loopholes, we will support it. But if it does not, it ought to get defeated. That vote ought to be no, and we ought to continue to fight in this Congress to make sure we get a good Patients' Bill of Rights.

I reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I regret our colleagues on the Democrat side of the aisle have decided to once again try to turn an issue, an important issue, Patients' Bill of Rights, into a political theater and not legislate, not come up with reasonable compromise. Instead, they want votes. They want to try to score points. I find that to be unfortunate because we are working very hard to try to come up with a responsible product.

A compromise in the conference committee is not easy on this issue because the differences between the House bill and the Senate bill are significant. They are significantly different in cost and scope and liability. We are trying to bridge those differences. It takes time, it takes compromise, it takes both sides working together.

We made a lot of progress with our colleagues on the Democrat side, in spite of what my good friend from Massachusetts says, a lot more progress than 2 out of 20 items. We agreed on an appeals process. Maybe not on every single last letter, but by and large we agreed on the appeals process. We invited the press in; we came to an agreement. It took about 2 months. I thought it should have taken a week. The reason why it took 2 months is because our friends on the Democrat side always kept wanting a little bit more. That is tough negotiating. I am not faulting them for that. But they are the reason why it took 2 months to come up with an appeals process. We basically agreed with it.

I just have to make a mention on scope. When they say: Wait a minute, their bill only applies to 50 million and our applies to 161 million; it should apply to everybody—our plan applies to everybody covered by ERISA. That is the plan we are amending, every employer-sponsored plan.

I know the Senator wants to overrule the State of Massachusetts State employee plan, he wants to regulate State individual plans—he wants national health care. I compliment him. He is being consistent. He always thought the Federal Government could do it better than States, and he always wanted the Federal Government to do it instead of States. I disagree with that. We have a disagreement. That is one of the items we were wrestling with in conference.

Now we have an amendment.

We tried to do this in a big fashion last year. They had their amendments. We had a lot of votes on amendments last year. Senator KENNEDY lost. We had an amendment on scope. We debated that last year. The Senator from Massachusetts lost. The majority of the Senate said: No, we don't want the Federal Government to take over State regulation of insurance. We don't think HCFA is very good at administering the insurance. They have a hard enough time in Medicare. Do we really want them to regulate State insurance? The Senate said no. The House said yes. We were negotiating that.

Incidentally, that is one of the things we are negotiating as we speak. But my colleagues on the Democrat side didn't wait for the conference. Two weeks ago they said: Let's ignore the conference. Let's just adopt the House position. In spite of the fact we have reached a bicameral agreement on a lot of patient protections, including the appeals process which, for my colleagues' information, is the backbone of the bill. It is the most important thing in the bill because if you do a good job in the appeals process, you don't have to go to the courthouse.

The patients who need care, whether it is the cleft palate that my colleague continues to show in the picture—they are going to have an appeal under the bill that we have. They are going to get care. It is going to be decided by a medical expert totally independent of the plan. That is going to be a binding decision. The person who is denied health care is going to have an appeal and is going to get the health care they need when they need it; not just go to court.

Mr. KENNEDY. Will the Senator yield?

Mr. NICKLES. No, I will not yield. I have a lot of comments to make. Maybe I will yield at a later time.

Instead of waiting for the conference to work, my colleague from Massachusetts put the Patients' Bill of Rights on either the Department of Defense authorization bill or the Defense appropriations bill.

There is no way in the world that bill is ever going to come out of conference. It was nothing but political theater. It disrupted the conference. I told him and my colleagues and I planned on having a conference that day with my Democratic colleagues. No, they engaged in political theater because maybe some people wanted to have a headline that said: ''Senate defeated Patients' Bill of Rights.'' We moved to table the amendment. The vote was 51–48. It accomplished nothing but headlines for my colleagues.

Two weeks after the vote, we have another Patients' Bill of Rights. Maybe we will have several and do them piecemeal. Maybe we will do one on scope and one on patient protections.

I tell my colleagues, this is not the way to legislate. We are on the Labor-HHS appropriations bill. Everyone knows this bill is not going to come back—maybe it will; maybe we will pass patient protections and put it on Labor-HHS. My colleagues put minimum wage on bankruptcy. Frankly, it is a complicated effort for both bills. Minimum wage did not belong on bankruptcy and patient protections does not belong on Labor-HHS.

Are they seriously legislating? No. Did they come up with a serious legislative proposal? They have a two-page proposal on scope. What is the amendment offered by my friend from North Dakota? He has an amendment which deals with scope.

My colleague talked about all these patient protections. Guess what. They are not in his amendment. His amendment basically says: We want the Federal Government to set standards, and, oh, States, you have to meet these standards. If not, the Federal Government is going to take over.

This little amendment, which looks innocuous and is like a thematic statement, says we are going to have the Federal Government design, mandate, and dictate benefits, and, States, if you do not meet these dictates, we are going to have the Federal Government take over; HCFA will take over; you will have to follow the HCFA standard.

This is the GAO report: Implementation of HCFA. The headline says: ''Progress slow in enforcing Federal standards in nonconforming States.'' We have a lot of States not conforming with existing laws where HCFA is supposed to have control—ask any of your doctors. Some people profess they want to be helpful to doctors. Ask the doctors. If we adopt the Dorgan amendment, we are asking HCFA to take over State regulation of health care. That would be a disaster. That would not improve quality health care. That would duplicate State regulation, confuse State regulation, and have Federal regulators who do not have the wherewithal or the talent—they say so themselves. They say in this report they do not have the talent; they cannot do it. They are not doing it in existing law.

They have three areas in existing law they are supposed to enforce, and they are not doing it. This is the GAO report saying this, not DON NICKLES. It is fact. And we are going to give them regulation over State health care? That is absurd. I know some people want national health care. They want the Federal Government to regulate health care in the States. I do not. I think it would be a serious mistake.

What about scope?

Mr. KENNEDY. Will the Senator yield?

Mr. NICKLES. I want to continue before I lose my train of thought.

What about scope? The scope proposal in our bill applies to every single ERISA-covered plan. Every employer-sponsored plan would have an external appeal because that is ERISA. It has Federal remedies.

We also included in this proposal a cause of action, a cause of action liability. In case the external appeal overturns the HMO and they do not pay, we say you can sue the HMO. We did not have that in the bill before. We did not have liability. We compromised.

Some say the conference has not done anything. We made a concession. We have liability in our proposal so patients can sue HMOs. It turns out that a lot of our colleagues want to sue more, on every case. They want to turn this into an invitation for litigation. We do not.

We do have cause of action. We have remedies allowing patients to go after the HMO, and, frankly, the employer, if acting as the HMO, if they are the final decisionmaker, if they are the ones denying health care, if they are the ones causing injury, harm, damage, or death, because of their decision to deny health care, they can be held liable. My point being: We have moved forward in the conference. We have made compromises. We have been working.

This is not the way to legislate: We will put, at 5 o'clock on a Thursday afternoon, on the Labor-HHS bill and say we are going to do part of patient protections, we are going to pick out a piece of it, a very significant piece. Maybe we will do another piece tomorrow.

That is not the way we are going to do it. We offered a significant comprehensive proposal, one that deals with scope, liability, patient protections, one that has an appeals process that will apply to every single employer-sponsored plan in America. We are going to give everybody a chance.

You will not be voting on a real patient protections bill, not the one Senator DORGAN offered as a two-page amendment. We have an amendment pending that is 250 pages that has real patient protections and one we have been working on for over a year.

Frankly, over half that language—maybe over 70 percent of that language—has been negotiated with our colleagues on the Democratic side of the aisle. It had tentatively been signed off by Democrats and Republicans, House and Senate. It has patient protections. It has an appeals process. We have a significant proposal. We do not have two pages. We have a Patients' Bill of Rights. We have remedies and cause of action where someone can sue an HMO or sue a final decisionmaker if they are denied health care. We have a good proposal, and I hope my colleagues will vote for it and against the Dorgan proposal.

We will have up-and-down votes on both proposals, on a bill on which neither one belongs. That is not my choice. I told my colleagues on the Democratic side that I will agree to a time certain and a vote on both of these proposals sometime—July, September. I am happy to do that. No, they want to score points. They want press conferences. They are not interested in patient protections. They are interested in press conferences and political theater.

They are not interested in helping patients. If they were interested in helping patients, they would be working with us to resolve and compromise in conference. Unfortunately, that is not the case. Maybe they will have theater, but we are going to give people substance on which to vote.

Last time, when my colleague from Massachusetts offered basically the House-passed bill—let's adopt the House position—we said no, and we tabled it. We saw the headlines: ''Republicans Defeat Patients' Bill of Rights.'' Guess what. Today we are going to pass a Patients' Bill of Rights. We are going to pass a Patients' Bill of Rights and give every single patient in America who happens to be in an employer-sponsored plan an appeal. If they are denied health care by an HMO, they will have an appeal, done by a medical professional, an expert, using the best medical evidence available. It is a binding decision.

If for some reason that appeal is not adhered to nor complied with, they will have a right to sue. They can sue their HMO, they can sue the final decisionmaker, if it is a self-funded, self-insured employer, if they make a decision to deny health care. They can sue them in those circumstances. We are offering real patient protections.

Time and again I have heard: We have to have patient protections where there is remedy against HMOs denying health care. We do that in this bill. We do not want people going to court; we want them to settle it in the appeals process so they get health care when they need it, not through the court system when it is too late. We want to resolve those cases. We want people to get health care.

On the patient protections—about which my colleague says the Senate does not do anything for the firefighter in Massachusetts, we want patient protections—we just do not think we are protecting patients by coming up with some facade that the Federal Government is going to take care of them when we know it cannot, and have the Federal Government basically preempt State law with national health insurance.

Look at the countries with national health care. Do they have the quality of health care that we do in this country? The answer is no; absolutely not. People think we can draft these patient protections in Washington, DC, and do a better job than the States. I happen to disagree. I will give some examples.

The States have done a lot with patient protections. We should not ignore that. We should encourage it and compliment it. We should encourage them to do more. It would be presumptive.

We negotiated access to emergency room care; direct access to pediatricians; provider nondiscrimination; direct access to specialists; continued care from a physician; timely binding appeals to an independent physician; agreement on direct access to OB/GYNs; agreement to improve plan information; agreement on access to out-of-network physicians; agreement on open discussion on treatment options with physicians; agreement on access to prescription drugs; and agreement on access to cancer clinical trials.

We have made a lot of progress. My colleagues say we have not done that. Are we going to say the language we drafted is so much better than anything the States can do and so we have to supersede their language? Some people think we are the font of all wisdom. I do not agree with that. It is absurd for us to say that.

States have been issuing patient protections. Forty-three States have already passed patient protection bills way ahead of the Federal Government.

I think it would be presumptuous of us to say: We are going to draft something. We know it is better. And States, you must comply. If you don't comply, the Federal Government is going to come in to regulate.

That is a serious mistake. I do not want to do it.

I urge my colleagues to vote yes on the proposal that I have submitted on behalf of myself and several others who have worked for over a year and a half to put together. I urge my colleagues to vote in favor of that. And I urge my colleagues to vote no on the Dorgan-Kennedy amendment.

I yield the floor.

Mr. KENNEDY. Will the Senator yield for one question?

Mr. NICKLES. I am happy to yield on your time.

Mr. KENNEDY. I yield myself 2 minutes for that purpose.

What is the scope of and coverage in the Senator's proposal, not what will apply in terms of internal-external appeals, but what is the total coverage?

Mr. NICKLES. The total coverage is, on scope, every single employer-sponsored plan in America would have the right to internal-external appeals.

Mr. KENNEDY. In terms of numbers, what are we talking about in the NICKLES proposal? The initial proposal, the first proposal, was 48 million. We are talking about 161 million in the Dorgan proposal. Does the Nickles proposal include 161 million American families?

Mr. NICKLES. To answer my colleague's question, on the appeals process, it applies to 131 million Americans. We do not say we should design plans written by the States for State employees or for city employees or individuals. Those have always been regulated by the Federal Government. They have never been regulated by ERISA, and they aren't regulated by them in our bill, either.

Mr. DORGAN. Mr. President, let me answer the question of the Senator from Massachusetts. The Senator from Oklahoma took a long while to say no.

Their proposal does not cover the 161 million Americans. It is essentially the same proposal we have seen previously. It falls far short of covering the majority of the American people who our proposal would cover.

Mr. President, I yield 10 minutes to the Senator from Florida, Mr. GRAHAM.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, the issue before us today is whether we are going to give the American people what I believe they expect and what they have a right to receive which is uniform, consistent coverage of their fundamental rights as beneficiaries of an HMO contract and as patients in a health care facility as it relates to the responsibilities of that health maintenance organization.

The Senator from Oklahoma has indicated he is going to submit to us a counterproposal to the provision that has been offered by the Senator from North Dakota, which focuses on one of the most fundamental issues and that is, who is going to be covered.

It is a little difficult for us to respond to the Senator from Oklahoma since at least none of us on this side of the aisle has had an opportunity to see the version of the amendment that will be offered. It is similar to seeing a biplane fly by with a long sign dragging behind its tail. That is what we see—a long, fluttering sign that says Patients’ Bill of Rights. But we can’t see any of the detail that supports that title of a Patients’ Bill of Rights.

The question raised by the amendment of the Senator from North Dakota is whether we should have a nationwide standard or whether we should have 50 standards.

We have already answered that question as it relates to the 39 million Americans who are covered by Medicare. We have a national standard for all of those 39 million Americans.

We have answered that question for the 20 to 25 million Americans who get their health care through the Medicaid program. All of those people are covered by a national standard.

The question is whether we are going to provide for those people who get their insurance through private HMO companies rather than through one of these governmental programs to also be granted the right to have a national standard.

The amendment Senator DORGAN has proposed would cover all 161 million Americans with private insurance. They will receive the same full array of protections. The proposal that I anticipate from the Senator from Oklahoma will only fund one type of insurance: self-funded employer plans, which cover only 48 million Americans. The others will be left out.

I take second place to no Member of this body in terms of my support for federalism. I basically believe in the principle that, where possible, decisions should be made at the community and State level. So I consider it incumbent upon myself to answer the question: Aren’t you being inconsistent by now supporting a national standard of patients’ rights? Why not leave it up to the 50 States to decide for the 113 million Americans who have private insurance rather than self-funded employer plans? Why shouldn’t those 113 million Americans be covered by a State’s Patients’ Bill of Rights?

I would like to answer that question in the context of one of the provisions within this bill, and that is how you will be treated if you go to an emergency room. I think it is an appropriate provision to use as an example of the larger question of whether this should be determined 50 times by the 50 States or should there be a national consistent standard.

The emergency room happens to be the site of the largest number of complaints by patients against their HMO’s treatment. There are more complaints as to access, as to standard of care, and as to care after the initial critical services are provided, there are more complaints by patients in that setting than any other aspect of patient-HMO relationships.

The emergency room is also a setting which is heavy with urgency and emotion. That is not just watching ‘‘ER’’ on television; it is the emergency room in reality.

I have a practice of taking a different job every month. In February of this year, my job was working at the emergency room in one of the largest hospitals in Florida, St. Joseph’s Hospital in Tampa. In that setting, I had an opportunity, firsthand, to see some of the issues that an emergency room poses for an HMO patient, such as the question of the patient arriving and asking the question: Am I going to be covered for the services that I will secure from this emergency room?

Am I entitled to access to the emergency room?

It is the question of: Have I come to the right emergency room? Should I have gone to the emergency room that is part of the plan of my HMO or can I go to this emergency room because it is a half hour closer?

It is the question of: What is going to happen after they stop the hemorrhaging and have moved into the poststabilization period? What kind of services can I receive, and what types of authorization do I have to get from my HMO to be certain that those services are going to be paid for?

Those are very fundamental, tangible questions that a family who is taking a loved one to an emergency room will want to have answered.

I suggest it would be preferable to all of the parties involved in this urgent transaction in an emergency room if there were a standard set of answers, whether you were in Tampa or Topeka or Tacoma, WA; that you would get the same answer. It would be beneficial to the beneficiary, to the patient, to know that there would be a consistent set of standards, that he would know, for instance, that he would be judged by the standard of ‘‘the reasonable layperson’’ in terms of access, that he would not be judged, as happens to be the case in my own State of Florida, not by the reasonable layperson standard, which is the rule in Medicare and Medicaid and most States but, rather, as he is in Florida, by the standard of an appropriate health care provider making a determination after the fact as to whether the patient should or should not have considered his or her condition requiring emergency room treatment.

It also avoids confusion by the provider because the provider will know that they can render services to all the people who come into the emergency room based on a single set of standards in terms of what is in that individual’s best interest.

Talking about emergency rooms specifically, as I understand it, in the provision of the Senator from Oklahoma, rather than using the norm, which is a 1-hour period in which the HMO can decide whether they will assume responsibility for the patient in the emergency room or allow the hospital of the emergency room to render poststabilization care, the Senator from Oklahoma is going to propose that that 1-hour standard, which is the standard for Medicare, for Medicaid, for most plans, is now going to be ballooned up to 3 hours. So for a person who has been in a serious automobile wreck, who has had bleeding, hemorrhaging, who is in very serious circumstances and has been stabilized but not yet cured or not yet cared for, we are going to have a 3-hour period for that individual to wait for the HMO to decide whether it is OK for the hospital where the injured patient is located to provide the care there, or is the patient going to have to be put in an ambulance and carried to one of their network hospitals. I don’t think that confusion as to standard is good medical policy for the providers. It is even not good policy for the insurance companies that have to deal with 50 different State standards as to authorization, length of poststabilization care, the other issues that arise in an emergency room.

