

STATE OF TENNESSEE,  
Nashville, TN, March 5, 2001.

Hon. FRED THOMPSON,  
Dirksen Senate Office Building,  
Washington, DC.

DEAR SENATOR THOMPSON: I'd like to offer you my support for Senate Joint Resolution 6, which disapproves the ergonomics rule submitted by the Department of Labor.

I oppose unfunded federal mandates and believe in each state's right to set workplace laws. The Ergo Rule is too complex, too unworkable and would be far too costly for state and local governments at a time when most state and local governments are working to cut costs in an effort to continue to provide quality, effective services without overburdening taxpayers.

In addition, the ergonomics legislation would negatively impact hundreds of Tennessee businesses. For these reasons, I join you and the Tennessee Association of Business, the Tennessee Apparel Corporation, the Tennessee Grocers Association, the Tennessee Automotive Association, the Tennessee Malt Beverage Association, the Tennessee Health Care Association and Chattanooga Bakery Inc. in support of Senate Joint Resolution 6.

If I can be of further assistance on this or other matters please don't hesitate to call.

Sincerely,

DON SUNDQUIST.

THE CITY OF KNOXVILLE,  
Knoxville, TN, March 5, 2001.

Hon. FRED THOMPSON,  
U.S. Senate,  
Washington, DC.

DEAR FRED: I am writing to advise you that I fully support S.J.R. 6.

This regulation regarding ergonomics is ill advised and will adversely impact local governments. It will, in fact, impose another unfunded mandate on local governments that would prove to be extremely costly for our taxpayers. It would eventually result in reduced services and/or a property tax increase.

This regulation is complex and unworkable. It is unclear how state and local governments will be affected. In addition, there can be no alternative position established for personnel such as firefighters and police officers.

I am hopeful your efforts to stop this regulation from taking effect will meet with success.

Sincerely yours,

VICTOR ASHE,  
Mayor.

CITY OF JACKSON,  
Jackson, TN, March 5, 2001.

Re S.J. Resolution 6.

Senator FRED THOMPSON,  
Committee on Governmental Affairs,  
Washington, DC.

DEAR SENATOR THOMPSON: I urge you to support S.J. Resolution 6 which allows for disapproval of the rule submitted by the Department of Labor relating to ergonomics regulation for the following reasons:

Tennessee has already enacted a comprehensive and effective workers' compensation system that encourages employers to provide a safe working environment and to compensate employees for injuries that occur.

The proposed rule would displace the role of states in compensating workers for musculoskeletal injuries in the workplace.

It would require employers to compensate workers for medical treatment under both the existing workers' compensation rules and OSHA rules.

The rule would force manufacturers to unnecessarily alter workstations and redesign

facilities, which could cause undue financial hardships on businesses without guaranteeing the prevention of a single injury.

In some work environments such as fire fighting and police activity it would be impossible to alter the components of their job and remain effective.

It is unclear how state and local government employees will be affected by the rule.

OSHA did not conduct a cost-benefit analysis revealing the fiscal impact of the rule. The rule is an unfunded mandate thereby placing the burden of funding on states and cities.

In short the rule is costly and unworkable.

Thank you for your attention to this matter. Please advise as to how I can provide further assistance of information.

Yours truly,

CHARLES H. FARMER,  
Mayor.

#### RECESS

The PRESIDING OFFICER. The hour of 12:30 having arrived, under the previous order the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:30 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. ENZI).

#### DISAPPROVAL OF DEPARTMENT OF LABOR ERGONOMICS RULE—Continued

The PRESIDING OFFICER. Who yields time?

Mr. DODD. Mr. President, I ask unanimous consent that the order recognizing Senator THOMPSON be vitiated.

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

The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I wish to address the Senate on the matter before us that has been the subject of the debate all morning—the resolution which would vitiate OSHA regulations on ergonomics. Ergonomics is a dreadful name. I am trying to find a good definition for it. It is probably causing some people to wonder what this debate is all about.

I am told that ergonomics is the science of fitting the job to the worker and ergonomic injuries are repetitive stress injuries.

There have been some rather startling statistics regarding these stress-related injuries over the last number of years. The National Academy of Sciences and the Institute of Medicine report of January, 2001, reported that in 1999, nearly 1 million people took time from work to treat or recover from work-related ergonomic injuries. The cost of these injuries is enormous—about \$50 billion annually. Many of the people with ergonomic injuries we are familiar with, such as meat-packing workers and poultry workers, assembly line workers, computer users, stock handlers and cannery workers, sewing machine operators, and construction workers. While women make up 46 percent of the overall work-

force, they account for over 64 percent of these repetitive motion injuries.

More statistics may be somewhat helpful here. According to the Bureau of Labor Statistics, 1.8 million ergonomic injuries are reported each and every year, and have been for well over the last decade as our economy produced more jobs of the kind I just described. Six hundred thousand people have lost work time as a result of these injuries. Ergonomic injuries cost businesses \$50 billion a year. Finally, women, who make up 46 percent of the workforce, account for a majority of these injuries that are occurring in the workplace. These injuries are debilitating. They are painful and the economic hardship caused by them is significant.

I can tell you firsthand about a woman who spent 30 years working in the Senate, and worked with me for almost the last 20 years. She developed carpal tunnel syndrome, a very painful injury. She was a valued worker in my office and showed up for work every day. I do not recall her ever being absent during the 20 years she spent with me. When she developed carpal tunnel syndrome, she was unable to perform her regular duties. But we found other work in the office for her to do until she was able to recover. She continued working in my office until she retired.

I mention these statistics and numbers because I find it rather appalling that we are now in the business, if this resolution is adopted, of abolishing the rules that provide help for 1.8 million people a year who are injured by repetitive stress injuries. It is the kind of protection workers ought to be getting under OSHA. I don't know of another time in the 20th century when we rolled back the clock on protecting workers in this country from work-related injuries.

I know there were times when people fought the initial legislation that provided protection. But I don't know if there was ever a time since this Nation first decided it was in the national interest to provide protection for people, that we have rolled back the standards in 10 hours of debate—10 hours. That is it, 10 hours of debate, after 10 years of crafting these rules to provide these protections.

Let me tell you what is the greatest irony of all. Who started this debate? Who proposed that we do something about this? It was the Secretary of Labor, Elizabeth Dole, who first brought up the issue that we ought to do something about protecting people from these kinds of injuries.

In fact, it was in August of 1990, in response to evidence that repetitive stress injuries were the fastest growing occupation illnesses in the country, that Secretary of Labor Elizabeth Dole announced the beginning of rulemaking on the ergonomics standards. Two years later, in 1992, her successor, Lynn Martin, under yet another Republican Administration, issued an advanced notice of proposed rulemaking

on these repetitive stress injuries. And not until substantial scientific study had been conducted did the Clinton administration release a draft of proposed standards in February of 1999.

However, before issuing the final rule, the Occupational Safety and Health Administration extended the comment period, at the request of some of my colleagues and others, and held 9 weeks of public hearings. They heard from 1,000 witnesses and reviewed 7,000 written comments. The final standards were issued in November of 2000 and they went into effect on January 16, 2001.

So after 10 years of work by good people who did not bring any ideological bent to this at all—at the suggestion of two Republican Secretaries of Labor—today, in 10 hours of debate, we are going to wipe all of this out.

I am not going to stand here and suggest to you that every dotted “i” and crossed “t” in these regulations is perfect or right. I do not claim that level of expertise to know whether or not that is the case. But if it is not perfect, then let’s fix it. Do not wipe all of this out—not after 10 years of work. It would take an act of Congress, adopted by both Houses and signed by the President, in order for the Administration to put some regulations back into effect to protect people.

What are these regulations? I think it is also very revealing what these standards are. The standards require that all covered employers provide their employees with basic information about signs and symptoms of these repetitive stress injuries or ergonomics injuries, the importance of reporting these injuries, risk factors associated with ergonomic hazards, and a brief description of the ergonomics standard. The employer has no further responsibilities under the rule unless an employee reports an ergonomic injury or signs of symptoms of an ergonomic injury that lasts for 7 days after being reported.

Then, if the employer determines, and I never heard of a rule set up like this—if the employer determines that the ergonomic injury is work-related, and that the injured employee is exposed to serious hazards, the employer must craft an appropriate remedy. Not some neutral board, the employer makes the determination.

To call this excessive stretches the imagination and credulity. These are not onerous standards. And if we want to fix some of them, then let’s try to do that. But to eliminate it altogether, in 10 hours of debate or less—after all of this work, I find terribly disappointing, to put it mildly.

We are only a few weeks into this new administration. There are ways in which you address problems. This is not a proper way to do so. There are 100 of us in this Chamber who care about these issues and who can work on them. But to bring up a resolution like this and try to jam it through, and eliminate all this work, I think, is a

great step backwards. I am terribly disappointed that the leadership of this body has decided to choose this route as a way of dealing with this issue.

There is more misinformation being heard about this particular issue than anything else I can think of.

As I said, these injuries are debilitating. They are painful. People are losing work and time. Are we just going to wipe out all of these standards, after 10 years of research, sound science and an unprecedented amount of time for public comment?

Employees have a right to expect a safe workplace. We fought long and hard in this country to provide these rights for people. And all along the way, there were those who objected—whether it was child labor laws or safety and health standards, work conditions, or hours. Unfortunately, at every critical moment in history there have been those who stood up and said: We can’t afford to do this; that it is an onerous burden on the employers of this country to have to provide a safe workplace. People ought to be grateful they have a job and not complain about the conditions under which they work or the injuries they may incur at the workplace. At every moment in history, when people have stood in this Chamber and elsewhere and fought on behalf of working people, there have been people who have stood up and said: We can’t afford to do it. It is too complicated. And we are not going to do it.

Those who are offering this resolution may succeed today, but the American people will not forget it. And the 1.8 million people this year—65 percent of them women—who are going to suffer, with no recourse, will not forget it, either.

There is a process by which you can fix this law, if you want to. A 10-hour debate on an unamendable resolution, after 10 years of work, is not the way to go. It is not the way to go.

I urge the authors of this resolution to withdraw it before the vote occurs this afternoon and allow this Chamber and the Members to work on this with the administration, and not reach some fait accompli that wipes out 10 years of work by intelligent, smart people who knew what they were talking about. I would hope the leadership would see fit to do so.

I yield the floor.

Mr. HUTCHINSON addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arkansas.

Mr. HUTCHINSON. Mr. President, I commend the passion of my colleague from Connecticut. I have the utmost respect and admiration for him. I know how strongly he feels about this. I know in his comments he was not in any way insinuating those of us who take a different position than he on this would not be concerned about workers, that we would not be concerned about health and safety in the

workplace because I want to assure him that this Senator from Arkansas, who supports the resolution of disapproval, feels very strongly, as I know the Presiding Officer, who has worked long and hard on this issue, does, that the ergonomics issue needs to be dealt with but needs to be dealt with properly.

Frankly, you may have 7,000 comments, but if they are ignored, and the rule is changed, then that process is flawed. Frankly, to question the process we are now going through is to question the lawmaking authority and the right of the Congress.

What has brought us to this point? It is the fact that there are agencies out there that have sought to do what we are constitutionally authorized to do; that is, to make the laws and the policies for this country.

I want to take just a moment to commend the Presiding Officer, Senator ENZI, who made an eloquent and very accurate and detailed speech earlier today. But, more than that, I thank him for the hearings he has conducted and the information he has brought forward and elicited about how this process went forward, about witnesses who were paid, instructed, coached, practiced, to arrive at a preordained outcome. I thank Senator ENZI for the role he played as part of this process to which Senator DODD was referring. Unfortunately, after hearing after hearing that was conducted, the outcome and the evidence that was elicited was ignored by OSHA.

I commend Senator NICKLES for his foresight years ago in sponsoring the Congressional Review Act. With the CRA, we have a means by which we can address an agency that goes amok and passes a rule that is not in the interest of the American people.

I see Senator BOND, who has walked on the floor. He has worked long and hard and felt strongly about this issue and has played an important role in bringing us to this day and allowing Congress the opportunity to assert its rightful role once again. Senator THOMPSON, who spoke earlier, has played an important role as well.

For the first time ever, the Senate will today utilize the CRA to vitiate and overturn an agency rule—that is, a several-hundred-page OSHA rule—that imposes the largest and most costly regulatory mandate in American history on the workplace. It is appropriate that this would be the first use for the CRA.

My colleague from Connecticut said that under the rule the employer makes the determination. Therefore, that is a good thing. That is one of the problems. Under the OSHA rule, the employer is going to be asked to determine health conditions, to determine whether or not the health condition of his employee was caused by a workplace condition or something that happened outside the workplace. The employer is going to be asked to have the wisdom of Solomon in making those

kinds of determinations. That does not make this rule better. It is a big flaw in the rule.

My colleague also said that it is not onerous. I will let the American people make the judgment of whether it is onerous or not. This is the rule. It has been said that it is only 8 pages out of what I am holding, but no one has suggested that the American businessperson will not have to read and be familiar with every item in this 608-page rule.

These are the supplementary materials that the businessman himself must buy. This is seven out of the eight. We could not get the eighth. The cost for these items will run \$221—money the employer must pay just to find out with what he has to comply. I will let the American people and my colleagues determine whether that is an onerous burden. I believe it is.

For more than two centuries, the three branches of our Federal Government have respected the checks and balances. This is not just a concept taught casually during our high school civics course. It is the means by which our American system of government has endured. The executive rulemaking process should be treated with respect. Without it, the laws we pass cannot be administered nor enforced.

However, the rulemaking process must also have checks. There must be a means by which a rulemaking body that goes too far and exceeds their statutory authority can be reined in by the elected representatives of the people. This process is what we are involved in today.

How did we arrive at this point? How did we end up with a rule that is 608 pages long, incomprehensible to the average businessman, and where the businessman has to pay \$221 to get the supplementary materials to find out with what he has to comply?

I suggest it starts with this mentality. This is a statement made in an interview by Martha Kent, former director of OSHA's safety standards program, a May of 2000 interview by the American Industrial Hygiene Association trade journal. This is what she said:

I absolutely love it. I was born to regulate. I don't know why, but that's very true. So as long as I'm regulating, I'm happy . . . I think that's really where the thrill comes in. And it is a thrill; it's a high.

It may be a high for the regulator. It may be a thrill for the rule writer, but it is no thrill for the small businessman with 20 employees or 30 employees or 200 employees who has to try to decipher what that thrill-loving rule writer meant.

That is how we have come to this point. In 1996, Congress and the President believed it was important enough to preserve this balance by enacting the Congressional Review Act. I am glad we have that tool today. We are having this debate to guarantee that rogue rulemakings do not become governing law.

There is not one Member of this distinguished body who does not advocate the safety and well-being of our workforce. Let me be clear. If this rule was about employee safety and health, we wouldn't be having this debate today. Unfortunately, this standard was not meant to improve working conditions but rather to place a \$63 billion or a \$100 billion—depending upon whose studies you look at; the Small Business Administration says it is up to \$63 billion—annual mandate on employers and, in so doing, circumvent State jurisdiction and require small employers to fulfill and to fully understand vague scientific solutions to extremely complex medical conditions.

To all of those today who stand on the floor and champion workers' rights, this rule will result without doubt in sending jobs overseas where there are often no worker protections at all. There are going to be jobs cut. There are going to be companies closed. There are going to be jobs exported overseas. Americans will stand to lose those jobs, and overseas there are going to be workers with far fewer worker protections who will inherit those jobs. That is why this debate is occurring and why our vote on this resolution is so imperative.

Recall that on Friday, November 19, 1999, Congress adjourned for the year having completed its work for the first session of the 106th Congress. After we left town, OSHA announced the following Monday its new ergonomics proposal. OSHA knew then that the clock had started ticking to complete action within the next 13 months. OSHA, however, decided it was in our best interest to shotgun the proposal through its hoops in 1 year's time, refusing to wait for the completion of the \$890,000 NAS study which since then has been completed.

The Senate Subcommittee on Employment, Safety and Training, after weeks of evaluating the impact that this proposal would have if actually enforced, held the first Senate hearing examining just one of many portions of OSHA's proposal, the work restriction protections. The WRP provisions would require employers to provide temporary work restrictions, up to and including complete removal from work, based either upon their own judgment or on the recommendation of a health care provider.

If the employer places work restrictions upon an employee which would allow them to continue to perform some work activities, the employer must provide 100 percent of the employee's earnings and 100 percent of work benefits for up to 90 days. If the employee is completely removed from work, the employer must provide 90 percent of the employee's earnings and 100 percent of benefits for up to 90 days. That is not a bad deal, much better than one would find under most State workers compensation programs.

This certainly raises the question as to what the motive was for having

WRP in the rule. Why didn't OSHA simply allow States to continue administering this provision? How does OSHA help the employer determine if the employee's injury occurred from work-related activities versus a disorder acquired from home? The fact is, the rule does not explain it, and OSHA never intended to answer these questions.

Suppose there is an employee whose job involves operating a keyboard. Let's suppose that in the course of time there is a repetitive motion affliction. Let's suppose that in fact there is an ergonomic result physically for that worker. The complaint is made. It is discovered that the worker usually, and on an ongoing basis, is on the Internet 2 or 3 hours a night after leaving the workplace. How is that employer to determine what is in fact the cause of that disorder? Under the OSHA rule, it doesn't really matter. If the workplace contributed even in the slightest to the disorder, they then would be eligible for the remedies under the OSHA rule.

I could go on. The employee complains about a back strain. Is the back strain the result of sudden lifting of furniture at home, or is it the result of some activity in the workplace? Under the OSHA rule, it is the employer who is liable to make those kinds of determinations and to provide relief.

In terms of State jurisdiction, the hearing that the Presiding Officer, Senator ENZI, conducted revealed that the WRP provision is a direct violation of section 4(b)(4) of the 1970 OSHA act. Let me read this. Senator ENZI went through some of this previously. Let me read it because it is so very clear.

Nothing in this chapter shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases or death of employees arising out of, or in the course of, employment.

Nothing in this chapter shall be construed to supersede or affect workers compensation laws. I am like you, Senator ENZI. What part of that do we not understand? This is the very act that established OSHA. They now, in clear defiance of the statute authorizing their very existence, have promulgated a rule and finalized a rule that violates their charter. They were explicitly told at the time the agency was established: You will not tamper with State workers compensation laws. That is the State domain.

I hope all my colleagues, whatever your feeling about how we should address ergonomics, will examine this single issue: Is it the right of any Federal agency to establish a national workers compensation law? Is that the domain of a Federal regulatory agency?

I suggest that on both sides of the aisle the answer is no. If we are going to have a national workers compensation system, managed and administered by the Department of Labor, then

it should go through this Chamber. It should be written and authorized by the Congress and signed into law by the President. It should not be done in a rogue rulemaking process.

I believe we not only have seen an infringement in OSHA upon the rightful constitutional lawmaking authority of Congress; we have also seen a trampling of State jurisdiction in the area of workers compensation laws. We specifically withheld from OSHA the authority to supersede or affect State workers compensation laws. Congress did this because State workers compensation systems are founded upon the principle that employers and employees have both entered into an agreement to give up certain rights in exchange for certain benefits in the area of work-related injuries and illnesses. Most often, employers give up most of their legal defenses against liability for the employees' injuries, and the employees give up their right to seek punitive and other types of damages in turn. The crucial factor that makes State workers compensation systems possible is that the remedies it provides to employees are the exclusive remedies available to them against their employers for work-related injuries and illnesses. That won't be the case come October 15, 2001, when employers must be in compliance with OSHA's rule, unless we act today.

If you can receive 90 percent of compensation under OSHA's ergonomics rule, it will absolutely undermine, pull the rug out from under, State workers compensation laws. It will destroy the trust and faith that has been developed at the State level. WRP provisions are in direct contradiction to section 4(b)(4) and will shake the foundation upon which State workers compensation systems rest because they will provide a conflicting remedy for employees with work-related injuries and illnesses.

Since WRP provisions will unquestionably differ from the current State compensation systems, there will also be confusion as to who is liable. As far as OSHA is concerned, that case is closed—the employer is guilty, no questions necessary.

This is precisely why Congress put section 4(b)(4) in the act 31 years ago. But to be sure that this is what Congress had in mind, I dug deeper and found the conference report filed December 16, 1970. As it pertains to section 4(b)(4), it reads:

The bill does not affect any Federal or State workmen's compensation laws, or the rights, duties, or liabilities of employers and employees under them.

If the statutory language isn't clear enough, the conference report ought to make it even more abundantly clear what the intent of Congress was. All of this came out in the hearings so well conducted by Senator ENZI. There was no answer from OSHA. There was no explanation as to how they were not tampering with State workers compensation laws.

I say to my colleagues, the law was clear, the report language is clear; how can this be misconstrued by OSHA? They are violating the very law that established and authorized their agency.

Another factor that was overlooked, I believe, was the proposal's price tag. There have been a whole slew of numbers tossed around, so I will use what I believe to be the most reliable and conservative figure—one put forth by the Clinton administration itself. According to their Small Business Administration, OSHA has grossly underestimated the cost impact of its proposal.

The SBA ordered an "Analysis of OSHA's Data Underlying the Ergonomics Standard and Possible Alternatives Discussed by the SBREFA Panel."

Policy, Planning, and Evaluation, Inc.—PPE—prepared the analysis and it was issued on September 22, 1999. PPE reported:

OSHA's estimates of the costs in its Preliminary Initial Regulatory Flexibility Analysis of the draft proposed ergonomics standard, as furnished to the SBREFA Panel, may be significantly understated, and that OSHA's estimates of benefits of the proposed standard may be significantly overstated.

That is from the Clinton administration's Small Business Administration. PPE further reported:

OSHA's estimates of capital expenditures on equipment to prevent MSDs do not account for varying establishment sizes, and seem quite low even for the smallest establishment size category.

PPE attributed the overstatement of benefits that the rule will provide "to the fact that OSHA has not accounted for a potentially dramatic increase in the number of MSDs resulting in days away from work as workers take advantage of the WRP provisions."

OSHA estimated the proposal's cost to be \$4.2 billion annually. That is almost laughable. PPE estimates that the costs of the proposed standard could be anywhere from 2.5 to 15 times higher than OSHA's estimate—or \$10.5 billion to \$63 billion a year higher.

Business groups have done their own analysis and they put the number much higher yet, at over \$100 billion per year.

Finally, the PPE report shows that the cost-to-benefit ratio of this rule may be as much as 10 times higher for small businesses than for large businesses.

It is not the large corporations that are going to be most impacted by this rule. My great concern is not so much for the large corporations, which will be able to handle this in one way or another—though it will certainly negatively impact our economy—my great concerns are for the small businesses of this country.

AFL-CIO president John Sweeney said recently:

We will let our voices be heard loud and clear to let the Bush administration, the Congress, and big business know that working families will not be outmaneuvered by this political power play.