Mr. President, as a self-declared Jeffersonian Federalist, this is a case in which we need to have a national standard because it is for the benefit of the good health of the American people. I urge adoption of the amendment offered by the Senator from North Dakota.

Mr. NICKLES. Mr. President, I am assuming we have an informal agreement to go back and forth and to try to keep the time fairly equally divided. I might ask of the Parliamentarian what the division of time is remaining.

The PRESIDING OFFICER (Mr. BENNETT). The Senator from Oklahoma has 40 minutes remaining, and the Senator from North Dakota has 24 minutes.

Mr. NICKLES. I yield 7 minutes to my colleague from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. Mr. President, I rise in support of the Nickles bill a little bit hesitantly—not my support—because of a conference which is underway which pulls together bills passed by the House of Representatives and by the Senate wherein progress is being made so that we can assure the American people of a real Patients' Bill of Rights.

This process seems to be interrupted time and time again, if not with bills brought to the floor, with press conferences day after day. You haven't seen that from this side. You have seen us working on a very aggressive, daily basis, in a bipartisan, bicameral way to put together a Patients' Bill of Rights—a real challenge because of the number of interests, the number of patient protection issues such as scope and liability. We are making progress.

Because of the political theater that seems to be the name of the play put forth on the other side, we have our response tonight. I am very excited about it. I am very excited because we are putting on the table a real Patients' Bill of Rights which has the objectives of returning decisionmaking back to that doctor-patient relationship, of getting HMOs out of the business of practicing medicine but not having the unnecessary mandates which needlessly drive the cost of health insurance so high that people lose their health insurance.

The alternative bill on the other side of the aisle—one that was defeated last year, a very similar bill defeated 2 weeks ago—we know would drive about 1.8 million people to the ranks of the uninsured.

I can tell the Senate, as a physician, as a policymaker, somebody who has now spent more than 2 years on this bill, we are obligated to the American people to present a bill which is a Patients' Bill of Rights that does not unnecessarily drive people to the ranks of the uninsured by driving up cost. That process is underway. It is interrupted once again tonight.

Tonight, for the first time, we are going to be able to put a new bill that reflects this bicameral, bipartisan work of the conference on the table. I would like to concentrate a few minutes on the actual ten or so patient protections that are in the bill that Senator NICKLES has put forward.

We heard a little bit from the Senator from Florida on a Florida Patients' Bill of Rights and patient protections. We will come back and talk about the scope of the bills a little bit more, but in Florida there are a total of 44 mandates that have already been passed by the legislature and are law in Florida today. The simple question is, Why do we in this body think we can do a better job when the State has jurisdiction already in putting forth mandates?

For example, in 1997, the State of Florida passed a comprehensive bill of rights, now 3 years ago. For ER services, emergency room services, 4 years ago they passed a Patients' Bill of Rights. They passed consumer grievance procedures; breast reconstruction in 1997; direct access to OB/GYNs passed in 1998 in Florida; direct access to dermatologists, 1997; external appeals, 1997.

It comes down to the basic premise that we believe we should write a bill in terms of scope, in terms of the ten patient protections that apply to those people under Federal jurisdiction, and not come in and say we know better than the Governor of the Assembly of Florida or Tennessee or Arkansas.

Very briefly, I will talk about the patient protections.

No. 1, emergency care: Under the Nickles bill, plans must allow access to emergency service. This provision guarantees that an individual can go to the nearest emergency room regardless of whether the emergency room is in the network, in the plan or outside of the plan. It is the nearest emergency room. So these press conferences where you see pictures of people skipping to different emergency rooms, it is not in the bill. In this bill you go to the nearest emergency room.

No. 2, point of service: In this bill all beneficiaries covered by a self-insured employer of 50 or more employees must have a point of service option regardless of how many different closed panel options an employer offers.

No. 3, access: Specialists such as an obstetrician/gynecologist, under the Nickles bill, patients receive a new right for direct access to a physician who specializes in obstetrics and gynecological care for all obstetrical and gynecological care.

No. 4, access to pediatricians: Under our plan, a pediatrician may be designated as the child's primary care provider; that is, if a plan requires the designation of a primary care provider for a child.

No. 5, continuity of care: Under the Nickles bill, when a provider is terminated from the plan network, patients currently receiving institutional care, if they are terminally ill, may continue that treatment with the provider for a period of up to 90 days.

No. 6, access to medication, a real issue for physicians and for patients, this whole idea of a formulary: under the Nickles bill, health plans that provide prescription drugs through a formulary are required to ensure the participation of physicians and pharmacists in designing the initial formulary and in reviewing that formulary.

If there are exceptions from that formulary and a nonformulary alternative is available, then the patient has access to that nonformulary alternative.

No. 7, access to specialists: As a heart and lung transplant surgeon, this is something I believe is absolutely critical and very important to have in the Patients' Bill of Rights. With the Nickles bill, patients will receive timely access to specialists when needed.

No. 8, gag rules: Under the Nickles bill, plans are prohibited from including gag rules in providers' contracts or restricting providers from communicating with patients about treatment options.

No. 9, access to approved cancer clinical trials: Again, this is very important. We have heard a lot about the human genome project today and the great advances. That is good because it gives you the ''phone book.'' We have to figure out what it means. In the same way, if you have new pharmaceutical agents, or treatments for cancer, you have to figure out whether or not they work; therefore, access to approved cancer clinical trials. The Nickles bill provides coverage of routine patient costs associated with participation in approved cancer clinical trials sponsored by the NIH, the Department of Veterans Affairs, the Food and Drug Administration, and the Department of Defense.

No. 10, provider nondiscrimination: Under the Nickles bill, plans may not exclude providers based solely on their license or certification from providing services.

No. 11, after breast surgery, mastectomy length of stay, and coverage of second opinions: Plans are required, under the Nickles bill, to ensure inpatient coverage for the surgical treatment of breast cancer for a time determined by the physician, in consultation with the patient.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. FRIST. Mr. President, I yield the floor.

Mr. LOTT. Mr. President, I have a unanimous consent request that has been cleared now on both sides of the aisle, if I may interrupt momentarily.

I ask unanimous consent that the motion to waive the Budget Act for consideration of the Gramm point of order be withdrawn.

I further ask consent that the Gramm point of order be temporarily laid aside, to be recalled by the Senator from Texas, after consultation with the majority leader and the minority leader, and the Chair rule on the point of order immediately, without any intervening action, motion, or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. I yield the floor.

Mr. DORGAN. Mr. President, I yield 5 minutes to the Senator from Rhode Island.

Mr. REED. Mr. President, I rise in support of Senator DORGAN's proposal. It is very straightforward, simple, and it states categorically that all Americans covered by health insurance should have the protections of the Patients' Bill of Rights. Nothing could be clearer or more effective and efficient in providing protections to the American people, to which we all, by and large, agree.

We have seen this proposal in the Democratic legislation that was submitted to this Chamber. It is included within the Norwood-Dingell legislation in the other body. It is consistent, it is appropriate and, frankly, it seems so common sensical. Why should an American citizen be denied protections and practices and benefits because he or she is in an ERISA plan rather than a non-ERISA plan? ERISA is a time and security income program created to protect the solvency of retirement funds and the financial aspects of these plans. It was never intended to be a health care plan or to define the coverage for health care plans in the United States. So on that point alone, it seems to be an inappropriate way to discriminate against those Americans who have access to the protections of the Patients' Bill of Rights.

I have been listening to the proposals by the Senator from Oklahoma and the description of the Senator from Tennessee and trying to understand their proposals. My understanding is this: They have—and Senator FRIST has announced a long list of protections and rights, and they only apply to ERISA plans—48 million Americans. The appeals process, however, would be expanded to apply to 131 million Americans.

Now, it appears to be inconsistent, but I think the rationale and the logic is pretty clear. If you don't have rights, it doesn't matter whether or not you have an appeals process. If you don't have the rights outlined by the Senator from Tennessee, then you could have the appeals process, but what are you appealing? You are appealing nothing. It comes back to the point that Senator DORGAN has made so well. This issue is about scope, so that not only do you have the right to appeal—all Americans—but you actually have valid rights that you can insist upon in an appeals process. That is included within the Democratic proposal, the Norwood-Dingell bill, and it is significantly absent from the Republican proposal we are hearing today.

Now, the justification, of course, for this approach—the Republican approach—is we can't disrupt State regulations, or the sanctity of State regulations. However, step back and look again. Under the pressure of Norwood-Dingell, the pressure of Senator DORGAN's proposal, and the pressure building up month after month of trying to bring this Patients' Bill of Rights to the floor for final passage—something solid and substantive—the appeals process has been expanded. When it comes to appeals, we are saying we don't care about State regulations anymore. That argument falls out. If we don't care about the appeals process with respect to the sanctity of State regulations, why do we care when it comes down to fundamental rights? Or why do you care about it in this, I think, inappropriate, illogical, and irrelevant distinction between ERISA plans and non-ERISA plans? The answer is, this ERISA distinction is a convenient dodge to avoid providing rights for all Americans in this health care bill.

Now, also, they talk about the fact that the cost of these patient protections will go up dramatically. Yet the Senator from Tennessee just announced a long list of protections that apply to ERISA plans. Why, if these are so onerous and costly, would we allow them to be applied to ERISA plans and not to other plans? The answer, I think, also should be obvious. It is that, in fact, these proposals are not only necessary but appropriate, and that the costs will not unnecessarily drive people away from insurance protection.

So what we have in the Republican proposal is based upon illogical premises, distinctions that should not be in place with respect to ERISA or non-ERISA, and also would create a complexity that is one of the banes of our health care system today. On this side, and also on the bipartisan measure adopted by the House of Representatives, you have a very simple, direct proposal that will cover every American—not just in the appeals process but in the basic rights they have. I think, in comparison, it is clear that we should support the amendment of the Senator from North Dakota.

Mr. NICKLES. Mr. President, I yield 5 minutes to the Senator from Vermont.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. JEFFORDS. Mr. President, if we are going to talk about improving patient care, we should talk about improving quality of care. We believe that every patient is entitled to the best medicine available. Reducing medical errors is an important part of improving quality. In fact, it is a critical issue.

The Institute of Medicine released a report late last year, which I requested. It focused our attention on the need to reduce medical errors to improve patient safety. The IOM report said that more people in this country die of medical errors than die of breast cancer, AIDS, or motor vehicle accidents—the one statistic we cannot ignore. In response to this report, the HELP Committee held four hearings. On June 15, Senator FRIST, Senator ENZI, and I introduced S. 2738, the Patient Safety and Errors Reduction Act.

This amendment, which is based on our legislation, will attack the problem of medical errors in several ways. First, it will provide a framework of support for the numerous efforts that are underway in the public and private sectors. Second, it will establish a center for quality improvement and patient safety within the agency for health care research and quality. Finally, it will provide needed confidentiality protections for voluntary medical error reporting systems. These provisions are consistent with the Institute of Medicine's recommendations.

The IOM report calls on Congress to establish a center for quality improvement and patient safety at the agency of health care research and quality.

This Center will take the lead on patient safety research and knowledge dissemination so that what is learned about reducing medical errors can be communicated across the country as quickly as possible.

The Institute of Medicine's report also calls on Congress to provide confidentiality protections for information that is collected for the purposes of quality improvement and patient study. This is the only way to get doctors and nurses to begin to voluntarily report their errors. These protections apply only to medical error reporting systems and do not diminish the current rights of injured patients. They will still have access to their medical records and they will still have the same right to sue as they do now.

We heard loud and clear at our four hearings that we need to encourage the reporting of close calls. A close call is a situation in which a mistake is made, but it does not result in injury to the patient. No harm is done, but the potential for harm is there.

Many times these ''close calls'' or ''near misses'' are the result of problems with the system. The nurse calculates the dose incorrectly because the medication name ordered was folinic acid and she is accustomed to giving folic acid. The doctor orders an inappropriate medication because he has no way to know that another doctor has given his patient a medicine that will interact.

Studies show that mandatory systems may actually suppress rather than encourage reporting. Punishment of individuals who make mistakes is not only ineffective, it is not the goal. The goal is patient safety.

It is time that we include our health care industry in the list of industries that have adopted continuously quality improvement and have taken significant steps to reduce human errors. Good people make mistakes. We need to do everything we can to put the systems in place to ensure that health care mistakes are very hard to make.

Neither the Institute of Medicine nor Congress discovered this medical error problem. Health care professionals have been at work for some time in trying to address medical errors. I hope that by becoming a partner in this process, the federal government can accelerate the pace of reform and provide the most effective structure possible.

I am pleased that this confidential, voluntary, non-punitive approach to addressing medical errors has the support of both the provider community and their oversight agencies.

We cannot afford to wait on this issue. The Nickles amendment will raise the quality of health care delivered by decreasing medical errors and increasing patient safety.

Mr. DORGAN. Mr. President, how much time remains on each side?

The PRESIDING OFFICER. The Senator from North Dakota has 19 minutes, and the Senator from Oklahoma has 27 minutes.

Mr. NICKLES. Mr. President, I yield to the Senator from Wyoming 5 minutes.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I thank the Senator from Oklahoma.

I, too, am distressed that we are debating the scope at this point. We had the opportunity to discuss this in a bipartisan way and to come up with good solutions. We were making good progress. We have been making good progress. Unfortunately, the opposition has decided that a national health care plan is the only way to go. A national health care plan has been defeated around here a lot of times. I can tell you that there are a lot of people who do not want a national health care plan. They do not understand a national health care plan. If I even considered one, folks wouldn't send me back again—not the ones from Wyoming. We have a little different atmosphere in Wyoming than they do maybe in Massachusetts or New York or Florida. But the people there want health care as bad as anywhere else. They don't want to be driven out of the market by rising costs for regulations that do not really even affect them. We don't have HMOs in Wyoming, except one small one owned by doctors.

The regulations that will work for other States in this country will not work for Wyoming. We have an insurance commissioner. His name is John McBride. The nice thing about Wyoming is if you have an insurance problem you call the insurance commissioner. You can talk to him or to one of the people who work for him. You can call them by their first names. I don't have to call them ''Mr. Commissioner.'' And they will help you get your problems straightened out. They will help out a lot faster than using a national health care plan that results in a chart such as this.

Can you picture me telling the folks in Wyoming that the insurance commissioner can't help them anymore, and to just pick the phone up and call HIPAA? I don't know the thousands and thousands of employees who work there. I especially don't know any of the thousands and thousands who they will have to hire to do the kind of job that the scope is calling for by our opponent.

A reasonable scope that handles the rest of the people who are not covered by States where they can call the people and get the same person every time so they don't have to explain again their problem every single day is the kind of service people expect. It is the kind of service they can get, but not if we take away States rights.

Guess what. It looks even worse for consumers under the HCFA's ''protection,'' according to a release by the GAO on March 31 of this year.

The model the Democrats are supporting for implementing the Patients' Bill of Rights is the Health Insurance Portability and Accountability Act, affectionately known as HIPAA. I quote from the report:

> Nearly only four years after HIPAA's enactment, HCFA continues to be in the early stages of fully identifying where enforcement will be required.

There are all kinds of stories about the Washington bureaucracy. Under their scope, they want us to give up the State plans in favor of this group that is still trying to figure out where they are going. Is that responsible? No.

There are other things that need to be negotiated out in this bill. But that is not an option we are being given when they start piecemeal. Every piece of a Patients' Bill of Rights interacts with the other part. When you jerk out one part of the scope and try to do that without talking about all of the other parts of it that interacts with the scope you wind up with nothing but a mess. To try to do that in a little two-page bill makes it look easy. We have gone from hard on an earlier one to a really easy one now. And neither of them will do it and protect the people in my State. I suggest that it will also not protect people in other States.

I am becoming less surprised that after walking away from the conference for the Patients' Bill of Rights, the Democrats are hurling accusations about others not wanting to get a bill done and enacted. That's an incredibly counter-productive reaction to giant steps on our part toward compromise. This conference has been long and time-consuming, but it has been working. There is not a single reason why we should abandon a process that is working. Yet, politics has been invited in, and I think the majority of us here to highlight why that's such a terrible mistake. Choosing this path is a vote to abandon patients in favor of a political issue.

Among the handful of principles that are fundamental to any true protection for health care consumers, probably the most important is allowing states to continue in their role as the primary regulator of health insurance.

This is a principle which has been recognized—and respected—for more than 50 years. In 1945, Congress passed the McCarran-Ferguson Act, a clear acknowledgment by the federal government that states are indeed the most appropriate regulators of health insurance. It was acknowledged that states are better able to understand their consumers' needs and concerns. It was determined that states are more responsive, more effective enforcers of consumer protections.

As recently as last year, this fact was re-affirmed by the General Accounting Office. GAO testified before the Health, Education Labor, and Pensions Committee, saying, ''In brief, we found that many states have responded to managed care consumers' concerns about access to health care and information disclosure. However, they often differ in their specific approaches, in scope and in form.''

Wyoming has its own unique set of health care needs and concerns. Every state does. For example, despite our elevation, we don't need the mandate regarding skin cancer that Florida has on the books. My favorite illustration of just how crazy a nationalized system of health care mandates would be comes from my own time in the Wyoming legislature. It's about a mandate that I voted for and still support today. You see, unlike in Massachusetts or California, for example, in Wyoming we have few health care providers; and their numbers virtually dry up as you head out of town. So, we passed an any willing provider law that requires health plans to contract with any provider in Wyoming who's willing to do so. While that idea may sound strange to my ears in any other context, it was the right thing to do for Wyoming. But I know it's not the right thing to do for Massachusetts or California, so I wouldn't dream of asking them to shoulder that kind of mandate for our sake when we can simply, responsibly, apply it within our borders. What's even more alarming to me is that Wyoming has opted not to enact health care laws that specifically relate to HMOs, because there are, ostensibly, no HMOs in the state! There is one, which is very small and is operated by a group of doctors who live in town, not a nameless, faceless insurance company. Yet, under the proposal the Democrats insist is ''what's best for everybody,'' the state of Wyoming would have to enact and actively enforce at least fifteen new laws to regulate a style of health insurance that doesn't even exist in the state!