I suggest it is not big business that I have heard most from; it is small businesses all across the State of Arkansas with anywhere from 20 employees to 200 employees. The rule is a concern for working families. I am concerned about the working families whose primary breadwinner will lose their job or see that job exported overseas.

"Will not be outmaneuvered by this political power play"—one can judge where the political power play is; I suggest it was at OSHA—from an open debate before the American people on the floor of the Senate. It is small business that will be most impacted.

According to the National Coalition of Ergonomics, an alliance of more than 50 trade organizations that are opposed to the OSHA rule, the new regulation will cost \$6 billion annually in the trucking industry, \$26 billion in the food industry, and \$20,000 at every convenience store across the country. According to the OSHA standard, the employees who suffer ergonomic injuries, also known as MSDs, could get more compensation than workers injured in other ways.

Let me mention one small businessman, Jim Zawaco, president and owner of GR Spring and Stamping, Inc., an auto supplier in Grand Rapids, MI, with about 200 employees. He estimates his company will spend as much as \$10,000 between now and October in an effort to comply with the law.

Let me get a little closer to home for me, Mansfield, AR. Complete Pallet, Inc., a small company in Mansfield, which is a very small community, recently wrote:

As a small business owner, I am alarmed at the implications that the OSHA Ergonomics rule will have on my business and Arkansas' economy in general.

It is my understanding that this ruling will force "ergonomic" structuring of our small workforce and several "new" forms to provide OSHA. I am not sure if you realize the impact this will have on the small business person, so I have taken the liberty of breaking down the cost figures for you:

Paperwork/Secretarial \$1,440.00, Yard rearrangement "ergonomic" \$150,000—For a total of \$151,440.00 first year loss experience. That first year out-of-pocket expense would force me to close my doors. In turn closing my small plant down would put twenty (20) people in the unemployment line here in our great State of Arkansas.

I would greatly appreciate your vote "YES" on rejecting OSHA's New Ergonomic rule.

That is one example, 20 employees, 20 lost jobs, another small employer that bites the dust because of the regulatory burden imposed.

So we are talking \$63 billion a year. Who covers that cost? OSHA has a simple answer, as we heard in the hearings: Pass it on to the consumer.

Senator ENZI has pointed this out as clearly as anybody, but I will reiterate it. You cannot always pass on the cost to the consumer. The clearest example of that is Medicare and Medicare-reimbursed businesses. The reimbursement is, as we know, capped by Federal law. There is nobody to whom to pass the

cost. Perhaps we should remember this when the Senate next considers yet another round of Medicare give-backs.

This ergonomics rule will only heighten the need for such relief and jeopardize the already critical lack of health care in rural States such as Arkansas or Wyoming. I listened to proponents of this ergonomics rule make the case, if we vitiate under the Congressional Review Act, thousands of additional employees will suffer.

Let's be clear, with or without the rule, OSHA can enforce current law. It states this in the ergonomics proposal on page 68267. Under section 5(a)(1) of the 1970 OSH Act, commonly referred to as the General Duty Clause, OSHA can enforce ergonomic violations, and according to the proposal, "OSHA has successfully issued over 550 ergonomics citations under the General Duty Clause." It even lists a number of employers by name where they successfully enforced ergonomics violations under the general duty clause.

So the vitiating of this rule does not somehow leave the American worker unprotected—far from it. I point out, without the rule, in recent years we have seen a steep decline in injuries—even without the new rule. These facts are available, though oftentimes I am afraid people would rather ignore them. Since 1992, ergonomic injuries have dropped from 3 million a year to 2 million a year, and those are OSHA's own numbers.

Lost workdays have also decreased. This chart shows they have decreased: 750,000 missed in 1992; about 500,000 will be lost this year. That is progress. It is progress without a burdensome, expensive rule from OSHA.

Business has done a lot on their own. It is in the interest of the employer to deal with ergonomics problems in the workplace. Even OSHA has figures that 95 percent of employers are doing the right thing. The bad actors constitute only about 5 percent of the employers. Would it not be far better to focus our attention upon the 5 percent of the bad actors as opposed to an across-the-board rule that would penalize all employers and our economy as a whole?

There was an article in the Detroit News about a cashier whose hands rhythmically shuffle back and forth scans about 22 items per minute at the supermarket where she has worked for 15 years. Many businesses—I will not mention this particular supermarket chain—many businesses recognized years ago that workers such as she were at risk for repetitive stress injuries, such as carpal tunnel syndrome, and began reconfiguring healthy work environments.

Across America, stores added better scanners to prevent the need to twist and double scan items. In offices, businesses added wrist pads at computer keyboards and glare screens on monitors. In warehouses, companies moved from hauling equipment that needed to be pulled, and resulted in back sprains, to automatic devices to push around heavy skids of cargo.

I have many examples to give about major companies and what they have

done. I could talk at length about Wal-Mart and what they have done as well as other Arkansas companies that have been proactive, without this very intrusive and burdensome rule from OSHA.

The rule is replete with vague and subjective requirements where employers must have an ergonomics plan in place to deal with such hazards. OSHA said it is being flexible by allowing employers to design a plan that caters to their own workplace, but that same "flexibility" also requires the employer to be an expert on ergonomic injuries, an understanding that many physicians admit isn't an exact science at all.

I share another true horror story from the State of Florida.

I am the V.P., Human Resources, for a company which has a manufacturing plant as a subsidiary. Last year, one of our employees developed a CTS problem with her wrists, allegedly due to her job as a sawyer. We had her go through an extensive evaluation process, and then did surgeries on each wrist although we had conflicting medical data on the need, and also went through a prolonged rehab process. We did transfer her out of the saw department and gave her an administrative job creating files, and delivering and picking up the files within an office area. A physical therapist consultant reviewed this job to insure no further risk of injury before she was assigned to it. She is not allowed to carry a load over 5 pounds based on her physician's advice and she does follow that advice at work. About a week ago, she reported that her elbows were very painful due to her work situation. While she was discussing this with our worker's comp HR person, one of her co-workers came by. He said he had seen her on the weekend working at her mother's vegetable stand unloading large boxes of produce and complimented her on how hard she was working. We have since determined that she works at least 8 hours a weekend, most weekends, doing the hard labor at the stand. When asked about this, she said it was none of our business what she did on the weekend and that it had nothing to do with her elbows hurting. We are still trying to get this one off our worker's comp side and over to the medical plan where it belongs.

Whether that happens frequently or is a very rare occurrence, be assured it will happen more frequently under a national workers compensation plan operated under the Department of Labor.

Finally, I want to discuss the vote we will take in a few hours and what it actually means. It would vitiate the effective rule, the underlying premise of the CRA; it would prohibit OSHA from promulgating another rule substantially similar to the effective rule so they could not turn around and put us through this process again. It is what should occur under the aforementioned flaws of the effective rule.

OSHA has admitted that 95 percent of American employers are acting in good faith. Why have an ergonomics rule that has but one purpose, and that is to place an unsustainable burden upon American employers? Why not have a program that works cooperatively with 95 percent and uses the general duty clause to enforce the remain-

ing 5 percent that are deemed bad actors? That is a rational alternative. Our Secretary of Labor has assured us she will address this in a comprehensive manner and in a fair manner.

This has been a proposal that, in my opinion, is not something that was 10 years in the making but is something that has been shotgunned in its present form at the 11th hour. This agency, I believe, has strayed from a common-sense approach. It is the duty upon this Chamber, upon this body, to pass this resolution to ensure that OSHA is placed back on the right track. My colleagues have several sound reasons for voting in favor of the resolution. The effective rule is a \$63 billion annual mandate on employers, or more. It circumvents State jurisdiction. It requires small employers to fully understand extremely complex medical conditions, and it will undoubtedly send jobs overseas where there are often very few protections for workers.

I remind my colleagues once again of the statement that I began with, a quotation from Martha Kent, who said, to her, regulating is a way of life, regulating is a thrill, regulating gives her a high.

Our regulatory agencies play an important role, but they threaten liberties when they run amok, when they become a rogue rulemaking agency. There is more at stake than simply a rule in the vote that we have on CRA. It is, at least in my mind, the issue of the separation of powers, the right of the elected representatives of the people to make the laws for the land and when necessary to step in and say enough is enough to a regulatory agency that has gone too far.

OSHA, in this 600-plus-page rule, has gone too far. We must say enough is enough. Here we draw the line. We stop this rule. Start over. I hope that is what my colleagues will do as we vote on this resolution of disapproval.

Mr. President, I thank the Chair and reserve the remainder of my time.

Mr. KENNEDY. Will the Senator yield for a question? As I understand it, is Senator BOND asking to speak after the Senator from California?

Mr. BOND. Mr. President, I have been waiting for about an hour, about 45 minutes, and I would like to speak after the Senator from California.

Mr. KENNEDY. What I would like to ask is if the Senator from Illinois could speak after Senator BOND. We are just trying to give some notice to our Members. We are alternating back and forth.

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

Mr. KENNEDY. I thank the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I have a very different view of this matter than that of the distinguished Senator from Arkansas. This is the first time the Congress of the United States will have removed a worker protection in the history of the United States. So

it is really a precedent-setting debate. It is also a debate, I think, about which there is a great deal of misunderstanding.

In this new workforce of higher skills, of greater technology, this issue, ergonomics, encompasses the No. 1 workplace injury. Of course, many of the victims of repetitive stress disorder are women. As a matter of fact, about 70 percent of the victims are women.

As has been mentioned many times, the effort to do something about it began in a Republican administration with Secretary Elizabeth Dole, a very fine woman. I have watched her. I have great respect for her. She began the promulgation of these rules which have just gone into place.

What I have heard is why we should not proceed with this. I am of another opinion. I believe we should proceed with it. If there are changes that need to be made, we should make those changes, but essentially this whole area is a pretty simple one.

Data entry employees use computer keyboards every day. Providing these employees with a wrist pad at the base of the keyboard to reduce strain on the wrist is what we are talking about. That is ergonomics. Furniture movers lift heavy objects and boxes on a daily basis. Providing them with training on how to lift with the legs and providing them with back braces—that is ergonomics.

Today, I watched a young man push water jugs on a dolly, the water jugs for our offices in the Senate. I watched him take out two very large bottles of water. I thought of him lifting these 8 hours a day, 5 days a week, 52 weeks a year, without a brace, without knowing how to lift correctly. You can see the impact this repetitive motion would have on the muscles and skeleton of an individual.

Each year, 600,000 Americans suffer work-related repetitive stress injuries. Businesses spend \$15 billion to \$20 billion in workers compensation costs alone. It is estimated that \$1 out of every \$3 spent on workers compensation is related to these injuries. In my State, California, in 1998 more than 80,500 private sector workers suffered from repetitive stress injuries that were serious enough to cause them to lose time from work, and another 20,000 public sector workers struggled also with these injuries.

The program standard states that employers must provide employees basic information about these injuries, common signs and symptoms of these injuries, and how to report them in the workplace. I don't think anything is wrong with that.

The standard requires employers to review jobs to determine whether they routinely involve exposure to one or more of the five ergonomic risk factors: repetition, force, awkward posture, contact stress, and vibration. If a job meets one of these five so-called action triggers, the employer has two options. He or she can provide a quick fix

by addressing the potentially harmful situation immediately. An example would be an owner of a furniture company providing his employee who moves furniture with a back brace, or a wrist pad for a data entry operator, or an adjustable chair for an employee who must sit at a computer for 8 hours a day.

If a quick fix isn't possible, the employer must develop and implement an ergonomic program for that job and others like it. For example, an employer could hire someone to come in and offer a training course to teach employees how to sit properly, how to use their arms and legs, how to lift from the legs, how to use a stepladder when lifting objects off a tall shelf, and so on.

The point I want to make is many businesses have already instituted ergonomics programs. I respectfully submit to the speaker who preceded me, that may well be one of the reasons why some of these injury statistics are, in fact, declining. Let me try to make that case.

As a result of labor negotiations with the United Auto Workers, Ford, General Motors, and DaimlerChrysler, an ergonomic program was put in place in 1994. The programs have been highly successful. The Bureau of Labor estimates that in just 1 year, 69,000 work-related injuries were prevented in these companies. Of these, 41,000, or over two-thirds, were repetitive stress injuries.

The number of these injuries reported to the big three automobile manufacturers dropped 12 percent over 1 year, and 33 percent over 5 years. That shows the statistics go down, the claims go down as these programs are in place.

Let me read from a letter from Xerox Corporation:

Our workers' compensation claims attributable to ergonomic issues peaked in 1992. Since then, we have experienced a steady decline in the number of cases, as well as the costs associated with those cases. 1998 data indicates a 24 percent reduction in the number of cases and a 56 percent reduction in associated direct costs from the 1992 baseline. We attribute this improvement to the reduction of ergonomic hazards in our jobs and improved case management of injured workers. Our ergonomic injury-illness rate in manufacturing is currently 52 percent lower than OSHA's estimated annual incidence.

This is a big company. The rate is 52 percent lower. That should show that these programs are working.

Levi Strauss, Coca-Cola, and Business Week are just a few of the companies that have cited cost savings and increased productivity as a direct result of ergonomics.

Silicon Graphics, a computer company in Mountain View, CA, hired an ergonomics consultant in 1994 after the company had 70 work-related repetitive stress injury cases in 1 year. The company redesigned work stations to include adjustable tables, chairs, keyboards, and mouses. The changes worked. Silicon Graphics reduced its

work-related stress injuries by 41 percent from 1994 to 1995 and by 50 percent from 1995 to 1996. The program works.

Blue Cross: In 1990, 26 employees of Blue Cross of California were unable to do their jobs because of debilitating pain. As a result, they filed workers compensation claims that cost the company \$1.6 million. To combat the problem, the company purchased adjustable chairs and work stations. Blue Cross also launched a training program to teach employees how to use the new equipment and how to identify work-related stress injuries early. Guess what. The investment paid off. The number of these injuries dropped dramatically. Blue Cross of California received a \$1 million insurance dividend in both 1992 and 1993.

Let me give you a city in my State—San Jose, a large, growing city. San Jose experienced a large number of ergonomic-related back and neck injuries during the early 1990s. To address the problem, the city analyzed each of its jobs over a number of days to identify high-risk activity. A training session was created to show workers how to work differently and reduce the risk of injury. That is ergonomics. Once again, the efforts paid off. Back injuries fell by 57 percent and wrist injuries fell by 26 percent. Ergonomics works.

Pacific Bell was spending approximately \$53 million annually for workers compensation benefits paid to 53,000 employees, 30,000 of whom operated video display terminals. The company developed an \$18 million ergonomics program providing education, training, brochures, and interfocal eyeglasses for video terminal operators. The results were impressive. Workers compensation claims dropped 33 percent. Ergonomics works.

The benefits of the standard: The Department of Labor estimates these work rules will prevent 4.6 million repetitive stress injuries in the first 10 years of its implementation, and 102 million workers will be protected at 6.1 million worksites across the country. They estimate companies will save \$9.2 billion a year in workers compensation claims similar to what has happened in Blue Cross, in Xerox, in Chrysler, in Ford, in the city of San Jose, and in Pacific Bell. For each repetitive stress injury prevented, the Department estimates a direct savings of \$27,700.

If what I think will happen happens when this vote is taken, and the ergonomics standard is overturned, OSHA is barred from introducing any standard that is substantially similar to the rule unless specifically authorized by a subsequent act of Congress. This effectively kills a 10-year effort.

Ironically, under the Congressional Review Act, no one is allowed to filibuster this joint resolution of disapproval, but any future efforts to implement a new program would be open to filibuster.

If the standard is overturned, we are going to have to rely on individual companies to implement their own

ergonomics standards. Though some companies have done this, 600,000 people still suffer work-related repetitive stress injuries a year.

The rate of these injuries is falling, but they are still the Nation's biggest and most costly job safety problem. These injuries still make up one-third of all lost work-time injuries suffered by American workers and cost our economy close to \$50 billion a year.

In conclusion, Mr. President, I have tried to outline where large companies have implemented ergonomics standards, and all of the statistics coming from those standards have run in the right direction—reduced claims, lower worker compensation payments, insurance dividends, and so on and so forth.

I must say that I am profoundly disappointed by the fact that there are those in this body who would like to do away with worker protection for the No. 1 workplace injury—repetitive stress motions.

I hope very much that this resolution will be disapproved.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I rise today to explain why the Clinton administration's OSHA ergonomics regulation is the absolute perfect regulation for the first use of the congressional disapproval mechanism under the Congressional Review Act. This regulation is the poster child of bad regulation. It represents everything that can go wrong in regulatory rule-making, and it gives us, under the CRA, an opportunity to exercise our responsibility as Congress to strike it down and tell the new administration to do a better job in this area.

Contrary to what has been said by opponents of this resolution of disapproval, this does not prevent the administration from going back and doing the job right. In fact, we expect that they will go back and do the job right.

Repetitive motion injuries are painful. They are debilitating. They are undesirable. They cost employees pain, suffering, lost sleep, and lost wages. They cost employers lost time, lost effort, and lost revenue.

I understand how serious they can be. I have a lot of friends who have suffered these injuries. I know they are a serious problem.

I have talked to employers with small businesses who have lost work from employees. They regard them as members of their family. They have had these repetitive motion injuries and are hurt personally by it, but they are hurt in their business.

The Senator from California described what I think are some very promising actions that have been taken.

I am delighted we are beginning to find ways to lessen the incidence of ergonomic injuries. Businesses have been working with employees—employ-

ers and employees working together—to lessen the impact because everybody knows they are bad. Everybody knows these injuries are harmful to the employee. But they also are harmful to the employer.

The Senator from California mentioned a couple things that can be done. She talked about a keypad for somebody who sits at a keyboard all day long. If that works, that is great. This is the kind of information we need to share with businesses, and particularly small businesses all across the country. They want to lessen the impact of ergonomic injuries.

She mentioned back belts. To say back belts are the answer, I am not sure that science is there because one of the women we contacted, who advises small business, was concerned. She had heard that maybe back belts are more harmful than helpful in lessening injuries for people who have to bend over and pick up things. She spent 5 hours on the phone with different people in OSHA who came up with different answers to her question: Can I tell my small businesses they must require a back belt? They could not give her an answer. They referred her to the general counsel. Unfortunately, under this regulation, if one of her business clients happens to guess wrong, that employer gets hit with the full sanctions of the law.

No, these 608 pages in the Federal Register are not helpful in telling small businesses how they can take meaningful steps to lessen the possibility that one of their workers or several of their workers will have ergonomic injuries. What they outline is a series of penalties if the workers have an injury on the job, or if the workers have an injury that is aggravated on the job, or even if the worker has an injury off the job and comes to work and it gets a little worse.

Five years ago, I introduced the Red-tape Reduction Act—others remember it as the Small Business Regulatory Enforcement Fairness Act—to protect small businesses from overreaching regulations. I am proud to say it was unanimously supported in the Small Business Committee. It came to the floor, and it was overwhelmingly supported. Senator NICKLES added the Congressional Review Act as an amendment for just this type of moment, this type of activity—when an agency has gone so far off course, there is no other remedy left but to force it to abandon its original approach and start over.

This is precisely the kind of regulation for which we overwhelmingly, in this body, adopted the Congressional Review Act because this measure, under review today, is a draconian, punitive measure that is incomprehensible, unfathomable, and ineffective.

Action under the CRA, as I said earlier, as some have tried to suggest, does not try to prevent any other action by an agency in the same area; it merely means the agency cannot make the same mistake twice. By dis-

approving this version of an ergonomics regulation, under the CRA we will merely be saying that OSHA cannot rely on that same type of regulation again. Indeed, when we strike down the regulation, it will help OSHA by expediting the regulatory process. Instead of the agency having to go through a separate rulemaking to determine whether to make changes to the current regulation, they will be free to begin to develop an approach that will be reasonable for employers, responsive to employees' needs, and based on sound science and the best information available, as soon as Congress completes action on the joint resolution of disapproval in S.J. Res. 6.

The Clinton OSHA ergonomics regulation is truly egregious in both substance and procedure. It will be devastating both to small businesses and their employers because it is incomprehensible and outrageously burdensome. Too many of the requirements are subjective and open-ended. For instance, an employer must implement "appropriate" control measures, use "feasible" engineering controls, or reduce hazards to the "extent feasible." These requirements are like posting a speed limit on the highway that says, "Do not drive too fast," but you never know what "too fast" is until a State trooper pulls you over and tells you that you were driving too fast.

Employers and small businesses simply will not know when they have met the burden of this regulation until they are told by OSHA or sued by OSHA or have to settle a lawsuit brought by a trial lawyer who has seized on this new regulation as a source of specialization.

It is not surprising to me that immediately after this regulation was published, billboards began springing up. I show you one in the St. Louis area, advertising for attorneys who would be willing to bring actions on behalf of employees who think they have carpal tunnel syndrome: "Such-and-such law center, representing workers with carpal tunnel syndrome. Toll free from St. Louis. Call for help."

Guess who is behind this regulation. Guess who wants to see it go into force. Never mind the States have set up workers compensation laws that are designed to compensate people without going through lawsuits, to compensate them immediately for workers comp or workplace-related injuries. This is a brand new industry. Carpal tunnel syndrome is the next tobacco industry lawsuit. Never mind that these employees would be eligible for benefits under workers compensation.

This regulation is like setting up a new lottery; somebody is going to strike it rich. Now everybody wants a shot at the pot of gold otherwise known as the employer's liability insurance policy.

What do you think will happen to insurance premiums and workers compensation premiums for small employers? They are going to go up. They are going to go up substantially because they are going to have

to pay all these claims. OSHA never took these consequences into account when it was estimating the cost of the regulation.

It is bad enough that this regulation is incomprehensible and vague, but it also requires an employer to go beyond the text of the regulation to understand fully and comply with the regulation.

I held up this Federal Register Code. If you really are interested in it, you can find it, going from page 68262 to page 68870. That is 608 pages of very fine print in the Federal Register. But the fascinating part about it is, there is appendix D. Appendix D says where you go to get the information. You can go to the "Job Strain Index: A Proposed Method to Analyze Jobs For Risk of Distal Upper Extremity Disorders." You can go to the "American Industrial Hygienists Association." You can get another copy of the "Applications Manual for the Revised NIOSH Lifting Equations" from the U.S. Department of Commerce Technology Administration. You can get a copy of "The Design of Manual Handling Tasks: Revised Tables of Maximum Acceptable Weights and Forces" from Taylor & Francis Inc. in Philadelphia. You can get a copy of the "Rapid Entire Body Assessment" from the Elsevier Science Regional Sales Office. You can get a copy of the "RULA: A Survey Method for the Investigation of Work-Related Upper Limb Disorders."

The mom or pop operating a small business is going to have enough trouble trying to get through 608 pages of the Federal Register. I doubt if any of us recently have sat down to read 608 pages in the Federal register. I used to have to do that for a living. That is why I changed my line of work. I got out of the practice of law because that did not seem to be a useful idea.