As consumers, we should be downright angry at how some of our elected officials are responding to our concerns about the quality of our health care and the alarming problem of the uninsured in this country.

It is being suggested that all of our local needs will be magically met by stomping on the good work of the states through the imposition of an expanded, unenforceable federal bureaucracy. It is being suggested that the American consumer would prefer to dial a 1–800–number to nowhere versus calling their State Insurance Commissioner, a real person whom they're likely to see in the grocery store after church on Sundays.

As for the uninsured population in this country, carelessly slapping down a massive new bureaucracy that supercedes our states does nothing more than squelch their efforts to create innovative and flexible ways to get more people insured. We should be doing everything we can to encourage and support these efforts by states. We certainly shouldn't be throwing up roadblocks.

And how about enforcement of the minority's proposal?

Well, almost one year ago this body adopted an amendment that stated, ''It would be inappropriate to set federal health insurance standards that not only duplicate the responsibility of the 50 State insurance departments but that also would have to be enforced by the Health Care Financing Administration (HCFA) if a State fails to enact the standard.''

Yet here we are one year later where, not only is it being suggested that we trample the traditional, overwhelmingly appropriate authority of the states with a three-fold expansion of the federal reach into our nation's health care, they still insist on having HCFA be in charge. HCFA, the agency that leaves patients screaming, has doctors quitting Medicare, and, lest we not forget, the agency in charge as the Medicare program plunges towards bankruptcy.

And guess what, it looks even worse for consumers under HCFA's ''protection,'' according to a new report released by GAO on March 31 of this year. The model the Democrats are supporting for implementing the Patient's Bill of Rights is the Health Insurance Portability and Accountability Act, affectionately known as HIPAA. I quote from the report: ''Nearly four years after HIPAA's enactment, HCFA continues to be in the early stages of fully identifying where federal enforcement will be required.'' Regarding HCFA's role in also enforcing additional federal benefits mandates that Congress has amended to HIPAA, the GAO states, ''HCFA is responsible for directly enforcing HIPAA and related standards for carriers in states that do not. In this role, HCFA must assume many of the responsibilities undertaken by state insurance regulators, such as responding to consumers' inquiries and complaints, reviewing carriers' policy forms and practices, and imposing civil penalties on noncomplying carriers.'' And then, the GAO report reveals that HCFA has finally managed to take a baby step: ''HCFA has assumed direct regulatory functions, such as policy reviews, in only the three states that voluntarily notified HCFA of their failure to pass HIPAA-conforming legislation more than 2 years ago.''

Is this supposed to give consumers comfort? First we should usurp their local electoral rights or their ability to influence the appointment of their state insurance commissioner and then offer up this agency as an alternative? I'm sure I could find a single Wyomingite to clap me on the back for this kind of public service.

I could go on at length about the very real dangers of empowering HCFA to swoop into the private market, with its embarrassing record of patient protection and enforcement of quality standards. Such as how it took ten years for HCFA to implement a 1987 law establishing new nursing home standards intended to improve the quality of care for some of our most vulnerable patients. But I think the case has already been crystallized in the minds of many constituents: ''enable us to access quality health care, but don't cripple us in the process.''

The next, equally important issue is that of exposing employers to a new cause of action under a Patients' Bill of Rights. Employers voluntarily provide coverage for 133 million people in this country. That will no longer be the case if we authorize lawsuits against them for providing such coverage. This is basic math. If you add 133 million more people to the 46 million people already uninsured, I'd say we have a crisis on our hands. In my mind, a simpler decision doesn't exist. We should not be suing employers.

Let me close by saying that the conference has worked in incredible good faith. We have come to conceptual agreement on a bipartisan, bicameral basis on more than half of the common patient protections. We have come to bipartisan, bicameral conceptual agreement on the crown jewel of both bills—the independent, external medical review process. Most dramatically, the bicameral Republicans offered a compromise on liability and scope, to which the Democrats responded with only rhetoric and political jabs in the press. It is absolutely bad faith to have done so. I think it would be regrettable if these continued public relations moves torpedo what, so far, has produced almost everything we need for a far-reaching, substantive conference product.

I encourage all of my colleagues to take the high road and support the legislative process our forefathers had in mind, versus a public relations circus.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I yield myself such time as I may consume.

I have listened to this discussion, and it is pretty interesting. It seems to me that if you don't want to pass a Patients' Bill of Rights—perhaps for the reason the Senator from Wyoming suggested, which is that the Federal Government ought not to have any involvement in this issue—then just say so. Don't come out here and describe an alternative as if it is doing something that it is not really doing.

According to my colleague, we have a 258-page amendment. It kind of reminds me of the ''Honey, I shrunk the plan'' approach, this suggestion that what we should go back to covering 48 million people rather than 161 million people.

The Senator from Tennessee talked earlier about emergency room care and a number of the patient protections we have proposed. I hope he will respond to my inquiry. Is it not the case that the emergency room care provisions in the Senator from Oklahoma's amendment applies only to about 48 million people. Isn't it so that two out of three people will not be covered with the kind of protection the Senator suggested was covered in their proposal? It seems to me it would be a much better approach to simply say we don't support a Patients' Bill of Rights.

Mr. FRIST. Mr. President, will the Senator yield?

Mr. DORGAN. I will yield for about 15 seconds.

Mr. FRIST. Mr. President, emergency room provisions are a good case in point. It comes up all the time. It is important that people have the right to go to emergency rooms. Emergency room provisions are important. The Senator is exactly right. For the 51 million people who the Federal Government regulates, we have a responsibility to put emergency room provisions in there. That is what the Nickles bill does for the States.

The other people the Senator is talking about—does he know how many people already have specific emergency room provisions legislated for managed care? We do. It is not 10 States or 20 States or 30 States or 40 States. I don't have the exact number. I know more than 43 States have taken care of the emergency room provisions.

Mr. DORGAN. I understand the Senator's answer, which is that the substitute offered by Senator NICKLES provides coverage for only about 48 million Americans. It is the same approach they have used previously.

One can suggest that all of these protections I am proposing are covered elsewhere. If that is the case, why does the Senator object?

The Senator from Oklahoma seems irritated we have raised this issue again. Let me tell you what Congressman NORWOOD, a Republican serving in the House who is a sponsor of the House legislation, said on May 25, and I quote: I am here to say the time's up on the conference committee. We have waited 8 months for this conference committee to approve a compromise bill. Senate Republicans have yet to even offer a compromise liability proposal. They have only demanded that the House conferees abandon their position.

This is a Republican saying the time is up on the conference committee.

Let me also point out that the Senate passed, in my judgment, a poor piece of legislation. It has the right title but it doesn't include the right provisions. The House passed a good piece of legislation, but the House leadership appointed conferees to the conference that voted against the House bill. Their conferees voted against the House bill. So the conference isn't even on the level.

If month after month after month goes by and you don't want to have a Patients' Bill of Rights because you don't believe the Federal Government ought to be involved in this, just tell the patients that. Say to the patients: We don't believe Congress ought to do this. You should go ahead and fight cancer and fight your HMO at the same time. Go ahead and do that.

The fact is, we can do better. The proposal we are offering today is very simple. We believe that a Patients' Bill of Rights establishing basic rights that patients ought to be able to expect in dealing with their insurance company is a proposal that ought to get 100 votes in this Congress.

There are some who say, when asked the question, Whose side are you on?

Let us stand with the insurance companies.

We believe Members ought to stand with the patients. There is a genuine and serious problem in this country with patients not getting the treatment they expect, need, or deserve. Patients find themselves having to fight cancer and their insurance company. That is not fair.

The question is whether this Congress will do something about it. The question is not whether this Congress will pass a national health care plan. That is nonsense. That is not what is being debated. I see more shuffle and tap dances going on around here on this debate. The fact is, if you want to pass a good Patients' Bill of Rights, do what the House did. Understand that Dr. NORWOOD, a Republican Congressman, knows what he is talking about. This conference hasn't moved. This conference isn't accomplishing anything. That is why we have offered this amendment.

I yield the floor, and I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. To respond to a couple of comments, my colleague read from a Norwood letter that said the Republican conferees are not addressing liability. We have liability on the floor of the Senate. Mr. NORWOOD is not a conferee. Maybe he didn't know what he was talking about. We have liability on the proposal. Granted, there was not liability in the Senate bill we passed. There is on the bill we have before the Senate.

When we talk about scope, we have scope that applies to 131 million Americans in the appeals process and liability that they can sue their HMO.

To read a letter by a Congressman that says the conference is not doing anything, they don't have liability, and we have liability is a little misleading.

When my colleague from North Dakota says our proposal doesn't have a Federal takeover of insurance, you might read the amendment. The amendment on page 2 says:

> (3) provide the Federal Government with the authority to ensure the Federal floor referred to in paragraph (1) is being guaranteed and enforced with respect to all individuals described in such paragraph, including determining whether protections under State law meet the standards of such Act.

In other words, the Federal Government will run State insurance, period. The Federal Government is going to take over. It is in his amendment.

I think that needed to be pointed out.

I yield 10 minutes to my colleague and conferee on this bill, the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. I thank Senator NICKLES, whose leadership on this issue I think is without equal on any issue on which I have worked since I have been in the Senate. I know the people of Oklahoma, who Senator NICKLES represents, watch this on television at home. They wonder, what is this all about? You did, you didn't; you did, you didn't. This has to be confusing.

In the limited time I have, I want to set this debate in historical perspective so everybody knows what this is about. When Bill Clinton was elected President, he had a goal of having the Government take over and run the health care system. In fact, I have before me the Clinton health care bill. This would have mandated one giant, national HMO run by the Government; HMOs would set up health care collectives, and of course the right people would be chosen to decide what health care we all needed.

If you went to your doctor, he would have dictated, under the Clinton plan, the kind of treatment he could give. If he violated their guidelines because he thought you needed it, he would be fined $50,000.

If, under the Clinton health care bill, you went to a doctor and said, I don't think all these experts are right and my baby is sick, my baby could be dying, I will pay you to treat my baby, if the doctor did it, he could go to prison for 5 years.

That is the health care system my Democrat colleagues are for. The Members who were here voted for it and supported it. They know what they want. They want the Government to take over and run the health care system. They want to herd Americans into health care purchasing cooperatives, or collectives, as they call them, and you have to be a member or else you don't get health care in America. That is what they want. That is where this debate started.

Now, we are trying to give patients rights in dealing with HMOs. We want internal and external review. We want the external review to be independent. We want to guarantee them rights. But there is one fundamental difference between the Democrats and us. We think this is a delicate balance, because we don't want to drive up health care insurance costs so much that millions of people lose their health care.

Senator KENNEDY's bill was scored as driving up the cost of every person's health care in America by over 4 percent and costing 1.2 million American families their health insurance. What patient right is more basic than having health insurance? They give you lots of rights, but if you lose your health insurance, how do you pay for your health care? There is the difference between them and us. We have to be concerned about 1.2 million people losing their health care; they don't.

When Clinton said, let us take over and run the health care system and put everybody into these health care collectives, what did he say the problem was? The problem was that we had too many people without health insurance. So if their bill passed and millions of people lost their health insurance, what do you think they would say? They would say: We have a solution; the solution is a government takeover of health care.

This job is easier for them than it is for us because they don't care if the baby dies, because they want to replace it. It reminds me of that story in the Bible. Some of you may remember it. Two ladies had gone to bed, and during the night one of them's baby had died and the other one had taken the baby. They come before Solomon. Solomon, in his wisdom, after listening to their arguments, says let's just cut the baby in half. That is what they are saying—cut the baby in half. Then one lady said: OK, cut the baby in half; and the other said: No, let her have the baby. Then Solomon knew whose baby it was.

This is our baby. We love freedom. We love the right of people to choose. We love the greatest health care system the world has ever known. We are not going to let the Government take over and run the health care system. That is what this debate is about. That is what our Democrat colleagues want. They are willing to destroy the greatest health care system the world has ever known because they want the health care system where the Government runs it. They think it would work better. We don't. Neither did America in 1993 and 1994, which is why we have a Republican majority today.

The second issue is scope. What does that mean? For those watching this on television, what does ''scope'' mean? What it means is, what should this Federal law do as it relates to the State in which you live?

Our Democrat colleagues believe with all their heart—they are as sincere as they can be—that there is only one place in the world where people have really any sense: Washington, DC. They think people in city governments and county governments and State governments are ignorant and uncaring. They believe Washington is brilliant, all-knowing, and all-caring. So what they want to do is write one bill in Washington and impose it on every living person in America.

We do not agree. We do not believe that just coming to Washington all of a sudden makes you brilliant. In fact, it is a long way from Washington to Wyoming. It is a long way from Washington to Texas. We joined the Union in Texas because we wanted freedom. We didn't join the Union to give it up.

What is the difference between the two bills? Their bill says we are going to write things the way we want them, and you are going to do it that way or we are going to come to your State, we are going to cut off your money, we are going to cut off your health care, and in some cases we are going to put you in jail. That is their way of doing it. You remember, in their bill if you went to this doctor, got down on your knees and begged that he take your money and treat your child, he went to prison for it; That was in their bill, the Clinton health care bill.

What we say is: Look, we will write a basic standard for patient protections.

But what if the people in Wyoming decide, since they don't have any HMOs—and this bill is about dealing with HMOs—that they should not have to come under the Federal Government to deal with a problem they don't have? They don't think they should. I don't they should either.

People in Tennessee and Texas were protecting patients before we got into this business. They passed comprehensive bills. All we are saying is our bill applies to those not already covered. But if people in Texas, through their government, through their elected Representatives, decide they appreciate our help, they appreciate our caring, they know we love them, they kind of figure we know everything—but just in case we are wrong, they would rather implement their own program for their own jurisdiction, our Democrat colleagues say: No, they don't care enough, they don't know enough, they are ignorant.

We do not agree. We want people in Wyoming to be able to say: Look we really appreciate the bill, we know you guys want to help us, but we don't have any HMOs; we say they ought to have the right to opt out.

If Tennessee says: Look, we set up TennCare because we adopted the Clinton health care bill in Tennessee—they wish they hadn't done it, but they did—if they say we would rather do it our way than your way, our Democrat colleagues say: What do you know? What do you know in Tennessee? You people in Tennessee don't know and don't care about people. We want to do it for you. We are going to tell you how to do it.

What we say is: Look, we have written a good bill. We want everybody to look at it very closely. In those areas where only Federal law applies, the bill applies. You can't get out from under it because there are no other protections. But if Tennessee decides in areas where they have already passed a Patients' Bill of Rights that they would rather do it their way than our way, we say if their elected Representatives, their Governor, decides to do it that way, they have the right to do it.

Is that an extreme view? Is that somehow denying people protection? Is freedom a denial of protection? Is keeping the right to choose denying people a basic health right? I don't think so. I think it enhances rights. And that is what this debate is about.

Our Democrat colleagues with all their hearts believe that the Government ought to take over the health care system and they think everything should be done in Washington.

I reserve the remainder of our time.

Mr. DORGAN. Mr. President, I yield 7 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, it is always interesting to listen to my friend and colleague from Texas. But I still am trying to find out why he is opposed to the protections which are included in our Patients' Bill of Rights. There was a lovely, wonderful statement about his reservations and about the importance of freedom to HMOs: If we give total freedom to HMOs, the public be damned. That is what has happened too often. What we are talking about is the protections that are guaranteed in a Patients' Bill of Rights, which is, interestingly, all the kinds of protections he has in his health insurance under the Federal employees program.

There is not a Member of the Senate who has not accepted the Federal employees program, and it guarantees virtually every one of these protections we are talking about tonight with the exception of the right to sue.

The question before the Senate tonight is this: Are we going to insist that whatever protections we are going to pass in a Patients' Bill of Rights are going to be available and accessible to all Americans? That is the Norwood-Dingell bill, the bill we on our side of the aisle favor. Whatever protections we are going to put in ought to include the 161 million Americans with private health insurance. That is our principle, that is what we stand for.

All you have to do is read the Nickles bill and you will find out that it covers exactly what was in the Senate Republican bill—only the 48 million Americans who are self-insured. Whatever protections they are talking about cover only those 48 million.

Look at the Nickles access to pediatric provision: ''If a group health plan''—that would be 123 million people;—''other than a fully insured group plan.'' Other than; that knocks out the fully insured. It knocks all of them out. So the guarantees on pediatric care apply to only 48 million out of 161 million.

Go through the rest of the Nickles bill. Go through coverage of emergency services. It says, again, ''If a group health plan''—they are covering 123 million. The next sentence, ''other than a fully insured group health plan.'' Other than fully insured—75 million. How many are left out? Forty-eight million. They cover the same number of people they covered 7 months ago. That is the reality. Here it is in their bill. Every one of these guarantees: If a group plan, other than a fully insured group plan. You go for the 48 million in the legislation that is rejected by Dr. NORWOOD, who is the principal health spokesman for Republicans on health matters over in the House of Representatives.

There it is. Their own language. They cover 48 million. The Dorgan proposal said: Whatever we are going to do, in terms of protecting consumers, let's protect them all—161 million.

We are one vote away in the Senate from passing an effective Patients' Bill of Rights. The conference is a failure. The amendment offered by the Senator from Oklahoma does not even have the support of the House Republicans. And only one of the House Republican conferees was a supporter of the Norwood-Dingell bill.