There are an awful lot of people in small business who provide a product, who deliver a service, who probably do not care about reading 608 pages of the Federal Register or applying to all those different people to get all the different manuals they have. That is what they would have to do under this regulation. They are highly technical pieces written by ergonomists for technical and academic journals. They are not the stuff that helps a small business to provide jobs, to provide services, and to provide a contribution to the economy and to the family of the owner.

The final regulation is also a travesty to the rulemaking process. The other side will say it has been in the works for over 10 years. That is true. But the truth is, it was not until OSHA saw the clock running out that it got down to business and cranked out proposals in November of 1999 and moved heaven and earth to get it done 1 year later.

To get it out in such a short time, OSHA cut corners at every opportunity. They padded the dockets with expert opinions bought and paid for

with tax dollars, tax dollars designed to get the contractors to trash the opposing comments and to support what OSHA was trying to do. They added materials to the dockets that were not available for review before the comment period closed. They didn't provide adequate time for commenters to develop their responses. They ignored a wide variety of constructive comments and suggestions they received. The Clinton OSHA even published the final rule with significant provisions that have never been put out for public comment, violating what I have always understood is a fundamental, cardinal principle of the regulatory process.

OSHA went into this rulemaking knowing exactly what it wanted to have and, in the end, didn't let logic, facts, fairness, congressional objections, legitimate concerns from small business, or plain common sense get in the way.

The true disappointment about the ergonomics regulation and all of its surrounding problems is that it could have been avoided. Congress told the Clinton administration in a bipartisan voice the last several years not to proceed with the regulation. Instead, the Clinton administration refused to accept the guidance of this legislative body and extended the negotiations over the final appropriations bills until they could get the final rule out the door on November 14. Not only did they trample on the separation of powers doctrine in so doing, but there were programs waiting for annual funding which did not receive their money—which in many cases were increases—because the administration wanted to be able to push through this flawed process and flawed approach to ergonomics.

In May 1999, I introduced a bill that would have avoided this mess. It was called the Sensible Ergonomics Needs Scientific Evidence Act, or SENSE Act. The bill would have forced OSHA to do something not too unreasonable, not too strange: Simply to wait for the results of a study then under way by the National Academy of Sciences on this subject of ergonomics before proceeding with the regulation.

The study, requested by Congress and agreed to by President Clinton in the appropriations bill of the previous year, reviewed the available scientific literature to determine if sufficient evidence and data existed to support OSHA's promulgating of a regulation on this issue. The report was delivered to Congress on January 16 of this year, the same day the Clinton ergonomics regulation took effect.

Had OSHA waited for the NAS study, they would have had the benefit of some valuable analysis of the data on this most complex subject. The NAS panel concluded that there are a wide array of factors which play significant roles in whether an individual develops an MSD and that workplace issues are only one of these factors and quite possibly not even the most significant one at that. As the panel stated:

None of the common MSDs is uniquely caused by work exposures.

Instead, the study discussed whether someone will develop an MSD based on the totality of factors that person may face, which is how the scientific literature handled the issue. The panel concluded that a wide range of personal factors played significant roles in determining whether someone was likely to develop an MSD. Included in these were factors such as age, gender, body mass index, personal habits such as smoking, possible genetically determined predispositions, as well as activities outside the workplace such as sports, household work, or exercise programs. These are factors over which an employer exercises no control and we certainly would not want them to exercise control.

The NAS study also concluded that psychosocial factors have a strong association with MSDs. Psychosocial factors include such conditions as depression, anxiety, psychological distress, personality factors, fear avoidance coping, high job demands, low decision latitude, low control over work, low work stimulus, low social support, low job satisfaction, high perceived stress, and nonwork-related worry, tension, and psychological distress. These psychosocial factors, even if work related, are beyond the reach of an OSHA regulation, meaning that OSHA's regulation will do little, if anything, to protect these employees from developing MSDs.

Furthermore, the NAS study was unequivocal in calling for more research into the issues surrounding the assessment, measurement, and understanding of ergonomics and workplace exposures. Among the specific areas in which the NAS recommends more research is the quantification of risk factors.

The Clinton OSHA did have a simple solution for the perplexing problem of how to determine whether a musculoskeletal disorder was caused by workplace exposures. They defined all MSDs as work related. Under this regulation, any MSD in the workplace contributed to by workplace exposures or even a preexisting injury aggravated in the workplace is to be considered work related. That is outrageously unfair. It goes beyond OSHA's mandate to protect workers from workplace hazards. It means that if an employee injures him or herself through recreational activities such as bowling, exercising, using the Internet at home, planting trees, or any other workplace activities, and any workplace activities aggravate these injuries and they meet OSHA's definition of frequency or duration, the employer will be required to implement the Clinton OSHA ergonomics program.

Small businesses that I talk to and listen to as chairman of the Committee on Small Business are absolutely stunned and shocked by this requirement. They are stunned that an agency of the Federal Government could issue

such a sweeping and poorly designed rule. They are incredulous and ask questions such as why didn't someone say or do something. The truth is, many people have said the right things. They outlined the difficulties employers would have with the rule, the faulty assumptions, but OSHA was not listening.

The preamble to the final rule cites comment after comment that tried to explain to OSHA why the regulation was a mistake. OSHA seemed to regard these as mere speed bumps on the way to the finish line. This regulation may become the best example yet of the law of unintended consequences. If allowed to stand, OSHA will end up undermining many of the best intentions of thousands of employers, causing their employees to suffer in the process and wind up costing them jobs.

Small businesses can be shut down because of the cost of these regulations. Yes, this regulation may lower the incidence of workplace MSDs, but at least some of that lessening of MSD injuries will be because people will lose their jobs. Then they clearly won't have a workplace musculoskeletal disorder. That is one very effective way to eliminate workplace ergonomic injuries, but it is not what we ought to be seeking.

A woman who runs a small business in Kansas City told me she won't be able to continue to pay 85 percent of her employees' health insurance premiums that she currently pays. She has a Web site and graphics design studio with 30 employees. She has already been buying new ergonomically designed chairs at \$800 apiece, along with new furniture to make it more comfortable for her employees. She provides a range of employee benefits, a 401(k), dental benefits, but she told me: The bureaucrats in Washington think we have all this money just lying around to spend for this type of thing. That's is not true. The only place I can get the kind of money to comply with this regulation is taking it out of the benefits I give to my employees.

She said: I asked my friends on the other side, how has the Clinton ergonomics regulation improved these employees' lives?

It isn't going to.

A man who runs a small business metal fabricating shop said this rule will cause him possibly to drop his company's work with the local sheltered workshop, providing jobs for those with mental and physical disabilities, because of the burdens of this OSHA regulation. Is that the result OSHA wants? Certainly not. This is an unintended consequence.

Many people may not realize, if they are not involved in small business, small businesses get by with very tight cashflow. Large businesses can capitalize expenses for compliance. They can have squads of people who are trained to help overcome these, but a small business does not have that luxury. Even a few hundred dollars a

month for a consultant can make a significant difference.

Then there is the question of time. Time is money. Do they have time to read these regulations? Do they have time to go out and get the other books, comply with all the requirements? Adding this regulation and its complexities on top of other duties means less time doing what will make their business grow, expand, and thrive.

Furthermore, many small businesses have never encountered an OSHA regulation like this before, which means it is not just another layer on their safety programs, it is a whole world of OSHA regulations, like starting off to climb Mount Everest on your first climbing experience. Small businesses we hear from simply don't have the resources to expend on this complicated a regulation with as little payoff as this will provide.

The cost estimates of this regulation reveal the utter cluelessness of the promulgators of the regulation. OSHA says it would cost \$4.5 billion per year over 10 years. But everybody else who has looked at it says they are off by orders of magnitude. The Small Business Administration Advocacy Council of the Clinton administration found the earliest draft was underestimated by a factor of up to 15 times, even before OSHA added more requirements.

We are possibly talking about regulations costing \$60 billion to \$100 billion a year. To inflate the benefits and thus make this regulation look less burdensome, the Clinton OSHA assumed, with no supporting evidence, that imposing this standard on businesses would cure an additional 50 percent more MSDs over the next 10 years. As I pointed out earlier, they may cure some of the MSDs by costing people their jobs. No job, no job-related MSDs.

Let me be clear, I raise this discussion about the cost of this regulation not because small businesses are unwilling to spend money on the safety of their employees—every small business my office has talked to, and committee reached out to, already has a safety plan and some level of an ergonomics program in place. They want to do what they can do to stop the injuries of employees, which are costing them money. I raise the issue to make the point that OSHA went forward with this regulation without any reliable idea about what this will cost or what benefits it will generate.

Not only was OSHA unable to say with any credibility what the costs and benefits of this regulation would be, but as has already been pointed out, this gargantuan regulation was also unnecessary: MSD rates have dropped by 22 percent over the last 5 years, according the Department of Labor Statistics. As the Senator from California pointed out, many leading businesses are making great strides in limiting ergonomic injuries because they realize it is good employer-employee relations to do so.

For that small percentage of businesses that may not be motivated to

help their employees with ergonomic injuries, there is the OSHA general duty clause to protect employees from employers who abuse them.

The bottom line is that small businesses are in business to stay in business. That means keeping their employees healthy. Employees often are more than mere workers—friends, neighbors, or even relatives. Any regulation from OSHA should first do no harm to both the employers and their employees. The Clinton OSHA ergonomics regulation fails this threshold test. It is regulations such as these that create waves of cynicism and doubt about the Federal Government and that cause them to wonder whether those of us who have been elected to safeguard and to speak up for their interests are asleep at the wheel.

For the first time in this CRA, we can say "enough"—that OSHA has gone too far and has crossed the line of reasonableness. The Clinton ergonomics regulation doesn't protect employees; it punishes employers. The regulation is not responsive; it is irresponsible; and it must be struck down. I urge my colleagues to support the resolution of disapproval and send OSHA a message that we will not tolerate this joyride of regulatory overreach.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mrs. CLINTON. Mr. President, I rise to add my voice to those of my colleagues who are concerned about efforts to demolish this important worker health and safety standard.

I listened carefully to the remarks of my distinguished colleague from Missouri, and I understand there are many serious concerns being discussed about this regulation and its impact both on our workforce and our employers. But I ask that we remember where this started 10 years ago—in the previous Bush administration, under the leadership of Secretary of Labor Elizabeth Dole. We have held numerous hearings and studies to determine the impact of our 21st-century worksites on people's physical well-being.

OSHA is charged with the responsibility of setting standards for the workplace to help protect citizens from harm. In its 30 years of existence, OSHA has helped to save many lives and prevent countless injuries. Despite such a track record, we know that OSHA faces almost continual opposition from those who do not agree with its mission and who seek to undermine its work. This year, the opposition feels emboldened to strike at the heart of OSHA's latest efforts to protect American workers.

We are, of course, talking about the ergonomics standard, which is designed to help more than 600,000 workers who experience serious workplace injuries every year from repetitive motion and exertion. In enacting this standard, OSHA heard from thousands of witnesses and received the backing of the

National Academy of Sciences and the Institute of Medicine.

The report to which my distinguished colleague from Missouri referred is this rather large report that was issued on January 18. I draw our attention to some of the conclusions and recommendations that were arrived at. Let me just quote from it:

The weight of the evidence justifies the identification of certain work-related risk factors for the occurrence of musculoskeletal disorders in the lower back and extremities. The panel concludes that there is a clear relationship—

I stress that—

between back disorders and physical load. That is, manual material handling, load momentum, frequent bending and twisting, heavy physical work, and whole body vibration. For disorders of the upper extremities, repetition, force and vibration are particularly important work-related factors.