There is no agreement on covering all Americans. There is no agreement on external appeals. There is no agreement on holding health plans accountable. There is no agreement on access to specialists, to clinical trials, or a host of other patient protections. There was no agreement.

This vote today is a chance for the Senate to make a statement. A vote for the Dorgan amendment is a vote for the proposition that every patient in America is entitled to protection. Establishment of that principle is a giant step towards the day the Senate will pass a true patients protection program. A vote for the Nickles amendment is a vote against patients and for insurance companies. It is a vote for covering less than a third of all Americans. It is a vote for the same limited coverage originally passed by the Senate. It is a vote for a review process that is not truly independent. It is a vote against meaningful accountability. It is a vote against access to specialists outside a plan, even if the specialist is the only one able to treat that condition. It is a vote against access to clinical trials for heart patients. It is a vote for a bill that is so inadequate it will never pass the House, and it will never be signed by the President. It will not protect the thousands of patients who are injured every day.

It is up to the Senate. We should vote for the principle that everyone be covered. We should vote against a plan rejected by every group of patients and doctors, and by House Republicans. And we should come back after the recess and pass a real patients' rights bill, of which we can all be proud, whether we are Republicans or Democrats. Let's protect patients, not HMOs. I withhold the remainder of my time.

Let's protect patients, not HMOs. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator from Oklahoma has 10 minutes, and the Senator from North Dakota has 7 minutes.

Mr. NICKLES. Mr. President, for the information of all of our colleagues, it is my expectation we will have a vote about 7:20 p.m. I say to the majority leader, all time will expire by about 7:20 p.m. We are happy to vote on both proposals. So colleagues should be on notice to expect two rollcall votes beginning at 7:20 p.m.

I yield 5 minutes to my colleague, a conferee on the bill, the Senator from Arkansas, Mr. HUTCHINSON.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. HUTCHINSON. Mr. President, I compliment and commend the Senator from Oklahoma, Mr. NICKLES, for the hard work he has done and the months of labor he has put into this conference. Anybody who has followed the reports of what has come out of this conference cannot honestly say it has been glacial movement. Enormous progress has been made. Concessions have been made on the part of the House conferees as well as the Senate conferees.

This is no way to legislate and no way to provide patient protections the way Senator KENNEDY and Senator DORGAN have done in parceling out a little piece here and there. Tonight we are going to do scope. That is not the way to legislate. This is truly the triumph of politics over policy.

I was writing as various Senators on the Democratic side made speeches. They spoke of a national standard, of universal coverage, and of a national health system. To this Senator's mind, they could be synonymous with a national health care system. We had that debate. We had it in 1993. It was called ''Clinton care.'' Senator GRAMM piled it up over here, and it was about 2 feet tall.

The American people made a judgment on ''Clinton care.'' We do not want a national health care system, nor is that in the best interest of Americans.

The real debate tonight centers around not whether we want protections for all Americans or whether we believe we are the only ones who can provide that protection or whether the States have a legitimate role in providing protections for their citizens. How many States have patient protection laws? Forty-three States have already enacted patient protection laws.

Do we not believe they have the best interests of their citizens in mind? What we are doing in our legislation is providing protection where States cannot do it where Federal jurisdiction is legitimate. Under ERISA and self-funded plans, we do that, as we should.

I listened to my colleague from Massachusetts, Senator KENNEDY. In his State, in 1996, they had a ban on gag clauses. They passed a grievance procedure. They, in fact, have 26 State mandates. Does the Senator not believe they care about their citizens?

I heard my colleague and good friend from Florida speak of the need for a national system. The State of Florida passed a comprehensive bill of rights in 1997, emergency room services in 1996. They have 44 State mandates. Do they not care? They care as much as we care, and they know their State better than we do.

I heard my colleague from the State of Rhode Island speak about the need for a national health care system. Rhode Island passed a comprehensive consumer rights bill in 1996. They have passed 27 mandates in Rhode Island. I can go on and on. Forty-three States already have a bill of rights. It is not our place to usurp their authority. It is not our place to take over insurance that has traditionally and historically been regulated at the State level. It is wrong for us to do that.

To my colleagues I say we have a conference in progress. It is progress. It is working hard. It is making progress. That is the way we should provide patient protections, not through an amendment on an appropriations bill.

I thank my colleague, Senator NICKLES, for the hard work he has done and all the conferees and look forward to when we will have a meaningful patients' rights bill passed into law.

I reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, has the Senator from Oklahoma completed his debate? It is my intention to close debate on my amendment.

Mr. NICKLES. I will be happy to let my colleague close. How much time remains?

The PRESIDING OFFICER. The Senator from Oklahoma has 5 minutes, and the Senator from North Dakota has 7 minutes.

Mr. NICKLES. I yield 3 minutes to my colleague from New Hampshire.

Mr. GREGG. Mr. President, I thank the Senator for bringing forward this extremely positive proposal in the area of patient protections. This bill has a lot of initiatives, many of which have been outlined very well by my colleagues. One that has not been highlighted as completely as I would like because of time—and I want to touch on it quickly—is the issue of liability.

When our bill initially passed the Senate, we did not include an opportunity to sue, but we have changed that policy. Under the bill as it is proposed today, first there is a tremendously positive appeals process. If a patient believes they have been aggrieved by their HMO, they have the right to an internal appeal and an external appeal which is set up with an independent group of physicians who will review the case and who are knowledgeable on that subject. More importantly, if a patient thinks they have been aggrieved, under certain circumstances, they will be able to sue that HMO. What they will not be able to do is have an open season on the employer.

If one looks at the proposal that has been put forward by the other side, they are suggesting we have an open season on employers. The whole exercise in the Patients' Bill of Rights is not to have open season on employers. It is to address inequities occurring to people as they deal with their insurers, specifically with health maintenance organizations.

If we allow this open season on employers, we will simply drive people out of insurance. Instead of improving insurance for individuals across the country, individuals across this country will walk into work one morning and their employers will say: I did not give you this health care policy which happens to be a very expensive event in my day in trying to make an effective workplace; I did not give it to you so lawyers could use it as a game area to bring suits against me.

Employers across this Nation are going to simply drop their health care insurance. They will give their employees a certificate to buy their own health insurance or some other type of vehicle to allow them to compete in the marketplace. Because employers are able to get a better price and are able to tailor their insurance policies more effectively to the needs of their employees in different regions of this country, the practical effect will be employees get significantly much less health care under the proposal coming from the other side because employer after employer will simply drop their employees' health insurance programs and will allow the marketplace to compete for their employees. Unfortunately, the result will be the employees will be left with the short stick.

I think that is the actual goal of the other side. I think their real goal is to drive up the number of uninsured across this country. If one looks at the pattern of activity on the other side of the aisle, it has been to annually increase the number of uninsured by raising the price of insurance in this country.

Since this administration has been in office, the number of uninsured has gone up by 8 million people because the price of insurance has gone up and up as the other side has tried to drive up the price of that insurance.

What is the ultimate goal? ''Hillary care.'' If they put enough people on the street, if they create enough uninsured, inevitably they will have to claim: I am sorry, everybody is uninsured so we have to nationalize the system.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. GREGG. I think that is a good place to stop. I reserve the remainder of the time on our side.

Mr. DORGAN. Mr. President, I yield 2 minutes to Senator EDWARDS.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EDWARDS. Mr. President, I will respond to the Senator from New Hampshire. He argues there is a new provision in the Republican plan that provides for liability. That provision is a sham. There are three points I want to make in response.

First is the argument that we are creating an open season on employers. It is simply false. Not true. A letter from the American Medical Association of June 23 states clearly:

> The insurance industry—

And the Republican plan in this case—

> is flat wrong, and to imply otherwise is frankly deceptive. The fact is, the bipartisan House-passed bill would actually protect employers.

Under our bill, an employer cannot be held responsible under specific language unless they actively intervene in the decision of the insurance carrier, which never occurs. There is to reason for it to occur. It in fact never occurs. It is a false argument that employers can be held liable under our proposal. They cannot.

Second, the argument that they are providing for liability is simply not true. Under their plan, an insurance company can never be held responsible for their initial decision to deny coverage. So if somebody goes to their doctor with an emergency situation—they need care—and the insurance company says no, and, as a result, they suffer a lifelong injury, a debilitating injury, or death, the insurance company cannot be held accountable. They can only be held accountable, can only be held responsible, if they have exhausted the internal review process and the insurance company acted in bad faith or if they failed to follow the decision from the external review board.

The bottom line is, it creates an incentive for the insurance company to deny coverage in the first instance because under no circumstances can they be held responsible, and under no circumstances can they be held accountable. For those reasons, this provision for HMO insurance carrier liability is not real; it is a sham.

Our proposal provides real and meaningful accountability.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I yield the Senator from Tennessee—how much time do I have?

The PRESIDING OFFICER. The Senator has 2 minutes.

Mr. NICKLES. I yield the Senator 1 minute.

Mr. FRIST. Mr. President, very quickly, a vote for the Nickles amendment is a vote for patient protection, emergency room access to obstetricians, pediatricians, specialists, and clinical trials.

A vote for the Nickles amendment is a vote for a strong internal appeals process. If the HMO rejects the appeal of the doctor, you can go internally. If it is rejected again, you go to an external appeal process. The decision made by the external appeals process is made by an independent physician not bound by how the plan may define ''medical necessity.'' If the external appeal overrules the plan, and the plan does not comply, you go to court. This new ability to go to court, which is what many people believe is so important, is a new right to sue in Federal court.

Lastly, the access provisions have not been mentioned.

In closing, all of these mandates are going to drive up the cost of health care.

Access provisions in the bill include an above-the-line deduction for health insurance expenses, a 100-percent self-employed health insurance deduction, expansion of medical savings accounts, and deductions for long-term care.

I reserve the remainder of our time.

Mr. LEAHY. Mr. President, I am please to be a cosponsor of the amendment offered by Senator DASCHLE to the FY 2001 Labor HHS Appropriations bill which will protect people from having their personal, genetic information used against them by their employers or their health insurance companies. The provision is identical to the legislation that Senator DASCHLE introduced earlier this year and which I have also cosponsored.

If adopted, the Daschle amendment will bar insurance companies from raising premiums or denying patients health care coverage based on genetic information. Employers will also be prohibited from using genetic information in hiring practices. Because a right without a remedy is not right at all, these measures also provide an individual who has suffered genetic discrimination with the right to take legal action. This is an essential protection to ensure that discrimination does not occur.

With the latest breakthrough earlier this week of the Human Genome Project in mapping human genetic make-up, protecting Americans from genetic discrimination—an issue that was already important—has become critical. We must support the advancement of science and discovery through research. But while we are embracing these new discoveries, we must also provide safeguards to ensure the protection of this new and potentially very sensitive and personal information. In order to help Americans embrace scientific discoveries we must ensure these discoveries will not cause personal harm.

This February, in recognition of the need to prevent abuse and misuse of genetic information, President Clinton signed an Executive Order that prevents federal agencies from discriminating against workers if they discover through genetic testing that they have a predisposition to a disease or some other conditions. President Clinton expressed his support for legislation to prevent genetic discrimination which will extend beyond the reach of the Executive Order. The Genetic Nondiscrimination in Health Insurance and Employment Act and today's amendment will allow Vermonters—and all Americans—to undergo genetic testing without being afraid that their employer or their insurance company will use this information to discriminate against them.

No one wants to find out they may be predisposed to a certain disease and then have to worry about losing their job. These important measures would give them the assurance and protection that their personal information will be protected and will not be used against them.

Mr. DORGAN. Are we finished? Will I close at this point? I have 5 minutes.

Mr. NICKLES. I have 1 minute.

Mr. DORGAN. I would like to close debate on my amendment, if the Senator would like to proceed.

Mr. NICKLES. I would like to close on ours. You have 5 minutes.

Mr. DORGAN. Mr. President, we are debating my amendment, I guess. I have the right to close debate on my amendment; is that correct?

The PRESIDING OFFICER. There is no right to do such.

Mr. DORGAN. All right, Mr. President. Let me take the 5 minutes at this point and close debate.

Mr. President, this has been an interesting discussion, but it has not been about what is on the floor today. We have had now a debate about the 1993 Clinton health plan. We have also had a discussion about ''Hillary care.'' If you have the interest in debating that, hire a hall, get your own audience, speak until you are exhausted, and have a good time. But those are not the subjects on the floor today. We are debating the Patients' Bill of Rights.

Some people do not want to debate that. They certainly do not want to talk about the facts, but this is what we are talking about: The Patients' Bill of Rights.

Dr. GREG GANSKE, a Republican Congressman from Iowa, was just on the floor of the Senate and he indicated that the 258-page missive that is now offered as a substitute will in fact weaken HMO laws in the following States: California, Texas, Georgia, Washington, Louisiana, Oklahoma, Arizona, and Missouri. That is not from me; it is from Dr. GANSKE, a Republican Congressman.

By the way, let me read something Dr. GANSKE said some time ago in a discussion about all of these issues. He said:

> Let me give my colleagues one example out of many of a health plan's definition of medically necessary services. This is from the contractual language of one of the HMOs that some of you probably belong to: ''Medical necessity means the shortest, least expensive or least intense level of treatment, care or service rendered or supply provided, as determined by us.''
>
> Contracts like this demonstrate that some health plans are manipulating the definition of medical necessity to deny appropriate patient care by arbitrarily linking it to saving money, not to the patients' medical needs.

Some of my colleagues say we are playing politics with this issue? Why don't you tell that to some of these kids.

Dr. GANSKE described this child I show you a picture of, a child born with a severe cleft lip. Fifty percent of the medical professionals in Dr. GANSKE's field report that they have been told that correcting this kind of condition is not a medical necessity.

So tell that to the kids. Tell it to this young child, that it is not a medical necessity to correct this condition.

Dr. GANSKE also shared with us what a young child looks like who was born with this deformity—but who has it corrected by the right kind of surgery. Let me show you another picture of this child with the condition corrected. Does anybody want to tell this child it was not worth it?

Or maybe you want to talk to Ethan Bedrick. Tell Ethan that this is just politics. Ethan was born during a complicated delivery that resulted in severe cerebral palsy and impaired motor function in his limbs. When he was 14 months old, Ethan's insurance company abruptly curtailed his physical therapy, citing the fact that he had only a 50-percent chance of being able to walk by age 5.

So talk to Ethan about this. You think this is politics? Talk to Ethan. A 50-percent chance of being able to walk by age 5 was deemed, quote, ''insignificant,'' and therefore you don't get the medical help you need. And some people say: Well, it doesn't matter. Apparently, you don't deserve it.

That is not the way health care ought to be delivered in this country. People ought to have basic rights. That is why we call this a Patients' Bill of Rights.

The question, at the end of the day, is: With whom do you stand?

Do you stand with the managed care companies that have developed contracts such as this, that say, ''Medical necessity means the shortest, least expensive, or least intensive level of treatment, care, or service as determined by us,'' which means that this young child is told: Tough luck?

Or do you stand with the patients and decide that maybe we ought to do something, as a country, that responds to real problems and pass a real Patients' Bill of Rights?

A fellow once told me, in my little hometown: You never ought to buy something from somebody who is out of breath. There is a breathless quality to some of the discussion I have heard tonight. We raise the issue of a Patients' Bill of Rights, and instead we hear a discussion about the 1993 health care plan. Then we have a substitute that is 258 pages that kills a lot of trees for nothing. You don't need to take up 258 pages to offer an empty plan. Offer one page, and say: We don't support a Patients' Bill of Rights. Just be honest about it. But do not try to fool the American people any longer.

It is true we have had a few votes on this. It is also true that there is a conference committee that is supposed to be working. But it is also true, as Dr. Norwood and other Republican Congressmen said, that the time is up and the conference committee has not done a thing.

No one ever accuses the Congress of speeding. I understand that.

The PRESIDING OFFICER. All the time of the Senator has expired.

The Senator from Oklahoma has 1 minute.

Mr. NICKLES. I will give my colleague an additional minute.

Let me say, I know he holds up a lot of photographs. I think that is a crummy way to legislate. But I will say that every single example he mentioned would be covered by external appeal. Those decisions would be made by medical experts. We even put in language that they would not be bound by the plan's definition of ''medical necessity.'' They would be covered.

Pass the bill. If you want those kinds of examples to be covered, pass the bill. We are going to give you a chance to vote on it tonight. I might mention, my colleague from Tennessee says: We have a bill that is a Patients' Bill of Rights-plus because we provide a lot of things for people who cannot afford it. We provide an above-the-line deduction to buy health care, so more people can buy health care. The Democrats' proposal is going to uninsure millions of Americans.

We should not do anything that is going to dramatically increase the price of health care and uninsure millions of Americans, as their proposal would do. We also don't think HCFA, that glorious Federal agency they are trying to empower, should be regulating all health care in the States.

I ask unanimous consent for an additional 30 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NICKLES. Mr. President, my colleagues have said we are one vote short. We are not one vote short. Unless somebody changes the rules of the Senate, the Norwood-Dingell bill is going to need a lot more votes. It will never pass this session of Congress.

I yield the floor and ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, on behalf of the leader, I am announcing that there will be no further votes this evening after these two votes. I will shortly ask unanimous consent that the debate and votes in relation to the following remaining amendments be postponed to occur in a stacked sequence beginning at 9:15 a.m. on tomorrow, Friday, with 2 minutes prior to each vote for explanation. Also in the request is a consent that no second-degree amendments be in order to the amendments prior to the votes just outlined.

The amendments are as follows: Wellstone No. 3674, Helms amendment regarding school facilities, and we have just added the Harkin amendment regarding IDEA.

I will also ask unanimous consent that following those votes and the disposition of the managers' amendment, the bill be advanced to third reading and passage occur, all without any intervening action and debate.

Finally, I ask unanimous consent the Senate insist on its amendments and request a conference with the House and the Chair appoint the entire subcommittee, including the chairman and the ranking member, as conferees.

I hope all of our colleagues will agree to this consent. If not, the Senate will be in session late into the day tomorrow concluding this bill and beginning the appropriations bill on Interior.

With that, I now propound the unanimous consent just outlined.

Mr. REID. Mr. President, if I could ask my friend to add one phrase, ''any amendments that may not be cleared as part of the managers' package.''

Mr. SPECTER. I make that addition.

Mr. GRAMM. Reserving the right to object, parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator from Texas will state his inquiry.

Mr. GRAMM. Mr. President, as I read this unanimous consent request, the phrase ''without intervening business'' suggests to me that possibly the point of order that has been set aside against the bill could not be raised. I would like to ask if that is the case.

The PRESIDING OFFICER. The Senator's interpretation is correct.

Mr. GRAMM. Mr. President, I ask unanimous consent that the request be revised to allow me to raise the point of order. I think that was always the intention, but I would like to be sure that is the case.

The PRESIDING OFFICER. Is there objection?

The unanimous consent request is as amended by the Senator from Texas.

Mr. REID. Mr. President, we just got a call in the Cloakroom. Somebody has a problem with this. We will try to take care of it as soon as we can. Should we go ahead with the vote?

Mr. SPECTER. Let us proceed with the vote, Mr. President.

The PRESIDING OFFICER. The Senator from Pennsylvania withdraws his unanimous consent request.

The question is on agreeing to amendment No. 3694. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUYE and the Senator from Vermont (Mr. LEAHY) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 51, nays 47, as follows:

[Rollcall Vote No. 166 Leg.]

YEAS—51

Abraham
Allard
Ashcroft
Bennett
Bond
Brownback
Bunning
Burns
Campbell
Cochran
Collins
Coverdell
Craig
Crapo
DeWine
Domenici
Enzi
Frist
Gorton
Gramm
Grams
Grassley
Gregg
Hagel
Hatch
Helms
Hutchinson

Hutchison
Inhofe
Jeffords
Kyl
Lott
Lugar
Mack
McConnell
Murkowski
Nickles
Roberts
Roth
Santorum
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Stevens
Thomas
Thompson
Thurmond
Voinovich
Warner

NAYS—47

Akaka
Baucus
Bayh
Biden
Bingaman
Boxer
Breaux
Bryan
Byrd
Chafee, L.
Cleland
Conrad
Daschle
Dodd
Dorgan
Durbin
Edwards
Feingold
Feinstein
Fitzgerald
Graham
Harkin
Hollings
Johnson
Kennedy
Kerrey
Kerry
Kohl
Landrieu
Lautenberg
Levin
Lieberman
Lincoln
McCain
Mikulski
Moynihan
Murray
Reed
Reid
Robb
Rockefeller
Sarbanes
Schumer
Specter
Torricelli
Wellstone
Wyden

NOT VOTING—2

Inouye
Leahy

The amendment (No. 3694) was agreed to.

Mr. COVERDELL. I move to reconsider the vote.

Mr. SANTORUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCAIN. Mr. President, today the Senate voted on yet another proposal for providing patient protections to Americans enrolled in HMOs. Unfortunately, this proposal did not provide the strong safeguards and protections that I believe each and every American deserves to have.

This amendment failed on the three key areas for meaningful patient protections—fair legal accountability for denied care, the right of every American to choose their doctor, and basic patient rights for every American not just a limited few.

Under this amendment only a limited number of Americans would be provided with basic patient protections including the right for a woman to go directly to an OB/GYN and a parent to take their child directly to receive care from a pediatrician. Every American should be protected from having their doctors being ‘‘gagged’’ by HMO and prevented from sharing all health care information with them.

Another disturbing provision contained in this proposal was the lack of legal redress available to an individual if they did not complete the internal review process. Under this proposal if a patient died during the internal review process—which could take up to 14 days—then their surviving family would have no legal recourse against the HMO that denied or caused harm to the deceased individual. This is simply wrong and indefensible.

While I was disappointed in this proposal there were a few provisions that were applaudable and made an important step towards providing stronger protections to patients. I appreciated the efforts that were made to make the external review process more fair, unbiased and accessible. In addition I applaud the attempts made to provide patients with the right to sue including a cap on non-economic damages and no punitive damages. Both of these are items that I have consistently fought for inclusion in a HMO reform bill. People must be provided the right to sue for damages once all means have been exhausted but it must be done in a manner that does not cause excessive lawsuits and cause health care costs to exorbitantly rise.

I am disappointed that this proposal did not go far enough but I am hopeful that a strong patient protection bill can still be passed prior to Congress adjourning in the fall. It is the least we can do for America’s patients.

Congress still has an excellent opportunity to show the American people that it can and will rise above partisan politics and find the consensus that serves the national interest and puts the health care needs of patients first. This is too important an issue to allow the influence of special interests to prevent us from doing what is right for all Americans and I am confident that the leaders in both the House and Senate will continue working with the conferees to ensure that an agreement is reached.

AMENDMENT NO. 3693

The PRESIDING OFFICER (Mr. GRAMS). The question is on agreeing to the DORGAN amendment.

Mr. BREAUX. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUYE) and the Senator from Vermont (Mr. LEAHY) are necessarily absent.

The PRESIDING OFFICER (Mr. L. CHAFEE). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 47, nays 51, as follows:

[Rollcall Vote No. 167 Leg.]

YEAS—47

Akaka
Baucus
Bayh
Biden
Bingaman
Boxer
Breaux
Bryan
Byrd
Chafee, L.
Cleland
Conrad
Daschle
Dodd
Dorgan
Durbin
Edwards
Feingold
Feinstein
Fitzgerald
Graham
Harkin
Hollings
Johnson
Kennedy
Kerrey
Kerry
Kohl
Landrieu
Lautenberg
Levin
Lieberman
Lincoln
McCain
Mikulski
Moynihan
Murray
Reed
Reid
Robb
Rockefeller
Sarbanes
Schumer
Specter
Torricelli
Wellstone
Wyden

NAYS—51

Abraham
Allard
Ashcroft
Bennett
Bond
Brownback
Bunning
Burns
Campbell
Cochran
Collins
Coverdell
Craig
Crapo
DeWine
Domenici
Enzi
Frist
Gorton
Gramm
Grams
Grassley
Gregg
Hagel
Hatch
Helms
Hutchinson
Hutchison
Inhofe
Jeffords
Kyl
Lott
Lugar
Mack
McConnell
Murkowski
Nickles
Roberts
Roth
Santorum
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Stevens
Thomas
Thompson
Thurmond
Voinovich
Warner

NOT VOTING—2

Inouye
Leahy

The amendment (No. 3693) was rejected.

Mr. COVERDELL. Mr. President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from North Carolina wishes to be recognized to offer an amendment.

Mr. LOTT. Will the Senator from North Carolina yield so we can get an agreement on how to proceed for the remainder of the night?

The PRESIDING OFFICER. Does the Senator from North Carolina yield?

Mr. HELMS. I yield.

Mr. LOTT. Mr. President I want to take a few moments to go over the schedule for the remainder of the night and the morning and get a final agreement on a unanimous consent request.

These were the last two votes of the night. We want to complete the offering and debating of the remaining amendments that have been requested tonight, and then we will have those votes stacked beginning at 9:30 a.m., which is a little different from the time earlier mentioned. We had discussed 9:15 a.m. and there was a request we do that at 9:30 a.m.

I renew the unanimous consent request regarding the Labor-HHS bill which now includes possible votes tomorrow, Friday morning, beginning at the amended time, 9:30 a.m., relative to the following issues: a Wellstone amendment regarding drug pricing; a Helms amendment regarding school facilities; a Harkin amendment regarding IDEA; a Baucus amendment regarding impact aid; any amendment that is not cleared within the managers’ package; disposition of the point of order; and final passage of the Labor-HHS appropriations bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. I thank my colleagues on both sides of the aisle for their cooperation.

Mr. WARNER. Mr. President, may I address my leader?

Mr. LOTT. I yield to Senator WARNER.

Mr. WARNER. Two things, Mr. President. The distinguished ranking member of the Armed Services Committee and I have a package of about a dozen amendments which we can clear tonight. They are agreed upon. We need to call up the bill.

Second, we want to discuss with our leadership the possibility of a UC which might help move our bill along. Can we give the general outline?

Mr. LOTT. That will be fine.

Mr. WARNER. It will take but a minute. I ask my distinguished colleague to generally outline what we had in mind. I ask him to articulate it if he can.

Mr. LEVIN. The idea would be, after this package of cleared amendments is adopted, we would offer a unanimous consent agreement to limit the bill to relevant amendments on the list, which would include Senator BYRD's amendment on bilateral trade because that probably is relevant under any circumstances.

Mr. WARNER. We think that is relevant, Mr. President.

Mr. LEVIN. The amendments will have to be on file no later than adjournment tomorrow for the recess. Second-degree amendments that are relevant would be in order even if they are not filed. This is just preliminary. Since the Senator from Virginia asked, I offer this at least as a suggestion preliminarily. This is what we are talking about.

Mr. WARNER. May I add, Senator DODD has an amendment in there which has been cleared.

Mr. LOTT. Mr. President, if I can respond to the comments, first, I want to make very clear I feel strongly we should try to find a way to pass this very important Department of Defense authorization bill. It has a lot of provisions in it, changes in the law we have to get done. We need to do this for our national security and for our men and women who serve in our military.

Senator DASCHLE and I have talked about the fact we want to work together to move it forward. That is one of the many reasons we tried to find a way to conclude the disclosure requirements of the section 527 issue. We have achieved that. That is why I have been working with Senator BROWNBACK to find a way to deal with an issue that is very important to him, NCAA gaming. We want to get it done.

What I had in mind was for the managers to continue to work and clear as many amendments as they can, and the week we come back—again, I have not discussed the details of this with Senator DASCHLE, so I will not agree to anything without us both having a chance to check on both sides and clear it. But I was thinking in terms of asking the managers, who have done yeoman's work, to be prepared to work on Monday night, Tuesday night, or Wednesday night while we do other issues during the day. I am hoping one night will do the job but work a couple or three nights and complete this bill the week we come back. We are glad to work with them toward that goal. We want to get this bill in conference. I think Senator DASCHLE wants to help with that effort.

Mr. DASCHLE. Mr. President, if I can add my thoughts, I share the view expressed just now by the majority leader. We really want to help the managers finish their work on this bill. They have been working on it now for weeks. We have come a long way.

The majority leader has also indicated to colleagues who have concerns about nonrelevant amendments that we will have an opportunity to consider other vehicles immediately following the completion of the Defense authorization bill so we will be able to continue this procedure of a dual track to allow the consideration of other issues.

With that understanding, we want to work with the managers to rid ourselves of nonrelevant amendments, stick to those amendments which are relevant in an effort to, as the leader suggested, finish the bill in a matter of a night or two. I commend the managers for the effort they have made thus far. We will work with them to see we finish it.

Mr. WARNER. I thank our respected leaders very much. I told my leader and Senator LEVIN, we will work nights, we will go right straight through the evenings and stack such votes that we feel are necessary. We will achieve that.

Mr. LOTT. I yield to the Senator from Kansas.

The PRESIDING OFFICER. The Senator from North Carolina has the floor.

Mr. HELMS. I yield to the majority leader.

Mr. LOTT. I thank the Senator from North Carolina for yielding further. I ask his indulgence for a moment so the Senator from Kansas can respond.

Mr. BROWNBACK. Mr. President, I appreciate the majority leader mentioning trying to work out the issue on NCAA gaming. I hope we can get that worked out and come to a resolution and move the issue forward. I want to make sure we get that one taken care of as well.

Mr. LOTT. I thank my colleagues and yield the floor.

Mr. DASCHLE. Mr. President, if I can add one other thought.

The PRESIDING OFFICER. The Senator from North Carolina has the floor.

Mr. DASCHLE. Will the Senator yield for 30 seconds?

Mr. HELMS. I yield to the Senator.

Mr. DASCHLE. Mr. President, I would be remiss if I did not bring up also the understanding the leader and I have about further confirmation of judges. Obviously, when we come back, that is going to continue to be an important matter. The leader has certainly indicated a willingness to work with us on that.

It is also with that understanding that Senator LEVIN has some very important matters, Senator REID, and others. I appreciate very much the majority leader's commitment to work with us on that as well.

Mr. LOTT. Mr. President, if Senator HELMS will yield one second more, we are going to confirm some nominations tonight. I do note it is our intent after we complete Labor-HHS and the MILCON conference report to proceed to the Interior appropriations bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

AMENDMENT NO. 3697

(Purpose: To prohibit the expenditure of certain appropriated funds for the distribution or provision of, or the provision of a prescription for, postcoital emergency contraception)

Mr. HELMS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 3697.

Mr. HELMS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

SEC. ____. (a) None of the funds appropriated under this Act to carry out section 330 or title X of the Public Health Service Act (42 U.S.C. 254b, 300 et seq.), title V or XIX of the Social Security Act (42 U.S.C. 701 et seq., 1396 et seq.), or any other provision of law, shall be used for the distribution or provision of postcoital emergency contraception, or the provision of a prescription for postcoital emergency contraception, to an unemancipated minor, on the premises or in the facilities of any elementary school or secondary school.

(b) This section takes effect 1 day after the date of enactment of this Act.

(c) In this section:

(1) The terms ''elementary school'' and ''secondary school'' have the meanings given the terms in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

(2) The term ''unemancipated minor'' means an unmarried individual who is 17 years of age or younger and is a dependent, as defined in section 152(a) of the Internal Revenue Code of 1986.

Mr. HELMS. Mr. President, I further ask unanimous consent that it be in order for me to deliver my remarks at my seat.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I thank the Chair.

Mr. President, Americans who follow international news, will recall that the French Government recently created an uproar when it authorized its public schools to distribute the post-conception ''morning-after-pill'' to girl students as young as 12 years old.

I wish parents in our country could be assured that such an initiative will never see the light of day in the United States, but no such assurance can be made under existing circumstances.

In fact, when the French Government announced that it would be distributing the ''morning-after pill'' in French schools, the Alan Guttmacher Institute—the research arm of Planned Parenthood—recommended almost immediately that the United States duplicate the Western European's approach in handing out contraceptions to teenage girls.

So, isn't it clear that attempts to distribute the ''morning-after pill'' in U.S. public schools are indeed underway in planning boards of Planned Parenthood?

Moreover, Americans will be alarmed to learn that Federal law currently gives schools the authorization to distribute these ‘‘morning-after pills’’ to schoolchildren.

In fact, the Congressional Research Service confirmed to me that Federal law does, indeed, permit the distribution of the ‘‘morning-after pill’’ at school-based health clinics receiving Federal funds designated for family planning services.

Simply put, this means that any school receiving Federal family planning money is prohibited by Federal law to place any sort of restriction on contraception. Even parental consent requirements.

In a handful of cases, the Federal courts have struck down parental consent laws, ruling that any Federal family planning program trumps a State or county parental consent statute because Federal law prohibits parental consent requirements—even though Federal law says recipients of Federal family planning money should ‘‘encourage family participation.’’ I make this point because so many who oppose placing restrictions on contraception—like parental consent requirements—run for cover under this language ‘‘encourage family participation’’ when they know good and well that it means absolutely nothing in a court of law.

Let me reiterate a warning: There is nothing in Federal law to prevent the post-conception ‘‘morning-after pill’’ from being distributed on school grounds by clinics receiving Federal funding—regardless of whether a parental consent State statute exists.

That is why I asked the Congressional Research Service to look into whether or not school clinics are distributing the ‘‘morning-after pill.’’ What CRS found is that there is some discrepancy to the response to this question.

For example, according to CRS, the National Conference of State Legislatures spokesman said there was no knowledge that any school had distributed the ‘‘morning-after-pill.’’ Yet, the National Assembly on School-Based Health Care—an organization which works closely with HHS—told Congressional Research Service that their group has recently conducted a national survey of their members, and that the resulting data reflected that out of 1,200 schools, 15 percent offer contraceptives, including the ‘‘morning-after pill.’’

So, you see, it is not clear as to exactly what is being provided to schoolchildren these days. But it is clear that we are not just talking about condoms.

Simply put, Planned Parenthood and its cronies have been given free reign to distribute to American schoolchildren whatever they so please—to the point where schoolchildren are now being provided extremely controversial forms of contraception. And, in my judgment, this has gone on far too long.

That is why I am offering an amendment today that would forbid schools from using Federal funds from the Labor, HHS, Education appropriations bill to distribute the lawfully given ‘‘morning-after pill’’ in school.

But before the guardian angels of Planned Parenthood get themselves in a tizzy, let me make clear precisely what this amendment will and will not do.

Under the proposed measure, elementary and secondary schools will be forbidden to use funds from the Labor, HHS and Education appropriations bill to distribute to school children the ‘‘morning-after pill’’—which is widely considered to be an abortifacient. In fact, many pharmacists nationwide have refused to fill prescriptions for the ‘‘morning-after pill’’ because they, too, see it as an abortifacient.

This amendment will apply only to school clinics on school property.

Clearly, Congress simply must not ignore the fact that our schoolchildren deserve to be protected.

Mr. President, I ask unanimous consent that two memoranda prepared by the Congressional Research Service be printed in the CONGRESSIONAL RECORD.

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

CONGRESSIONAL RESEARCH SERVICE,
LIBRARY OF CONGRESS,
Washington, DC, April 26, 2000.