Mr. President, destroying this standard would put many workers at risk, but today I want to focus on women workers in particular because, as my friend and colleague Senator FEINSTEIN said, women account for 64 percent of repetitive motion injuries, even though we make up only 46 percent of the workforce.

Earlier today, I was joined by a number of women who have suffered from these disorders. One was Kathy Saumier, who was a worker at a plastics plant in Syracuse, NY. Kathy worked on a production line where she had to lift 40-pound boxes every 1 to 2 minutes while twisting and holding the boxes at an awkward angle in order to put the boxes on the conveyor belt.

With relatively small changes to the design of her work station, or with automated assistance in lifting the boxes, she and many of her coworkers could have been saved from such painful and time-consuming injuries.

Kathy joined me and my colleagues from Maryland and California, Senator MIKULSKI and Senator BOXER, at a news conference to highlight our concerns about these issues as they particularly affect women. Also speaking was Dianne Moriarity, who, for 18 years, worked as a school secretary in New York. Because of her years of work in a badly designed work station, both of her wrists and hands are damaged. She showed me the picture of her work station. The computer was bolted in a certain way so it could not be moved. The space for the chair was such that it could not be angled, and there was no place for her to be able to move comfortably to fulfill her obligations at that worksite. She is in virtually constant discomfort and needs regular therapy.

We also heard from Jennifer Hunter from Virginia, who worked for 20 years in a chicken processing plant. She was required, as the chickens went down the line, to make 1,400 cuts each hour. She spoke specifically about what it took to prepare the filet of chicken breast, which so many of us enjoy and eat at home or order in a restaurant, and how difficult it was at the speed of

that line to be able to get those cuts in, and how her wrists had to be constantly moving.

She, too, has suffered serious health effects from that kind of repetitive motion. As she told us today, we really need this standard so that workers are protected.

Heidi Eberhardt of Massachusetts worked at an Internet publishing company, writing, editing, and researching. She is only 32 years old. This was her dream job. She was able to put her college education to work. But because of the repetitive motion that was required over long hours sitting at her computer, she finds it impossible to perform some of the daily functions we all take for granted. She can't turn on a faucet; she can't squeeze a toothpaste tube; she can't twist an ice cube tray or even open mail without severe limitations and pain. As Heidi said, this is not just about the people who are already injured; this is about hundreds of thousands of workers who will become injured if there is no ergonomic standard for the workplace.

One of the reasons women are adversely affected by this workplace hazard is because women hold more than 80 percent of the jobs that involve repetitive motion injuries, jobs such as hotel cleaning, data entry, secretarial positions, sewing.

Those who are here today working to save this worker safety standard understand that our opponents believe it will impose a costly burden on business. But as our distinguished colleague, Senator FEINSTEIN from California, pointed out, those businesses that have already implemented standards have found they save money. They save money by keeping their workers on the job, in good health, and more productive.

Certainly in New York we have found that businesses which have implemented the standards have reaped rewards: businesses such as garment manufacturers, Sequins International in Queens, or Xerox in Rochester, a company that has had ergonomic standards in place since 1988. We have found that these standards and the businesses that implement them are taking not only better care of their workers but better care of their bottom line.

In addition to our concerns about the substance of the standard, we are also deeply concerned about the manner in which the opponents seek to destroy this important worker safety provision. Everyone is willing to work together to change or improve the standard. If there are legitimate concerns that have been raised, there are certainly ways we can go about working to ameliorate those concerns.

As my colleague, the senior Senator from Massachusetts, put it so well, this is an effort that is truly a legislative atom bomb. The Congressional Review Act has never been used before. It does more than rescind the worker safety standard. It does ensure that the Labor

Department can never again put forth an ergonomic standard. It is, in effect, a gag rule on worker safety. By dropping this Congressional Review Act atom bomb, opponents will completely eliminate 10 years of bipartisan effort in two administrations, many hours of public review and witness testimony, and extensive research in less than 10 hours of debate—10 years versus 10 hours.

I can appreciate the desire by some to make changes to the standard. But I hope we can talk about ways that such changes would be considered, give the public a chance to be heard, and any changes would be based not upon anecdote, not upon story after story but on science and on the legitimate concerns of both workers and businesses.

We should simply not bow to pressure groups and wipe this worker safety standard off the face of our regulatory planet. We are here today to send a clear message that this is not the way to go about creating a safe workplace or working with businesses to make it safer for them to employ people across the vast sectors of the economy that use repetitive motion. We particularly are concerned about the impact this will have on women in the workplace.

We are also concerned this could mark the beginning of an erosion of protection for workers in America; if you will, a legislative repetitive motion that will undo safeguards that will save lives.

In the 20th century, we made great advances in protecting workers. Often those advances came because of a tragedy, a terrible fire, a mine collapse, a factory assembly line run amok, when all of a sudden it became clear that we were putting people's lives and well-being at risk. This is a silent epidemic. There will not be a big newspaper headline about a crash of ergonomics. We will see just the slow but steady erosion of people's health and their productivity and their capacity to get up and go to work and to go home and do what they need to do for themselves and their families.

This is an issue that goes to the heart of the new economy. How do we provide for 21st century workers the protections we did finally work out after lots of effort? We should not go back. We should not turn our backs on America's working families. We should, instead, defeat this effort to kill this vitally important standard and then utilize the procedures available to us to go ahead and consider whatever the concerns on the other side might be.

I ask our distinguished opponents to think hard about using this legislative atom bomb and, instead, consider how we can, through existing procedures, petition the administration to stay the regulation while further work is done. We can also petition the agency to modify or repeal the standards, and we can have OSHA initiate rulemaking procedures to modify the rule in accordance with the Administrative Procedures Act. If the real point here is to

protect small business and protect workers, there are ways of going about that which are already provided for. It is hard to understand why we would need to blow away 10 years of work, the findings of nonpartisan, objective scientists, and the stories that flood many of our offices from workers who are endangered, in order to deal with what could be legitimate questions.

I certainly hope we are able to disapprove this resolution so we can, together, work on behalf of the American worker.

Mr. ENZI. I yield such time as he desires to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. BUNNING. I thank the Senator from Wyoming.

Mr. President, I rise today in support of S.J. Res. 6, the resolution to disapprove the Department of Labor's regulations on ergonomics standards. This isn't a new issue. Congress wrestled with ergonomics regulations for a decade. This isn't the solution we need. We can and must do better.

Right off the bat, let's remember we all want a safe workplace for the American workers. That is just common sense.

The debate today isn't about who is for or against workers or who is for or against a safe place to work. It is, instead, about the most effective way to achieve the goal of workers, employers, and our entire economy.

The Department of Labor regulation that we are voting on today has a number of problems. It is too regulatory, too burdensome on business, and it is not backed up by sound science. It needs an overhaul. We need to pass this resolution today to make sure that if and when the Federal Government passes a final ergonomics rule, it gets it right.

For years, Congress and the Department of Labor have been talking about writing an ergonomics rule. This is nothing new. All of my colleagues are familiar by now with this issue. But these regulations that are about to go into effect are the product of a hurried, sloppy rulemaking process. After years and years of debate and study, it was rushed through at the 11th hour by President Clinton, just before he left office.

I know everybody has seen this, but it is 608 pages—608 pages. It is not even the same rules and regulations that were originally proposed.

We need to know that President Clinton was busy as a beaver before he left the White House, working right up to the last minute trying to pass as many new big Government regulations and to pardon as many fugitives as possible. The ergonomics regulations are just another example of the frenzied last-minute push by the President to build a legacy. It is not about getting the best workplace safety rules; it is about President Clinton trying to pass as many new rules as possible before he had to leave town. That is not the right

way to write regulations, and Congress has the oversight responsibility to do the right thing and take a hard, cold look at what he did.

What the President did just does not make sense. After years of discussing and debating, the worst thing he could have done was to finally pass a new rule just for the sake of doing it. The Small Business Administration estimates that the ergonomics rule is going to cost American businesses \$60 billion to \$100 billion a year. That is too much money not to make sure that every "i" is dotted and every "t" is crossed.

It is hard to pass a law and it is hard to pass a rule. Congress has set up that procedure on purpose to make sure things are done thoroughly and thoughtfully and sensibly, and new regulations that could have a tremendous impact on employers and employees are not slapped together at the last minute. But that is exactly what happened with the ergonomics rule, and the results could be disastrous for our economy. Besides the sloppy process, one of the biggest problems with this mad rush to pass a rule was that it ignored sound science. OSHA and Congress have been working on an ergonomic standard for the better part of a decade, and in 1998 we asked the experts at the nonpartisan National Academy of Sciences to study the medical and scientific evidence to help determine what, if any, regulations were needed.

They finished that study in January and determined that more detailed research was needed before we write a final rule. Among other things, the Academy said many factors such as age, gender, personal habits, or even job satisfaction could all play a part in workplace injuries, and that we have to be careful to take everything into account in writing an ergonomics rule.

One size does not fit all. That is probably another reason why President Clinton was in such a hurry to pass the ergonomics rule last November. The new study was going to come out soon and he was worried about what it was going to say. So instead of waiting for all the evidence, instead of waiting for the experts, he tried to jam the ergonomics regulations down the throat of American business before all the facts came to light. That is no way to run a Government or a railroad.

But the biggest concern I personally have with the new regulations is not about process, and it is not about science. It is about what the new rules would mean in terms of dollars and cents out in the real world. Before we do anything else, we have to be realistic and take a hard look at the bottom line and how this rule is going to hurt our economy; how it could close businesses and lead to layoffs of real people.

As I just said a few minutes ago, the SBA has already told us these new regulations could cost up to \$100 billion every single year. According to the

Employment Policy Foundation, businesses in Kentucky could expect to pay \$1.3 billion annually. In my part of Kentucky, that is serious money. For a business that operates on the margin, where the owners and workers struggle every day to keep the doors open and the lights on, this sweeping new regulation could be the difference between life and death—staying open or closing.

Over the years, I have heard many of my constituents speak about this issue, and many are afraid these new regulations could lead to layoffs or increased prices for products or to jobs moving overseas. That is simply not acceptable.

I recently received a letter from Joe Natcher, who is President and CEO of Southern Foods in Bowling Green, KY. Southern Foods is a small business that sells food, cleaning supplies, and other products to area businesses. He told me about these regulations and how they could affect his company. Mr. Natcher wrote:

As we begin our compliance efforts, it is clear that the rule will severely impact productivity and profitability, putting jobs at risk and increasing prices to our consumers without providing any additional health and safety benefits.

Southern Foods does not just talk about safety and health habits. We practice it every day. Additionally, we provide training to all co-workers and have an active safety committee. . . . The ergonomics rule threatens our company's future and the jobs of the co-workers who depend on us.

Southern Foods is just one example from the thousands of Kentucky businesses that would be affected by these new regulations. As they are written now, the new regs would affect almost every single employer in America, even if they had just one employee. No matter what their situation, businesses will be forced to implement a complete ergonomics program if there is only one complaint. The cost and effort could be staggering.

It is simple. More burdensome rules and regulations mean more time spent on paperwork and less time on business. Less work on business means less gets done, the bottom line shrinks. We know who is going to pay—workers, in lower wages, fewer benefits, and layoffs.

I know many in the labor movement really want the new regulations, but I am afraid they are looking at the regulation rules in a vacuum. They might think this sweeping new rule is the answer to their prayers, but in the end it is just going to hurt those they claim they want to protect.