To: Senator Jesse Helms
From: Kenneth R. Thomas, Legislative Attorney, American Law Division
Subject: Application of Parental Consent Requirements to Distribution of Emergency Contraceptives in School-Based Clinics Receiving Federal Funds

This revised memorandum is in response to your rush request to determine whether state parental notification statutes would apply to the distribution of emergency contraceptives at a school-based clinic which receives federal funds. Specifically, you requested an evaluation of whether state parental notification statutes, regulations or policies which applied to federally funded clinics distributing contraceptives would be preempted.

In a series of cases in the mid-1980's, various federal courts reviewed the application of parental notification requirements to federally funded programs which distributed contraception. In general, the courts found that the application of parental notification statutes to federally funded programs to provide contraception resulted in the frustration of the federal purpose of the statutes, and consequently the courts invalidated such restrictions.

There is currently no federal prohibition on the distribution of emergency contraceptives at school-based clinics.

If I can be of further assistance, please contact me at 7–5863.

CONGRESSIONAL RESEARCH SERVICE,
LIBRARY OF CONGRESS,
Washington, DC, April 12, 2000.

To: Honorable Jesse Helms.
From: Technical Information Specialist, Domestic Social Policy Division.
Subject: School-Based Clinics.

Your office requested a memorandum describing policies of school-based clinics for distributing emergency contraceptives (more commonly known as the ‘‘morning-after pill’’), including the number of schools estimated to be offering emergency contraception, and any existing federal prohibitions.

We contacted three different groups for this information:

(1) The National Assembly on School-Based Health Care informed us that their group has recently conducted a national survey of their members and that data reflected that out of 1200 schools, 77% do not offer contraceptives, 15% offer contraceptives, including emergency contraceptives, and the remaining 8% offer contraceptives, but not emergency contraceptives. The schools offering contraceptives are middle schools and high schools. The information is not yet available for publication.

(2) The National Conference of State Legislatures informed us that they currently have no knowledge of any schools distributing emergency contraceptives through school-based health clinics.

(3) The Healthy Schools/Healthy Communities (HSHC) Program, Health Resources and Services Administration, Department of Health and Human Services informed us that HSHC does not provide direct dollars for specialized services, such as emergency contraceptives, but does support school-based programs that provide full and comprehensive health services. HSHC is administered as a discretionary program under the Health Centers program, Section 330 of the Public Health Service Act. Section 330 allows the provision of voluntary family planning services at health centers.

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

Mr. HELMS. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I say to my colleague from North Carolina, is he finished with his prepared remarks on his amendment?

Mr. HELMS. Yes, I am.

Has the Chair ruled on the yeas and nays?

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. HELMS. They have been ordered.

Mr. President, I am advised I should ask unanimous consent that this amendment of mine be laid aside and the vote be put in regular order tomorrow morning. I ask unanimous consent that that be the case.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I thank the Chair and yield the floor.

AMENDMENT NO. 3698

(Purpose: To provide for a limitation on the use of funds for certain agreements involving the conveyance or licensing of a drug)

Mr. WELLSTONE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE], for himself and Mr. JOHNSON, proposes an amendment numbered 3698.

Mr. WELLSTONE. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 92, between lines 4 and 5, insert the following:

SEC. ____. (a) LIMITATION ON USE OF FUNDS FOR CERTAIN AGREEMENTS.—Except as provided in subsection (b), none of the funds made available under this Act may be used by the Secretary of Health and Human Services to enter into—

(1) an agreement on the conveyance or licensing of a patent for a drug, or on another exclusive right to a drug;

(2) an agreement on the use of information derived from animal tests or human clinical trials that are conducted by the Department of Health and Human Services with respect to a drug, including an agreement under which such information is provided by the Department to another Federal agency on an exclusive basis; or

(3) a cooperative research and development agreement under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) pertaining to a drug, excluding cooperative research and development agreements between the Department of Health and Human Services and a college or university.

(b) EXCEPTIONS.—Subsection (a) shall not apply to an agreement where—

(1) the sale of the drug involved is subject to a price agreement that is reasonable (as defined by the Secretary of Health and Human Services); or

(2) a reasonable price agreement with respect to the sale of the drug involved is not required by the public interest (as defined by such Secretary).

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to apply to any agreement entered into by a college or university and any entity other than the Secretary of Health and Human Services or an entity within the Department of Health and Human Services.

Mr. WELLSTONE. Mr. President, I offer this amendment on behalf of myself and Senator JOHNSON from South Dakota.

I am just going to take 1 minute to summarize this amendment, I say to my colleagues, and then Senator JOHNSON will proceed, and then I will come back to the amendment.

Mr. President, if you just look right here at this chart, it is very interesting. Tamoxifen and Prozac are two widely used drugs. Look at the difference between what the United States citizens pay for a vial versus what people in Canada pay.

In our country, a United States citizen pays $241 for tamoxifen; $34 in Canada. For Prozac, in this country it is $105; in Canada, it is $43.

What this amendment says—and I want to go back to Bernadette Healy's leadership at NIH. What this amendment says is that what Ms. Healy did is the right thing to do, which is to say to the pharmaceutical companies, when the NIH does the research, and then the patent is handed over to a pharmaceutical company, that pharmaceutical company—since we put the taxpayer dollars into the research—should at least agree to provide citizens in this country with a decent, affordable charge; that the pharmaceutical company should agree to an affordable price or a reasonable price which is defined specifically by the Secretary of Health and Human Services.

Again, this amendment says that pharmaceutical companies that negotiate an agreement with NIH—NIH is doing the research, helping out, the drug is then developed, the pharmaceutical company now has the patent—must sign an agreement to sell the drug at a reasonable price.

I do not think it is unreasonable from the point of view of your constituents and my constituents, people in this country who pay the taxes and support our Government, who feel just a little bit ripped off by the prices today, that if we are going to put our taxpayer dollars into the research and into the support and then the pharmaceutical companies are going to get a patent, at the very minimum they ought to be willing to sell the drug to people in our country at a reasonable price defined by the Secretary of Health and Human Services.

This amendment is all about corporate welfare at its worst. It is about being there for consumers. It is about assuring people that their taxpayer dollars are contributing toward some research that will in turn contribute toward affordable drugs for themselves and their children.

I yield the floor to my colleague, Senator JOHNSON of South Dakota.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. Mr. President, I am pleased to join my colleague from Minnesota, extending strong support for his amendment.

Very simply, this amendment would require that when companies receive federally funded drug research or a federally owned drug, the benefits of that research or drug be made available to the public on reasonable terms through what is called a ''reasonable pricing clause.''

This issue first surfaced during the Bush administration, in fact, when the NIH insisted that cooperative research agreements contain a reasonable pricing clause that would protect consumers from exorbitant prices of products developed from federally funded research.

Two weeks ago, during floor debate in the other body on the Labor, Health and Human Services, and Education appropriations bill, a very similar amendment to this one was offered and overwhelmingly accepted by nearly three-quarters of the House of Representatives in a bipartisan vote.

The circumstances we face today are extraordinary. As an example, between 1955 and 1992, 92 percent of drugs approved by the FDA to treat cancer were researched and developed by the taxpayers through the NIH. Today many of the most widely used drugs in this country dealing with a variety of critical illnesses such as AIDS, breast cancer, and depression were developed through the use of taxpayer-funded NIH research. The Federal Government funds about 36 percent of all medical research.

The unfortunate scenario for American taxpayers is that oftentimes this drug research, done at their expense, is frequently used then by the pharmaceutical industry with no assurance that American consumers will not be charged outrageously high prescription drug prices.

Take the drug Taxol, for instance. The NIH spent 15 years and $32 million of our money, taxpayer money, to develop Taxol, which is a popular cancer drug used for breast, lung, and ovarian cancers. Following the development of Taxol, the drug manufacturer was awarded exclusive marketing rights on the drug, and Taxol is now priced at roughly 20 times what Taxol costs the manufacturer to produce. So a cancer patient on Taxol will pay $10,000 a year while it only costs the drug company $500.

As reported by Fortune 500 magazine earlier this year, the pharmaceutical companies once again represent the most profitable sector of the American economy. On top of that, we are seeing drug prices soaring at unimaginable rates year after year. In the United States, drug spending is growing at more than twice the rate of all other health care expenditures. Furthermore, Americans are paying far more for prescription drugs than do the people in any other Western industrialized Nation—many of these drugs manufactured in the United States and the research having been conducted through American taxpayer dollars.

As an example, tamoxifen, a widely prescribed drug for breast cancer, recently received federally funded research and numerous NIH-sponsored clinical trials. Yet today the pharmaceutical industry charges women in this Nation 10 times more than they charge women in Canada for a drug widely developed with U.S. taxpayer support.

The evidence has shown that the pharmaceutical companies are charging enormously high rates for drugs developed with the help of taxpayer money. Americans then are forced to pay twice for lifesaving drugs: first as taxpayers to develop the drug, and then as a consumer to bolster pharmaceutical profits. Once again, who is hurt most by this? As one would expect, these costs fall hardest on those most vulnerable and least able to bear the burden, such as cancer patients, AIDS patients, and the elderly.

We have to put an end to the giveaway of billions of taxpayer dollars to finance drug research that goes on without any assurance whatsoever that the American taxpayers will not see a reasonable return on their investment in terms of affordable prescription drug prices.

I appreciate that this amendment may not be the silver bullet that solves all of the problems of assuring the American public they are receiving the return on their investment that they deserve. But it does serve as an important message that this Congress is here to protect the millions of American consumers who have invested their money in research to develop drugs that they now cannot afford to buy. Furthermore, it shows we are here to fight for affordable prescription drugs for every American in this Nation.

This is one part of an overall strategy that this Congress needs to enact to assure that we have equity, to assure that we have tax fairness, and to assure that we maximize the number of people in America who can afford their prescriptions.

I urge my colleagues to vote for passage of this critically important amendment tomorrow when the vote is taken on this amendment. I commend and applaud my colleague from Minnesota for his work in crafting this amendment and bringing it before the body.

Mr. WELLSTONE. Mr. President, I thank the Senator from South Dakota. Again, the amendment says that when the pharmaceutical companies negotiate an agreement with the NIH to develop and market a drug based on taxpayer-financed research, there must be an agreement signed by the pharmaceutical companies that they will sell the drug at a reasonable price.

This is an eminently reasonable amendment. This amendment does not cover extramural NIH research grants, such as grants to universities. It does not cover grants to universities. It does not establish a health care price control scheme.

This amendment will reinstate the Bush administration's reasonable pricing clause which was in effect from 1989 to 1995. This amendment directs the Secretary of Health and Human Services to determine what is a reasonable price. This amendment gives the Secretary flexibility to waive the pricing clause if it is in the public interest to do so.

As my colleague from South Dakota pointed out, a similar amendment, which was introduced by Congressmen SANDERS, ROHRABACHER, DEFAZIO, and others passed the House of Representatives by a 3-to-1 margin, 313 to 109. It is because people in the country feel ripped off by this industry. People in the country believe that the prices should be more reasonable. Certainly our constituents believe that if we are going to be funding some of the research and these companies are going to benefit from our taxpayer dollars, then there ought to be an agreement that these companies are going to be willing to charge us a reasonable price. That is not too much to ask.

This amendment is supported by Families U.S.A., the National Council of Senior Citizens, and the Committee to Preserve Social Security and Medicare.

I ask unanimous consent that their letters be printed in the RECORD.

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

FAMILIES USA,
Washington, DC.

Senator PAUL WELLSTONE,
Washington, DC.

DEAR SENATOR WELLSTONE: We applaud your amendment that would require that a price agreement be part of agreements between NIH and companies who do research on new drugs.

Currently, once NIH has successfully developed a new drug it signs over the commercial rights to pharmaceutical companies that charge American consumers as much as they want. Americans are forced to pay twice for lifesaving drugs, first as taxpayers to develop the drug and then as consumers to the drug companies for the product. These costs fall hardest on those least able to bear the burden such as seniors and the uninsured, although all consumers wind up paying more than they should have to.

Your amendment would help correct this burdensome situation. Please let us know how we can help make this amendment in law.

Sincerely,

RONALD F. POLLACK,
Executive Director.

NATIONAL COUNCIL
OF SENIOR CITIZENS,
Silver Spring, Maryland, June 29, 2000.

Senator PAUL WELLSTONE,
Washington, DC.

DEAR SENATOR WELLSTONE: The National Council of Senior Citizens fully supports your amendment to the FY 2001 Labor HHS appropriations bill to require that the Federal government negotiate a reasonable and fairer price for all drugs developed with public funds. The Federal government has for too long sold its most precious research findings for a mess of pottage to the pharmaceutical cartels. The drug companies, in turn, sell these findings back to the American people at unconscionably high retail prices. Pharmaceutical retail price reform must start at the source—where public drug research and development investment has borne fruit.

Your bill defines the public interest as requiring hard bargaining by the N.I.H. in behalf of the public when selling patents to drug companies. We also note that your amendment only covers intramural N.I.H. research. We call on your colleagues to support this needed amendment.

Sincerely,

DAN SCHULDER,
Director, Legislation & Public Affairs.

NATIONAL COMMITTEE TO PRESERVE
SOCIAL SECURITY AND MEDICARE,
Washington, DC, June 29, 2000.

Hon. PAUL WELLSTONE,
U.S. Senate, Washington, DC.

DEAR SENATOR WELLSTONE: It has come to our attention that the Senate is likely to consider H.R. 4577, an amendment to the Labor, Health and Human Services, and Education appropriations bill. The amendment would require drug companies to sell drugs at a reasonable price if the drugs were developed based on intramural research done by the National Institute of Health. On behalf of the members and supporters of the National Committee to Preserve Social Security and Medicare, I strongly support your proposed amendment.

When pharmaceutical companies build on NIH research they are using taxpayer money. A Congressional Joint Economic Committee report revealed that seven out of the top 21 most important drugs introduced between 1965 and 1992 were developed with federally funded research. Taxpayers deserve some return on their investment in terms of lower prices. This amendment will help to ensure that.

We appreciate your leadership on this important issue.

Sincerely,

MARTHA A. MCSTEEN,
President.

Mr. WELLSTONE. I will quote from Ron Pollack, executive director of Families U.S.A.:

> Currently, once NIH has successfully developed a new drug it signs over the commercial rights to pharmaceutical companies that charge American consumers as much as they want. Americans are forced to pay twice for lifesaving drugs, first as taxpayers to develop the drug and then as consumers to the drug companies for the product. These costs fall hardest on those least able to bear the burden such as senior citizens and the uninsured, although all consumers wind up paying more than they should have to.

I want to simply quote from a piece in the New York Times from April 23, which challenged the drug industry's contention that R&D cost justify the prices they charge the American consumer. That is what we keep hearing, that it is the R&D cost. That is why they have to charge so much. I quote from the New York Times piece of April 23:

> The industry's reliance on taxpayer-supported research—characterized as a ''subsidy'' by the very same economists whose work the industry relies on—is commonplace, the examination also found. So commonplace, in fact, that one industry expert is now raising questions about the companies' arguments.
>
> The expert, Dr. Nelson Levy, a former head of research and development at Abbott Laboratories, who now works as a consultant for industry and the Federal Government on drug development, bluntly challenged the industry's oft-repeated cost of developing the drug. ''That it costs $500 million to develop a drug,'' Dr. Levy said in a recent interview, ''is a lot of bull.''

Finally, the examination found that Federal officials have abandoned or ignored policies that could have led to lower prices for medicines developed with taxpayer dollars. That is partly because the Government has lost track of what drugs have been invented with its money, and partly, officials say, because the industry has resisted any Government effort to insist that they charge people—our constituents—a reasonable price. As Dr. Bernadine Healy, a former Director of the NIH, said in a recent interview, ''We sold away Government research so cheap.''

Again, it is not a new issue. During the Bush administration, the NIH, from 1989 to 1995, insisted there be some reasonable pricing clause. There was heavy pressure from the pharmaceutical industry. They abandoned this practice. We are saying that we ought to be going back to it.

There are multiple factors contributing to the prescription drug cost crisis in our country today. I realize that this reasonable pricing clause is not a panacea for these egregiously high drug costs for America's seniors—and, for that matter, for families in our country—but this amendment makes it clear the Congress will not allow taxpayers to spend all of the money for this kind of research and then not get any kind of break in return.

For the most part, most of the drugs that are developed with taxpayer money are then given over to the pharmaceutical industry with no assurance whatsoever that Americans will not be charged outrageously high prices—in fact, no assurance that they won't be charged the highest prices in the world. Tamoxifen is a very important drug to women struggling with breast cancer. This is what a prescription costs that is getting filled. In Canada, it is $34. In the United States, it is $241. Prozac is $43 in Canada, and in the U.S. it is $105.

Here is the next chart. This amendment will ensure that we get some fair return on our investment and that we don't get the highest prices for medications in the world. Let me restate that. I don't think it ensures that, but it can only help. I have given some examples up here. Let me simply point out to colleagues that the cost of prescription drugs has skyrocketed. Our people in this country this past year paid 17 percent more.

Let me also point out that we are paying the highest costs for pharmaceutical drugs of any people anywhere in the world— exorbitant prices. I have this chart—The Fleecing of America—just to look at some of the profits of companies. Let me give some examples: entertainment companies, $4.2 billion; airline companies, $4.7 billion; oil companies are doing pretty well right now at $13.6 billion; auto companies, $15.4 billion; the drug companies, $20 billion.

As the Fortune 500 magazine said, this past year has been a ''Viagra'' kind of year for these drug companies. But do you know what. It is the consumers who paid the price. We are charged the highest prices of any country in the world, and I think it is time to say to the pharmaceutical companies that enough is enough.

This industry has opposed every measure that has been introduced in this Congress to try to lower prices and to provide a decent prescription drug benefit to senior citizens. Frankly, I hate talking about it in terms of senior citizens because there are a lot of working families being hurt by this.