Finally, let me say if this resolution passes, it is not the end of the discussion about ergonomics and improving the safety of the American workplace. Instead, it leaves the door open for the Bush administration to continue studying this issue and to come up with more practical and creative ways to accommodate workers and employees. Any new regulations have to be

something with which we all literally can live. The pending regulations we have now are not.

I urge support for the resolution before us today and I yield the floor.

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, about 10 years ago—during the first Bush Administration—Labor Secretary Elizabeth Dole heard the stories and saw the statistics about the serious ergonomic injuries that American workers suffer.

For 10 years, the Department of Labor—in consultation with business, labor, and Congress—has worked to enact a fair, enforceable rule to protect America's workers from the real harm caused by ergonomic injuries.

Now, with just a few hours of debate, some in this body are trying to undo a decade's worth of work.

In fact, their actions would preclude the Department of Labor from enacting a similar rule.

That sends a horrible message to America's working men and women. It says—we know you're breaking your back—literally—day-in and day-out to put food on your table, but this Congress won't do anything to protect you from a serious injury.

Today, many people wear down their tendons and their joints on the job. They go home after a long day of work and just want to pick their kids up and hold them. But they can't because of ergonomic injuries.

To them, this resolution that is before us says, "Too bad. This Congress won't help you."

Yes. This rule will have an economic impact on business in America. But we must also consider the economic impact of injured workers.

If a family's primary breadwinner can't work because of an on-the-job ergonomic injury—there is a serious economic impact to that family, that community, and our country.

The human body has its limits, and this rule recognizes those limits and helps us become a safer, more productive workforce.

Last week, I received a letter from a constituent, Frank Lehn, from Washougal, Washington. Washougal is a great town—the kind of town that any parent would want to raise their kids in.

The gentleman who wrote me was a mill worker for 27 years—"performing extremely physical, manual-type labor"—as he describes it. In his email to me, he says:

The constant stress of my job on my body resulted in a degenerative spinal disease, creating painful bone spurs where the nerves exit my spine.

When I was finally unable to do my job, I was given a disability retirement, and now live on an \$800 monthly pension.

The ergonomics standard now in place came too late to help me, but I am greatly concerned about the future of the young workers who are performing the same tasks I did day after day for many years.

It is crucial that we do not allow this vital standard to be weakened in any way.

During my years on the job, many of my co-workers suffered painful injuries to their joints and muscles through no fault of their own. They were all simply doing their jobs.

The many whose sweat and toil form the backbone of this nation need strong laws to protect their safety and welfare. Please oppose any effort to weaken or take away this nation's ergonomics standard.

We should heed Frank's words, and the millions of other workers who have stories just like his. In fact, ergonomic injuries are the single-largest occupational health crisis faced by America's working men and women today.

This resolution, if enacted, turns our backs on the people who build America, assist us at the grocery store, sew our clothes—the people who keep our country running.

Let's be clear: Today's debate is just the latest step in a larger attempt to by some to deny progress on this issue.

Many Americans will ask: Who could be against such a common sense measure?

The answer: The current administration and many here in Congress.

They are trying to use the Congressional Review Act to undo a rule that was called for by a Republican, and finalized by a Democrat, based on 10 years of work.

Today, they are trying to undo this vital safety rule because they've been losing this debate on its merits for the last 10 years.

I hope that gives my colleagues pause as they consider how they will vote on this measure: a ten year, bipartisan effort versus a highly-charged, highly-partisan debate for 10 hours.

The action we are contemplating today would strip the ergonomic standard off the books forever, and require a further act of Congress to implement another one.

Let's look at one claim made by those who oppose this standard: The opponents claim we don't have enough facts.

Just two months ago, the National Academy of Sciences finished its second comprehensive study on ergonomics.

Their conclusion: Workplace practices do cause ergonomic injuries, and ergonomics programs can effectively address those practices that cause injury.

This was the second Academy study on ergonomics that upheld this conclusion.

In addition to the two studies by the Academy of Sciences, the National Institute for Occupational Safety and Health studied ergonomics.

It found there is "clear and compelling evidence" that musculoskeletal disorders—or MSD's—are caused by certain types of work. And it found that those injuries can be reduced and prevented through workplace interventions.

The American College of Occupational and Environmental Medicine—the world's largest occupational medical society—agreed with those findings and saw no reason to delay implementation.

mentation. The studies and the science are conclusive.

Other opponents claims that this isn't a significant problem. The facts prove otherwise.

Each year, more than 600,000 private sector workers in America are forced to miss time from work because of painful MSDs.

These injuries hurt America's companies. Employers pay more than \$20 billion annually in workers' compensation benefits due to MSDs, and employers pay up to \$60 billion in lost productivity, disability benefits and other associated costs.

The impact of MSDs on women in the workplace is especially serious. Women make up 46 percent of the total workforce. They account for just a third of the total injured workers, but women account for 63 percent of all lost work time due to ergonomic injuries, and 69 percent of lost work time because of carpal tunnel syndrome.

Women in the health care, retail and textile industries are particularly hard hit by MSDs and carpal tunnel syndrome.

Women suffer more than 90 percent of the MSDs among nurses, nurse aides, health care aides and sewing machine operators.

Women also account for 91 percent of the carpal tunnel cases that occur among cashiers.

Despite the overwhelming evidence of the impact of MSDs due to a lack of workplace standards, we are still debating the need for this rule.

The states are getting this right. Last year, my home state of Washington became the second state along with California to adopt an ergonomics rule.

The rule in Washington state is helping employers reduce workplace hazards that cripple and injure more than 50,000 workers a year at a cost of more than \$411 million a year.

It is estimated that it costs employers about \$80 million a year to comply with the standards. But when they comply, employers save about \$340 million per year. Clearly, this is a cost-effective program.

Nationwide, the ergonomic rule is estimated to save businesses \$4.5 billion annually. That's because workers' compensation claims will fall and production will increase.

I urge my colleagues to oppose this resolution. We should allow OSHA to get on with its job of protecting American workers from ergonomics injuries. If individuals have problems with the rule, I suggest they seek to modify it through the administrative process or craft legislation. Trying to use the Congressional Review Act, however, is a drastic action by desperate people.

We should not allow 10 hours of debate to permanently invalidate a rule that took 10 years to implement and is clearly supported by credible science.

Let's give America's workers the protections they need instead of misusing this process to eliminate the safety

standards that workers and their families rely on.

I yield the balance of my time.

**THE PRESIDING OFFICER.** The Senator from Pennsylvania.

**MR. SPECTER.** Mr. President, I thank my colleague from Oklahoma, Senator NICKLES, for yielding to me. He was next in line.

I have sought recognition to comment on the pending issue on the Congressional Review Act as it relates to the pending ergonomics rule. The issue before us at the moment has been a long, contentious one that I have had considerable contact with in connection with my responsibilities as chairman of the Appropriations subcommittee, which has jurisdiction over the Department of Labor.

The issue of rulemaking on ergonomics has been around since a study was ordered more than a decade ago by then Secretary of Labor Elizabeth Dole. There have been a number of delays, as the issue has come before the subcommittee on appropriations for the Department of Labor where efforts have been made to withhold funding, and then to seek additional studies. There have been many studies, and there have been very substantial delays.

I am concerned about the need to provide further protection to America's workers on repetitive motions and the other kinds of physical activity encompassed by this ergonomics rule. But I am also concerned about the complexity of the rule which is at issue here.

In an effort to try to get additional factors which would bear on the question of cost and on the question of complexity, I convened a hearing which was held this morning—late notice on the hearing, but this matter has just been recently scheduled to be on the floor today.

We heard from three witnesses who provided a fair amount of insight into the issue. We heard from Joseph M. Woodward, Esq., Associate Solicitor for Occupational Safety and Health at the Department of Labor; from Lynn Rhinehart, Esq., Associate General Counsel of the AFL-CIO; and Baruch A. Fellner, Esq., a partner at Gibson, Dunn & Crutcher—where his practice centers on employment law, with an emphasis on occupational safety and health; and he spoke, in essence, for the Chamber of Commerce and the business interests.

In the course of this morning's hearing, I think it is fair to say there was generalized agreement on the need for regulation. But, there was total disagreement on the issue of what the cost of this regulation would be and whether the regulation needed to be as complex as it is.

Mr. Woodward testified that the OSHA calculation was that the regulation would cost \$4.5 billion, and there would be benefits of some \$9.1 billion. Mr. Fellner testified that the cost could range from somewhere around

\$100 billion to as much as \$1 trillion. When I asked Mr. Fellner what the benefits would be, if any, on the figure advanced by Mr. Woodward of \$9.1 billion in benefits, contrasted with \$4.5 billion in cost, Mr. Fellner said there were no real benefits; and if any did exist, they would be subsumed by the enormous amount of cost.

In listening to these two witnesses testify, and in focusing on what the role of the Congress is, the Senate is—and my role as a Senator in trying to evaluate congressional review on agency rulemaking—I must say that I did not get a whole lot of guidance from these witnesses, as they testified as to what the cost factor would be.

When we got into the issue of the complexity of the rule, again, it is a very complicated matter. We focused on a couple of the rules in particular—one, which was set forth on page 68848 of the Federal Register, Volume 65, No. 220, Tuesday, November 14, 2000, specifying a repetition rule:

Repeating the same motions every few seconds or repeating a cycle of motions involving the affected body part more than twice per minute for more than 2 consecutive hours in a work day.

There was considerable debate in the hearing this morning, but, again, not a whole lot of light shed as to what the real import was.

Mr. Fellner made a suggestion that there ought to be experts convened—between 6 and 12 on each side—who would debate and discuss just exactly what this repetitive motion meant, to have some better appraisal and better understanding as to what the impact was on the individual who is subjected to that kind of work.

Another rule which we considered at some length involved the force issue on the same page:

Lifting more than 75 pounds at any one time; more than 55 pounds more than 10 times per day; or more than 25 pounds below the knees, above the shoulders, or at arms' length more than 25 times per day.

The analysis again leaves me somewhat in a quandary as to really the import of the rule or exactly what its impact is and how important that is for the well-being of the employee, so that it is not an easy matter to make a calculation as to the import of those rules in terms of workers' safety contrasted with what the cost of those rules would be.

I was concerned with the information heard this morning. We had an extensive informal meeting before going to the formal hearing, when the point was made that there had been no public comment on the specific rule which related to the action level, which means the repetitive motion for a period of time, and there had been no public comment on the hazard resolution.

All of this, candidly, left me with the conclusion that there was a need for promoting worker safety; but a concern as to whether the entire matter ought to be substantially simpler.

When we talk about the enormous volume, the regulations themselves

cover 9 pages only, with 16 pages of factual backup, and then the balance of several hundred pages on analysis and hearings.

The representation was made that if an employer is to really understand the rules to find out what has to be done, that employer is going to have to read the full text in order to have some real understanding.

An additional concern I have turns on what will the effect be if this resolution of disapproval takes effect with respect to any later rulemaking. The statute in question, the congressional review of agency rulemaking has a provision:

A rule that does not take effect or does not continue under paragraph 1 may not be reissued in substantially the same form. And a new rule that is substantially the same as such a rule may not be issued unless the new rule is specifically authorized by law enacted after the date of the joint resolution disapproving the original rule.

From this language, I am concerned that a new rule may be subject to being invalidated if it is determined to be "in substantially the same form." And I am concerned about the mischief that could come from virtually endless litigation, with what whatever any new rule may be, if it conflicts with that statutory provision on interpretation that it is substantially in the same form.