I think the amendment we have introduced tonight is a small step, but I think it is a step in the right direction. It is not unreasonable to say to these companies that if we are going to finance the research, if NIH is going to do the research, if you are going to get valuable data and information from NIH to use to develop your drugs, and you are going to get the patent, at the very least you have to agree to charge a reasonable price.

That is all this amendment says. This is what we did under Dr. Healy's leadership. The pharmaceutical companies hated it. They were able to knock it out sometime around 1995. But do you know what. A lot has changed, I say to Democrats and Republicans alike, since 1995. People in our States are absolutely furious about the prices they are being charged by the pharmaceutical industry. This industry has basically become a cartel. I wish there were a lot of free enterprise. I wish there were a lot of competition. But that is not so. They basically have administered prices; they basically have price gouged; and they have made an immense amount of profit—an exorbitant amount of profit—based upon the sickness and misery and illness of people. That, in and of itself, is an obscene proposition.

This amendment goes after the worst of corporate welfare. This amendment is eminently reasonable, and I hope that my colleagues will support it.

Again, I point out the support of Families U.S.A. I think I will read from the letter of the National Council of Senior Citizens:

> The National Council of Senior Citizens fully supports your amendment to the FY2001 Labor HHS appropriations bill to require that the Federal government negotiate a reasonable and fairer price for all drugs developed with public funds.

Ask the people back home. Do any of our constituents think it is unreasonable for us to ask these companies that benefit from our taxpayer dollars and benefit from Government research to charge our citizens, our constituents, a reasonable price?

They go on to say:

> The Federal Government has for too long sold its most precious research findings for a mess of pottage to the pharmaceutical cartels. The drug companies, in turn, sell the findings back to the American people at unconscionably high retail prices. Pharmaceutical retail price reform must start at the source—where public drug research and development investment has borne fruit.

Finally, from the National Committee to Preserve Social Security and Medicare:

> On behalf of the members and supporters of the National Committee to Preserve Social Security and Medicare, I strongly support your proposed amendment.
>
> When pharmaceutical companies build on NIH research they are using taxpayer money. A Congressional Joint Economic Committee report revealed that seven out of the top 21 most important drugs introduced between 1965 and 1992 were developed with federally funded research. Taxpayers deserve some return on their investment in terms of lower prices. This amendment would help to ensure that.

This amendment would help to ensure that, and I don't know why the Senate tomorrow morning cannot go on record saying that when we, a Government agency supported by taxpayer dollars, by our constituents, do the research, provide the data, provide the information to these companies, which in turn get a patent for the drug, those companies will sign an agreement that they will charge the citizens in this country a reasonable price.

They make all the arguments about how they need all of these exorbitant profits for their research. But there is not a shred of evidence to support that. Their profits are so exorbitant that it goes way beyond any cost of research. We all know that. That is what is behind the record profits they make.

They make these arguments that I cannot believe—that if NIH is going to force us to sign an agreement, since we benefit from your research and the taxpayer money, we will charge people a reasonable price, then we may not even be willing to do this research. That is blackmail, or white mail, or whatever you want to call it. It is outrageous. These companies dare to say to the NIH—or dare to say to the Government, or to our constituents—if the Government says to the pharmaceutical companies that get the research dollars, do the work and research and get the patent, that they should charge a reasonable price, we might not do the research at all, enough is enough.

My final point: I think this is a reform issue as well. I think Senators vote their own way. But, honest to God, I think, at least speaking as a Senator from Minnesota, I am just tired of the way in which—if Fanny Lou Hammer were on the floor she would say ''sick and tired''—this industry pours the dollars in, makes these huge contributions, has all of these lobbyists, has all of this political power, and is so well represented to the point where they believe they run the Congress. They do not.

This amendment with very similar language passed the House of Representatives by a huge margin. Very similar language, the same proposition, and the same subject matter passed the House of Representatives by a huge margin.

I hope tomorrow on the floor of the Senate there will be a strong vote for this amendment that I bring to the floor with Senator JOHNSON of South Dakota.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, it is just simply wrong that Americans are forced to pay extraordinarily high prices for prescription drugs and then have to cross the border to Canada and Mexico to buy those drugs manufactured in the United States at far lower prices. It is simply wrong. But it is doubly wrong when the U.S. taxpayers have paid for part of the research that produced those very same prescription drugs.

Many of us have constituents who go to Canada just for this purpose; they are unable to afford prescription drugs here in the United States. Sometimes they go great distances to cross the border to Canada or to Mexico in order to buy prescription drugs at prices they can afford.

We did a survey of a number of prescription drugs. These are seven of the most popular prescription drugs. We took a look at those seven drugs and then did a survey of the cost of those prescription drugs in Michigan and in Ontario across the border. Premarin, $23.24 in Michigan, $10.04 in Ontario; Synthroid, $13 compared to $8; Prozac, $82 compared to $43; Prilosec, $111 compared to $48; Zithromax, $48 compared to $28; Lipitor, $63 compared to $42; Norvasc, $76 compared to $41.

When particularly seniors—sometimes by the busload—gather together, drive to a border point, and cross the border to get a 30- or 60-day supply of prescriptions, and then come back into Michigan or other States with prescription drugs that they cannot afford to buy in their own hometown, something is fundamentally wrong with that system.

These are the percentages of those top seven drugs. The U.S. prices are above the Canadian prices based on that survey. That was a survey of prices in Detroit compared to Ontario across the border.

For the first one, Premarin, the U.S. price is 131 percent higher than the Canadian price; Synthroid is 63 percent higher than for Ontario purchasers; Prozac is 878 percent higher for Americans than for Canadians; Prilosec is 132 percent higher; for Zithromax, Americans are paying 674 percent more than Canadians; Lipitor is 51 percent more than for Canadians; and Norvasc is 783 percent more than for Canadians.

That is unconscionable. It is wrong. It is infuriating. It is costly. We have to do something to change the system that allows this to happen. But it is doubly wrong when U.S. taxpayers have paid for part of the research that produced those very same prescription drugs.

I don't know which of these particular prescription drugs were produced with U.S. taxpayer dollars or partly with U.S. taxpayer dollars. I don't have that data. But that is not the point of the amendment of the Senator from Minnesota. For the drugs produced with U.S. taxpayer dollars, there should be an agreement that the manufacturer will charge a fair price as determined by the Department of Health and Human Services.

That is a very reasonable approach, it seems to me. There are other approaches which have been suggested to address this issue. I think there are other approaches also worthy of consideration. But the approach before us today is an approach which I believe is eminently fair, which simply says if you want to use taxpayer dollars in your research, that you make sure your pricing system is fair to Americans who helped to fund that very research.

I hope we will adopt the amendment of the Senator from Minnesota. I think it is a fair approach. It is based on the contribution Americans have made to the creation of the very prescription drugs which too many Americans find they cannot afford.

We want pharmaceutical companies to be profitable. We want pharmaceutical companies to engage in robust research and development. But we do not and should not, as Americans, pay the share of research and development that consumers in other countries should be shouldering. We can't afford to subsidize other countries, and it is particularly wrong where we have originally done some of the subsidy of the very research and development which produced the drug which is now sold for so much less in those other countries.

I commend the Senator from Minnesota. I support his amendment. I hope we will adopt it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I thank the Senator from Michigan for his remarks. I am very proud to have his support.

AMENDMENT NO. 3699

(Purpose: To fully fund IDEA)

Mr. HARKIN. Mr. President, I send my amendment to the desk on the Individuals With Disabilities Education Act.

The PRESIDING OFFICER. The pending amendment is laid aside. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself, and Mr. WELLSTONE, proposes an amendment numbered 3699.

Mr. HARKIN. I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 60, line 16, strike ''$7,357,341,000'' and insert ''$15,800,000,000''.

On page 60, line 19, strike ''$4,624,000,000'' and insert ''$13,071,659,000''.

Mr. HARKIN. Mr. President, this is a very simple amendment. It is very straightforward. It does not include a lot of pages of text. All it does is fully fund the Individuals With Disabilities Education Act. By passing this amendment, we meet our goal of paying 40 percent of the average per pupil expenditure.

For years, many on both sides of the aisle have agreed that the Federal Government should increase our support for States' efforts to provide children with disabilities a free and appropriate public education. With this amendment we can do just that.

Congress enacted the Education for All Handicapped Children Act, which is now known as IDEA, for two reasons. To establish a consistent policy of what constitutes compliance with the equal protection clause of the 14th amendment with respect to the education of kids with disabilities, and to help States meet their constitutional obligations.

Mr. President, I ask unanimous consent to add Senator WELLSTONE as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, there has been a lot of misperception about IDEA. That misperception is amplified in statement after statement until it almost becomes a state of fact that IDEA is a Federal mandate on the States. I hear it all the time: a Federal mandate that is not fully funded.

IDEA is not a mandate of the Federal Government on the States. The fact that the Federal courts have said if a State provides a free and appropriate public education to its children—and States don't have to do that—but if a State provides a free and appropriate public education for all of its kids, it cannot discriminate on the basis of race, it cannot discriminate on the basis of sex, or national origin, and in two court cases the court said it cannot discriminate on the basis of disability.

Simply because a child has a disability doesn't relieve the State of its obligation under the equal protection clause to provide that child a free and appropriate public education.

In 1975, the Congress said because this would be such a burden on the States, we will pass national legislation to help the States meet their constitutional obligation to educate kids with disabilities. That is what IDEA is. The Federal Government said, OK, if you meet these certain requirements, you will be eligible for IDEA for this money. If we had no legislation at all, if there were no Individuals With Disabilities Education Act, the States would still have to fund the education of kids with disabilities—not because the Federal Government says so, but because the Constitution of the United States says so. As long as a State is providing a free public education to other kids, they have to provide it to kids with disabilities. It is not a Federal mandate. It is a constitutional mandate.

We have said in the Federal Government, when we passed IDEA, we will help. Furthermore, we said in the authorizing legislation, that it would be a goal of the Federal Government to provide for 40 percent of the cost of the average per pupil expenditure for all other kids. We have never reached that 40 percent. It was a goal then. It is still a goal. Senators on both sides of the aisle talked about meeting this goal. Now we have the opportunity to do so.

My amendment is a win-win situation for everyone. We are able to fully fund both the IDEA and our general education priorities so that all kids, with and without disabilities, get the education they deserve and they are guaranteed by the Constitution of the United States.

Over the past 5 years, I have worked hard with my colleagues on the Appropriations Committee to more than double the appropriation for Part B of IDEA. This year we have included an additional $1.3 billion. Senator SPECTER and I, in a bipartisan fashion, worked very hard to get this increase. Because of the amendment offered by Senator JEFFORDS yesterday and the statements made on the floor, it became clear to me that there is a strong will on both sides of the aisle to fully fund IDEA to meet that 40-percent obligation.

Now we can step up to the plate and do it. This week the OMB informed us that the non-Social Security surplus will reach up to $1.9 trillion over the next 10 years. I believe we ought to use these good economic times to prepare for the future.

So, Mr. President, as I said, OMB has informed us we are going to have $1.9 trillion over the next 10 years in non-Social Security surplus. That means we can use some of this for a lot of different things: Pay down the national debt, shore up Social Security, Medicare, and make appropriate investments in education. One of the most appropriate investments we can make is to fully fund the Individuals with Disabilities Education Act. But there are a lot of other ways we can help pay for this. For example, we could save dollars by cracking down on Medicare waste fraud and abuse. The HHS Inspector General said last year, Medicare made $13.5 billion in inappropriate payments. Eliminating that waste alone would more than pay for the entire IDEA expenditure. Yet the House-passed Labor-HHS bill actually cuts the funding for detecting waste, fraud and abuse. I hope we can take care of that in conference. My point is we have a lot of waste, fraud, and abuse in Medicare we can cut out to help pay for this.

We have a lot of other things we can do also: Cutting out Radio Marti, and TV Marti; spending by Government agencies on travel, printing and supplies and other items could be frozen. This could save $2.8 billion this year, about $12 billion over 5 years. Pentagon spending could be tied to the rate of inflation. This would force the Pentagon to reduce duplication and other inefficiencies. This change would save taxpayers $9.2 billion this year alone; $69 billion over 5 years. Enhancing the Government's ability to collect student loan defaults would be $1 billion over 5 years.

The reason I cite these examples is to show there is a lot of waste and a lot of spending we can tighten down on to help pay for IDEA. We have the surplus, however. All this money that we found out there—as we go through this year, you wait and see, transportation will take a little bit of that money; housing will take a little bit of that money; defense will take a big chunk of that; the Finance Committee will have tax provisions—they want to do away with all the estate taxes now. That will take away a big chunk. I hope we don't pass it but I assume something will come through.

There is a big surplus out there and bit by bit special interests are going to come and take some of it away. Now is our time to get in there and say we are going to take enough to fully fund the Individuals with Disabilities Education Act. We can do it. We have the money to do it. And, if I listened correctly to my friends on both sides of the aisle, we seem to have the will to do it.

I just point out a range of organizations fully support full funding. It is one of the National Governors' Association top priorities. The Education Task Force of the Consortium for Citizens With Disabilities advocates full funding. The National School Boards Association just sent me a letter last week requesting an increase in funding for IDEA.

In January of 1997 the majority leader, Senator LOTT, announced that fully funding IDEA was a major component of the Republican agenda. Later, Senator GORTON said that failure to fully fund IDEA is fundamentally wrong—CONGRESSIONAL RECORD, May 13, 1997.

In January of 1998 the majority leader and other Republican Senators held a major press conference to announce they were going to introduce a bill, S. 1590, that would, among other things, fully fund IDEA.

Senator COVERDELL said the resolution of the issues in that bill were:

> As important a battle as the country has ever dealt with.

On his Web site, Senator GREGG from New Hampshire, who has always been a proponent of fully funding IDEA said that:

> He will continue to lead the fight to have the Federal Government meet its commitment to fund 40 percent of the special education costs.

On his Web site, Senator SANTORUM of Pennsylvania supports full funding for IDEA.

Last night, Senator VOINOVICH of Ohio said it is about time we paid for 40 percent of IDEA. That was last night.

And last night Senator JEFFORDS, with whom I have worked many years on this issue, said:

> This body has gone on record in vote after vote that we should fully fund IDEA.

Senator JEFFORDS also said:

> If we can't fully fund IDEA now with budget surpluses and the economy we have, when will we do it? I do not believe that anyone can rationally argue that this is not the time to fulfill that promise.

The reason I opposed the JEFFORDS amendment last night, and I said so openly last night in debate, is because his amendment would have taken money out of class-size reduction and out of funding for school modernization and construction to fund IDEA. I said we should not be robbing Peter to pay Paul. We need to reduce class sizes. We need school construction money.

In fact, some of the biggest beneficiaries of school construction and modernization are kids with disabilities.

Now we have an opportunity to fully fund IDEA because we have these big surpluses, as I said, $1.5 trillion on-budget surpluses over the next 10 years, not counting Social Security. To fully fund IDEA would amount to less than 6 percent of that over the next 10 years. And, like I said before, we wouldn't have to touch the surplus if we just implemented one of my proposals to close up special interest tax loopholes, eliminate wasteful government spending, including Pentagon waste, or deal with Medicare waste, fraud and abuse. If you want to give a gift to the States this year, if you really want to help our local school districts, this is the amendment with which to do it, to fully fund IDEA once and for all.

I yield for any comments or suggestions my colleague from Minnesota might have.

Mr. WELLSTONE. Mr. President, I am going to be very brief. Staff is here, and it is late. It has been a long week. I can do this in a couple of minutes. I wanted to stay with Senator HARKIN because I think this amendment goes right to the heart of what we are about. It is a win-win-win-win amendment. I do not know how many times I said ''win.'' It is a win for us because we should match our budgets and our votes with the words we speak. Just about everybody on the floor of the Senate said they are for the Federal Government meeting this commitment of 40 percent funding of IDEA. It is also a win for children with special needs. It is about children. We ought to do well for all of our children.

Maybe it is because I am getting a little older and have six grandchildren, but I think all children are beautiful and all children have potential and all children can make contributions. We should do everything we can to nurture and support them. That is what this program has been about.

The Senator from Iowa has been, if not the leader, one of the great few leaders from early time on for kids with special needs. It is also a win because I do think our States and school districts, if we can do better by way of our investments, I say to Senator HARKIN, will not only be able to live up to this commitment but will have more resources to invest in other priority areas. One of the things that has troubled me is, the Senator talked about the surplus. What is it over 10 years, $1.9 trillion?

Mr. HARKIN. Mr. President, $1.5 trillion, non-Social Security.

Mr. WELLSTONE. It is $1.5 trillion non-Social Security over the next 10 years. Some of what has been discussed is a zero-sum gain, whether we are faced with the choice of do you support low-income kids with title I or do you support IDEA or do you support a lower class size or do you support trying to get more teachers into our schools, or do you support rebuilding crumbling schools. I believe we have a chance right now with the surplus, with these additional resources, to make these decisive investments. I cannot think of anything more important than making this investment in children and education.

My last point is, all of us—and I will even make this bipartisan, seeing Senator CHAFEE presiding, whom I think cares deeply about children and education, just like his dad did, and I mean that sincerely—we are all going to have to make some decisions about consistency.

It is like the old Yiddish proverb: You can't dance at two weddings at the same time. We cannot do everything. Some people want to put yet more into tax cuts, including Democrats, more here and more there. Ultimately, we have to decide what is most important. We have this surplus and we have the opportunity. We have had all the debate and discussion, and now we have an opportunity, with this amendment—of which I am proud to be a cosponsor—to match our votes with our rhetoric. We should do that. I hope there is a strong vote for this from Democrats and Republicans. I am proud to be a cosponsor. I yield the floor.

Mr. HARKIN. Mr. President, I thank my colleague for his words of support, not only tonight but for all the time I have known him and all the years he has been in the Senate for making kids and education, especially special needs kids, one of his top priorities.

I could not help but think when I was listening to the Senator speak, this vote on this amendment—I do not mean to puff it up bigger than it is. We are going to be faced the remainder of this year with vote after vote on what to do with that surplus. We may disagree on whether it is the estate tax cut or marriage penalty—whatever it might be. There might be other things coming down the pike, and we will have our debates and disagreement, but it seems to me that before we get into all that, we ought to do something for our kids with disabilities and we ought to do something that is right and is supported broadly, in a bipartisan way, and supported by our States.

I can honestly say to my friend from Minnesota, if every Senator voted for this amendment, they would not get one letter, one phone call taking them to task for their vote in support of this amendment. I believe I can say that without any fear that I would ever be wrong; that no Senator, whoever votes for this amendment, would ever get one letter or one phone call from anyone saying they voted wrong. I believe that because it is so widely supported.

Then we can go on with our other debates on tax cuts and other issues with the surplus and how we will deal with it.

At this point in time, let us say we are going to take this little bit and invest it in the Individuals With Disabilities Education Act and, once and for all, meet that 40-percent goal, and we will not have to be talking about it anymore.

As I said, this is a very simple and very straightforward amendment, but I will admit, for the record, it is going to take 60 votes. I understand that. It will take 60 votes, but I believe if Senators will just think about what they have said about IDEA and fully funding it and think about that big surplus we have and all of the demands that will be made on that surplus in the future, they just might think: Yes, we ought to carve out a little bit right now and put it into IDEA. It would help our States and our schools and, most of all, help our families who have special needs children who may not have all of the economic wherewithal to give their kids the best education.

As I understand it, this is the first vote up or down vote on fully funding IDEA ever. Let's make it our last.

I thank the Senator from Minnesota for his support. I yield the floor.

Mr. JEFFORDS. Mr. President, I rise to commend Chairman STEVENS, Chairman ROTH, and Chairman SPECTER for their commitment to working in conference to restore funding to the Social Services Block Grant (Title XX), the Temporary Assistance for Needy Families (TANF) program and for the State Children's Health Insurance Program (S–CHIP). These programs provide a vital safety net for our most vulnerable citizens.

The Social Services Block Grant program provides critical services for abused children, low-income seniors, and other families in need of assistance. For example, my own State of Vermont uses 80 percent of its Title XX funds to help abused and neglected children. Much of this money goes to assist the roughly 300 children in foster care in our State. This block grant was created under the Reagan Administration to provide States with a source of flexible funding to meet a variety of human service needs. It was the success of the Social Services Block Grant that paved the way for welfare reform.

When welfare reform was passed, Congress made several agreements with the states. One such agreement was that funds for the Social Services Block Grant would be reduced to $2.38 billion with States permitted to transfer up to 10 percent of allocated TANF funds into the block grant to ''make up the difference.''

Since making that agreement in 1996, Congress and the Administration have repeatedly cut the funds appropriated for the Block Grant to its current year funding level of $1.775 billion. I am grateful that there is a strong commitment to maintain this year's funding level in conference. However, the reduction of the amount of TANF funds that States can transfer also must be addressed. Vermont is one of several States which transfer the entire 10 percent that is allowable under TANF. Unfortunately, even with full use of the transferability, many states are no longer able to make up for the repeated reductions in Social Service Block Grant funds.

I believe that the amount of TANF funds that States are permitted to transfer should not be cut in half, as current law requires, but should be increased to help mitigate the loss of Title XX funds that States have experienced since the 1996 agreement. The commitment to restore Social Services Block Grant funds to the current level is a good first step, but we should keep in mind that it is just a first step.

In creating the TANF program, the Federal Government limited the amount of welfare funds that would be provided to States in exchange for giving States more flexibility in the use of those funds. The booming economy combined with successful State efforts to move more people from welfare to work have allowed States to reduce the costs of welfare. Congress urged States to save a portion of their TANF grants for the inevitable ''rainy day'' when additional funds would be needed. Many States did save part of their TANF allocation, and Congress has threatened to reduce the TANF allocations promised to the States, because the funds have not been fully expended. I thank Senators STEVENS, ROTH, and SPECTER for their commitment to uphold the promises we made in 1996 during conference negotiations on the Labor-HHS appropriations bill.

My home State of Vermont has an unparalleled track record in extending health insurance coverage to children and families, and the S–CHIP has played a key part in contributing to this success. While Vermont has achieved its enrollment goals for this program to date, it continues to reach out to enroll eligible children. Restoration of the S–CHIP funding is essential for Vermont and other States in order for them to continue enrolling children in this program. It is essential for Congress to keep its commitment to the S–CHIP program, otherwise States are not likely to continue their aggressive outreach and enrollment efforts and children may be left without health care.

I believe strongly that it is important for Congress to keep its agreements with the States—-particularly regarding the Social Services Block Grant, TANF, and S–CHIP. The success of States in implementing these programs and the extent to which Congress and the administration maintain promised funding levels for these critical programs will help determine the future of State block grants.

How can we expect States and advocates to agree to flexible block grant initiatives, if Congress cannot fulfill its promise to maintain adequate funding?

Mr. ALLARD. Mr. President, I would like to make a statement concerning the Federally funded research that is conducted at the various Centers for Disease Control (CDC) around the country.

February of this year I met with the Director of the CDC, Jeffrey Koplan. CDC was highlighted in newspaper articles concerning the misuse of research funds targeted for hantavirus disease. Because of the presence of this disease in our state, as with other neighboring states, I am very concerned at the lack of accountability from the CDC.

I expressed my concern for the correct utilization of funding for the disease research programs that are mandated by Congress. I stressed the importance of CDC's accountability and obligation to carry out the letter of our laws. Mr. Koplan assured me that they have taken measures to complete a full audit of the misdirected funds and that they will follow the intent of Congress in the future.

Being a member of Congress, I for one can fully understand that the process of appropriating funds for research is complicated at best. Although Congress designates specific funds for certain diseases, there are several levels of bureaucracy through which the dollars must pass before they are received by the appropriate agency. This still does not account for an agency's lack of dedication in meeting congressional direction that is law. Part of my responsibility as a U.S. Senator is the oversight of various agencies and their accountability to Congress to carry out the language of our laws.

Hantavirus outbreaks have rapidly affected the U.S., reaching as far as Vermont. Most recently, a 12-year-old girl who lives in Loveland—my hometown—was diagnosed with the disease. Doctor's believe she may have contracted the disease while visiting a ranch in Arizona last April. Once hantavirus is contracted it can be anywhere from one week to as little as one day before symptoms appear. Once symptoms are prevalent, it rapidly progresses to respiratory distress as the lungs fill with fluid.

Colorado has had 23 cases of hantavirus since 1998—with three cases already this year. It is time to act with no further delay by the CDC laboratory.

I hope that the CDC has worked out it's problems and will carry out what Congress expects of an agency.

Mr. FEINGOLD. Mr. President, I rise today to describe why I opposed the amendment offered by the senior Senator from Arizona, Mr. MCCAIN, to this legislation on the issue of schools and libraries blocking children's access to certain materials on the Internet, and supported the alternative amendment on this topic offered by Senator SANTORUM.

The McCain amendment prohibits schools and libraries from receiving federal funds under the E-Rate program if they do not install software to block children's access to two specific kinds of information: materials that are obscene and materials that constitute child pornography. The Santorum amendment contains a similar prohibition on funding, but gives the local community the flexibility to decide what materials are inappropriate for children's viewing and to implement a comprehensive policy on minors' Internet use if they want to continue to receive the E-Rate. I feel that local communities, not the federal government, should decide what materials are suitable for children's viewing. Wisconsin communities may want to address or restrict whether children have access to adult chat rooms even though the chat may not be about child pornography or may not contain technically obscene topics of conversation. They also may want to restrict whether they post identifying information or photographs of students on school sponsored web sites. I simply feel that these decisions are best made locally.

Second, I am concerned that the McCain amendment imposes an additional cost to obtain filtering software upon schools and libraries without adequate input from those institutions. The McCain amendment relies upon the technical fix of filtering and imposes filtering software on all computers in a facility. The Santorum amendment allows a school or library to determine which computers are available for student access and then install blocking software upon those computers. Software licensing costs are not inexpensive, and requiring that software be installed on every machine may be financially difficult for small communities.

Finally, though I am concerned about protecting children on the Internet, I am also concerned about the constitutionality of blocking material on the Internet for adult computer users. The Santorum amendment allows communities to develop common sense solutions to protect the rights of adults to access information over the Internet in a place like a public library. A Wisconsin community could decide, under the Santorum amendment, for example, that it wanted to have a locked room in its public library with computers in it that only adults could use to access the Internet and not install blocking software on those machines. There are ways to block children's access to computers that are structural, Mr. President, like a locked door, that would still protect the First Amendment right of adults. These options are not available under the McCain amendment.

I appreciate the Senate's interest in protecting children from inappropriate material on the Internet, but I feel that the McCain amendment does not go far enough to ensure that local governments, libraries, schools, and individuals rights are protected.

Mr. WELLSTONE. Mr. President, I thank Chairman SPECTER and ranking member, Senator HARKIN, for working with me to see that funding is increased for the Perkins Loan Cancellation Program. I filed an amendment that would have increased the level of the Perkins Loan Cancellation Program by $30 million to $90 million. I am very appreciative that the committee increased funds for this valuable program by $30 million—especially given the terrible budget constraints on this bill. I am especially thankful that the Managers of this bill have agreed to raise the appropriation by another $15 million. This will get the government half way to where it needs to be to reimburse Perkins Revolving Funds for what they have lost to the Loan Cancellation Program. It is an important step.

The reason I asked for more is simple. If we give the extra $30 million, the federal government can pay back what it owes to the universities and colleges for the loans that have been canceled. This amendment would simply fulfill its IOUs to the Perkins program. Mr. President, we have a $1.9 trillion surplus, it is ironic and probably an oversight that we are still in debt to America's colleges and universities that provide loans to low income students, but it is a debt that I think we can and should repay. That is why I am thankful for the Managers' efforts, and that is why I will continue to push for the full $90 million in the future.

Both the cancellation program and the Perkins Loan Program are seriously undermined if the government does not fulfill its debt obligations to the universities and colleges that choose to administer it.

The Perkins Loan Program (formerly called the National Defense Student Loan Program) provides long-term, low-interest (5% per year) loans to the poorest undergraduate and graduate students. 25 percent of the loans go to students with family incomes of $18,000 or less, and 83% of the loans go to students with family incomes of $30,000 or less. Since its inception, 11 million students received $15 billion in loans through the Federal Perkins Loan Program. In the academic year 1997/98, 698,000 students received Perkins loans.

Perkins is exceptional because it is a public/private partnership that leverages taxpayers' dollars with private sector funding. The yearly Federal contribution to Perkins Loans revolving funds leverages more than $1 billion in student loans. This is because Perkins Loans are made from revolving funds, so the largest source of funding for Perkins Loans is from the repayment of prior-year loans.

The Perkins Loan Cancellation Program entitles any student who has received a Perkins loan who enters teaching, nursing and other medical services, law enforcement or volunteering to cancel their loans. This past year, more than 45,000 low income students who chose to enter these important professions were able to have their loans canceled. Last year, 26,000 teachers, 10,500 nurses and medical technicians, 4,000 people who work with high-risk children and families, 4,000 law enforcement and 700 volunteers had their loans canceled under this program.

This year, thanks to the efforts of Senator DURBIN and others, it looks like we may be able to expand the professions eligible for cancellation to include public defenders.

The value of Perkins loans is enormous. Since 1980 to 1998, the cost of higher education has almost tripled, leading to a decline in the purchasing power of federal grant programs. The maximum Pell grant this year is worth only 86% of what it was worth in 1980, making the Perkins program, and all loan programs, a more important part of low income students' financial aid packages.

The value of the cancellation program is also enormous. It provides the lowest income people who want to enter public service a small break from the crushing debts they incur attending higher education. Offering loan cancellation also highlights the need for well-trained people to enter public service and honors those who choose to enter public service. This is the kind of incentive and reward we should be doing more of and I thank the Senate for accepting my amendment earlier that would provide Stafford loan forgiveness for child care workers.

Mr. President, I am here today because the future of both of these programs is in great jeopardy because we are unable to repay the universities' revolving funds what they are owed for the cancellation program. There are colleges that receive only 47% of what they are owed by the government. They are given the rest on an IOU.

Because Perkins loans are funded through revolving loans, the people who end up paying the price for this IOU are low income students who are eligible for Perkins loans in the future. As loans are canceled, and the government is unable to reimburse the revolving funds, there is less and less money available in the funds to generate new loans. It is estimated that 40,000 fewer students will be eligible for Perkins loans because of the declining money available in the revolving fund.

When you combine the pressure from the unfulfilled government obligations with recent cuts to the Perkins program in general, I believe that both these key programs are at risk. Congress has cut the yearly Federal contributions to the Perkins Loans revolving funds by $58 million since fiscal year 1997. Since 1980, the Federal Government's contributions have declined by almost 80%. 900 colleges and universities around the country have cut their Perkins programs at least in part because they were not economically viable. In MN, colleges such as Metro State University have ended this valuable program in large part because they cannot afford to keep it going.

This means one thing and one thing only. There are less and less loans available for the lowest income students. The $15 million the manager's package will provide will go far to reverse this situation.

Reducing the number of loans available is not the direction we want to be going given what we know about the rising importance of college education and the increasing need for financial aid.

A study from Minnesota indicates that for every $1 that is invested in higher education, $5.75 is returned to Minnesota's economy. A 1999 Department of Education study indicates that the real rate of return on investment in higher education is 12% based on earnings alone. This does not include savings on health care and other factors. Further, a recent poll found that 91% of the American Public agree that financial aid is an investment in America's future (Student Aid Alliance, 1999).

The numbers indicate that this is true. In 1998, men who had earned a bachelors degree earned 150% more than men who had received only a high school diploma. Women earned twice as much. (NCES, ''Condition of Education, 2000,'' 2000). College graduates earn on average $600,000 more in their lifetime than people with only a high school diploma. (US Department of Commerce, Bureau of the Census, 1994.

Despite the obvious benefits of investments in higher education, funding is declining. Since 1980 to 1998, the cost of higher education has almost tripled, leading to a decline in the purchasing power of federal grant programs. The maximum Pell grant this year is worth only 86% of what it was worth in 1980, making the Perkins program a more important part of low income students' financial aid package. Yet, the numbers of institutes of higher education offering the Perkins Loan Program has declined by 80% over the past 20 years. During the last decade, student aid funding has lagged behind inflation, yet in the next ten years, more than 14 million undergraduate students will be enrolled in the nation's colleges and universities, an increase of 11 percent. One-fifth of these students are from families below the poverty line. Many of them are the first in their families to go to college.

The effect of the decline in funding has a disproportionate impact on low income students—the very students that Perkins is designed to help. Studies show that an increase in tuition of $100 lowers the enrollment of low income students by 1%. (McPherson and Shapiro, 1998). In Minnesota, students from families that make $50,000 per year or more are three times as likely to attend a four year college as students from families who make $30,000 per year or less (and I remind my colleagues that 83% of Perkins loans would go directly to these students with incomes less than $30,000.) Further, more than 1/3 of students who enter college drop out. Often this is because they cannot afford to continue.

The Perkins Loan Program is vital to helping these low income students enter and stay in college. It would be a shame if the program failed because the government failed to pay universities back the money it owes this valuable program. By increasing the appropriation for the cancellation program, the managers have taken a strong step toward getting the government out of debt. I am also committed to seeing that this program is fully funded in the future. We have on-budget surpluses of $1.9 trillion. We should use this appropriation to ensure that we are not in debt to the 40,000 fewer students who will not receive the Perkins loans they once could have because the federal government did not meet its obligation to pay for its own cancellation program.

These are America's poorest students who are simply trying to afford a college education. With a $1.9 trillion surplus, we owe it to them to pay it back.

MORNING BUSINESS

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business and return to the pending business when I complete these remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I ask unanimous consent to speak in morning business for 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

APPROPRIATIONS

Mr. KENNEDY. Mr. President, before the Senate are the appropriations bills which provide the funding for education, health, and training programs. As I have mentioned over the past few days, I respect the work by Senator SPECTER and Senator HARKIN in trying to shape that proposal. We have some differences, even within the limited budget figures that were allocated, in areas we feel were shortchanged. We tried to bring some of those matters to the floor yesterday.

On the issues of making sure we will reach out in the areas of recruiting teachers, providing professional development for teachers, and mentoring for teachers, we received a majority of the Members of the Senate. I believe it was 51 votes. A majority of the Members felt that should be a higher priority than designated. Even in the majority party, there is a clear indication, particularly against the backdrop of the announcements made in the past 2 days with these enormous surpluses, that one of the priorities of the American people is investing the surpluses in the children of this country.

I think that is something that needs to be done. We are going to proceed during the course of this day on amendments which I think are very important. The next one, which will be offered by Senator DASCHLE to deal with issues of genetic discrimination and employment discrimination, is very important. We will go on, as has been agreed to by the leaders.

But as we are going through this debate, I cannot remain silent on the allocating of resources. We are hopeful, as a result of the action of the President of the United States, there will be a different form and shape of this appropriations bill by the time it comes back from the conference, or by the time it is actually enacted in the fall. We are not giving the priorities in the areas of education, and I must say even in the health area, that I think the American people want and deserve. The principal reason for that is there is an assumption within the Republican leadership that there will be a tax break of some $792 billion. So if you are going to write that into the budget, or parts of that into the budget, you are