I have conferred on this matter with my colleague from Oklahoma, Senator NICKLES, who referred me to a joint statement which was made on the enactment of the Congressional Review Act back on April 18, 1996, a statement made by Senators NICKLES, REID, and STEVENS, which constitutes the managers' interpretation. On page 3686 of the CONGRESSIONAL RECORD for April 18, 1996, the following language is set forth:

If the law that authorized the disapproved rule provides broad discretion to the issuing agency regarding the substance of such rule, the agency may exercise its broad discretion to issue a substantially different rule.

Then continuing somewhat later:

It will be the agency's responsibility in the first instance when promulgating the rule to determine the range of discretion afforded under the original law and whether the law authorizes the agency to issue a substantially different rule. Then, the agency must give effect to the resolution of disapproval.

The substance of this appears to state that where the agency has broad discretion, the agency can issue a new rule without falling under the prohibition of being substantially the same; that it is the agency's determination as to what discretion they have.

I contacted the Secretary of Labor, Elaine L. Chao, about this matter yesterday and received a letter from her today saying in part:

Let me assure you that in the event a Joint Resolution of Disapproval becomes law, I intend to pursue a comprehensive approach to ergonomics which may include new rulemaking that addresses the concerns levied against the current standard.

The key word there, of course is "may." So that it is within the discretion of the Secretary of Labor and

that, of course, would remain to be seen. The letter does signify, in addition to the conversation I had with Secretary Chao, her concern about the entire issue and her determination to take a very close look at it, which is some assurance but obviously not totally dispositive.

I ask unanimous consent that the full text of the letter be printed in the RECORD at the conclusion of my remarks.

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

(See Exhibit 1.)

Mr. SPECTER. Mr. President, at a caucus discussion earlier today, I had a brief colloquy with my distinguished colleague from Oklahoma, Senator NICKLES, which I would like to repeat the essence of now. That went to the issue of whether this legislative prohibition against issuing substantially the same rule would be an effective bar or, as one of the authors and having coauthored the statement of legislative intent, a new regulation would pass muster without a likely bar from the limitation of substantiality or substantially the same.

Mr. NICKLES. To respond to my colleague, I remember when we put in that language in the Congressional Review Act, we did it specifically because we didn't want to have Congress go to the trouble of overturning a regulation and then have the regulatory agency just basically come back and rewrite the same reg. That is the reason we included that language.

I have no doubt, after reading Secretary of Labor Chao's statement, that she is very concerned about ergonomics. She leaves the option open to reissuing another rule.

There are different ways of combating ergonomics without coming up with a regulation of 835 pages. If she comes up with a different approach, it will be more cost effective. It will be more effective. I have great confidence that it will be substantially different than the proposal we have before us today.

Mr. SPECTER. So the essence of the Senator's position is that the prohibition against reissuing a rule "substantially in the same form" is not a real impediment to the Secretary of Labor and of the current administration picking up the issue and coming out with a new regulation.

Mr. NICKLES. The Senator is exactly right. I have great confidence that when she addresses this, whether she uses the rulemaking process or uses other tools in the Secretary's office to address work-related injuries, including ergonomics, it will be substantially different than this. I certainly hope and expect that it wouldn't have a new workers compensation, Federal workers compensation system that would be superior to almost every State's worker comp rules.

Mr. SPECTER. I thank my colleague from Oklahoma for his response.

I have taken a few moments of the Senate's floor time today, having re-

served actually some 15 minutes, to express my concerns. I am continuing to listen to the debate. I have received, as one might expect with a constituency such as mine in the Commonwealth of Pennsylvania, a great many calls. I am continuing to weigh the issues.

I note the presence on the floor of the Senator from Massachusetts, who had an idea about the potential for a 2-year delay, which might be accomplished with an amendment to another bill, such as the bankruptcy bill. These issues are complicated. Trying to balance the interests of the working men and women of America with the interests of the employers of America, especially small businesses, trying to figure out how to have rules which are fair and just to all sides, is not an easy matter.

I have expressed the concerns I have today. I continue to weigh this matter as I listen to the floor debate.

EXHIBIT 1

SECRETARY OF LABOR

Washington, DC, March 6, 2001.

Hon. ARLEN SPECTER,  
Chairman, Subcommittee on Labor, Health and  
Human Services, Education  
Committee on Appropriations, U.S. Senate,  
Washington, DC.

DEAR CHAIRMAN SPECTER. It is my understanding that the Senate will soon consider a Joint Resolution of Disapproval pertaining to the Occupational Safety and Health Administration's (OSHA) ergonomics standard. As you are aware, the Congressional Review Act of 1996 gives Congress the authority to vitiate this standard and permanently prevent OSHA from promulgating a rule in substantially the same form.

Let me assure you that, in the event a Joint Resolution of Disapproval becomes law, I intend to pursue a comprehensive approach to ergonomics, which may include new rulemaking, that addresses the concerns levied against the current standard. This approach will provide employers with achievable measures that protect their employees before injuries occur. Repetitive stress injuries in the workplace are an important problem. I recognize this critical challenge and want you to understand that the safety and health of our nation's workforce will always be a priority during my tenure as Secretary.

I look forward to working with you throughout the entire 107th Congress.

Sincerely,

ELAINE L. CHAO,  
Secretary of Labor.

Mr. WARNER. Mr. President, if I might reply to my distinguished colleague. Earlier today I listened to him and I think he approached this issue in a very realistic and pragmatic way, particularly with his State having so much heavy industrial work in it. I am strongly in favor of the resolution.

But I am concerned about the proposition of a 2-year delay. There are a lot of people—and I will address that—who are actually at this moment suffering a consequence of their repetitive physical action. Do we really think 2 years would give Congress the time necessary to address this problem? I think we can reach an accommodation with our new Secretary of Labor addressing this and quickly get to a more realistic set of regulations to promote worker safety from these injuries.

Mr. SPECTER. Mr. President, if I might respond, I do not think it was the intention to have any delay but only an intention to keep the current rule in effect until a new rule could be promulgated or this rule might be revised. I would be very interested to work with my colleague from Virginia on an expedited process. One of the suggestions I made with the witnesses I had this morning was to have the experts come in to a hearing on my subcommittee and let's have at it. Let's have it out. I would be interested to know what the Senator from Virginia thinks might be a timetable for getting a new rule.

Mr. WARNER. Mr. President, I thank my colleague for that offer. I accept it. I am proud to represent the largest shipyard in the world. It has enormous amounts of heavy construction going on daily.

Mr. SPECTER. The Philadelphia Navy Yard was about to top you until some disaster occurred there.

Mr. WARNER. Well, until I became the Secretary of the Navy, and we began to bring that down to size.

I say to my good friend, I believe the value of this colloquy and delivery of the statements by Senators today is focused on the imperative need to stop the current promulgation of these regulations. I commend our distinguished colleague from Wyoming and our distinguished colleague from Oklahoma for taking the lead on this. I will support the resolution. I shall vote unhesitatingly today, whenever the vote is arranged. We have to commit to the workers in America that we will go to work with our current Secretary of Labor to do our very best to come up with a realistic, commonsense set of regulations. You can count on this Senator for joining in that.

Mr. President, I rise today in strong support of S.J. Res. 6 to preclude OSHA from enforcing ergonomics regulations advanced during the Clinton Administration.

This Rule is likely the most far reaching and intrusive regulation ever promulgated by OSHA. Unless Congress acts, employers will be forced to sift through over 600 pages of new and complex ergonomics standards.

The rule is full of flaws and ambiguities. As currently written, fair and just enforcement of these regulations would be near impossible for OSHA.

By disapproving this most recent OSHA regulation, it does not mean that I discount initiatives to improve conditions for workers.

I know from personal experience and Americans know from their personal experience that there are people in some workplaces who may suffer simply because of the repetitive nature of their physical work.

Those people watching this debate know there is a problem. I concur that there must be some corrective action to help these workers. I join my colleagues in asking the Secretary of Labor to review this situation and

work with Congress to develop a realistic and attainable ergonomics regulation. We have this obligation.

An ergonomics rule that is based on sound science. OSHA bases its new ergonomics standards on the assumption that all repetitive motion injuries are a result of work related factors. In fact, outside, non-work related activities often contribute to repetitive motion disorders. The necessary scientific research needed to develop effective standards is incomplete.

It is in the best interest of business owners to protect their employees and maintain a safe and healthy work environment.

Mr. President, while I believe the government has a valid role in protecting American workers, this rule is too large, assumes unrealistic thresholds, and will in the long run hurt American businesses and their workers.

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

Mr. SPECTER. While the Senator is on the floor, I want to inquire whether he, or perhaps the Senator from Oklahoma, or Senator ENZI, who has done such an outstanding job working in the subcommittee, would have any suggested timetable to which we might look on a new rule.

Mr. WARNER. I think that would be very helpful if we could have a thought from the managers of this.

Mr. ENZI. Mr. President, I want to comment on that because I am the subcommittee chairman for employment, safety, and training. I have held some of the hearings and have said repeatedly—particularly this morning—that something needs to be done on ergonomics. I am willing to work on it.

I mentioned that one of the highlights of mine last week was an award I received from the Service Employees International Union. I think that is the largest division of the AFL-CIO. The reason I got that award is that I worked with Senator KENNEDY on a needle-stick bill. Employees of this country were injured by accidentally being stabbed by needles, and janitors when emptying trash were stabbed. The worst part isn't the fact that they got stabbed but all of the time it takes before they understand whether they are really infected or not.

We got together and did a reasonable bill that provided some incentives for people to do that—a different way of doing recordkeeping and it passed by unanimous consent through both bodies. In a very short period of time, we were able to do that.

In light of your question about some kind of a mechanism here for postponing this rule for 2 years, the option is, under the CRA, of eliminating it now or staying with it. It is an up-or-down vote on that proposition, not an amendable motion. It is impossible to say we will put that in place.

I recommend that you do not keep the present one in place because some people say it is not a perfect fit and we

ought to trim it back. If you have a tree that is rotten to the core, you don't try to prune it; you chop it down and you plant a new one. If you have a house built on a bad foundation—and that is what the testimony shows—you don't try to build the top part of the house up again; you start at the basement. I think it can be done in a relatively short period of time because there has been all of this collection of information and there are people out there who are hurting.

I have said a lot of times if we actually talk to the people who have the problem, we can get a solution. We are always talking to the experts who talk to the people who have a problem. Somehow they seem to complicate those problems considerably. We haven't put in place—well, we have put in place incentives for the employers already. It was mentioned in the Senator's hearing that some of the people had a net gain by doing these things. Of course, I don't know of a businessman in this country who, if he couldn't get a net gain out of doing something good, would not do it. So already in this country people are bringing down the number of accidents. They are doing it because it is the right thing to do.

So we have a lot of support from the business community to come up with the right way to do it. As I pledged this morning, I will be happy to work with everybody on the Health, Education, Labor, and Pensions Committee, everybody who deals with appropriations—you carry a big stick in dealing with appropriations—to come up with a solution for this. We have to do it the right way.

Mr. WARNER. If the Senator will yield, Mr. President, that is the basis on which I am committed to him to do this. I am very encouraged by what you have advised. It is eminently fair. That type of attitude is one that can succeed in this Chamber and will help get through a piece of legislation which I think is needed now. We should not postpone its consideration, I think, for 2 years.

Mr. SPECTER. If the Senator will yield, I think it might be useful, if possible, to have a suggested timetable to carry to the Secretary of Labor to try to have a target date to get this done.

Mr. ENZI. While I think it is an excellent idea to have a target date, there are a lot of staff who are very competent on this who ought to be involved in putting something together so we have a work plan, and there is need for basic time for Senator KENNEDY and me and other people to spend some time talking. I don't think that putting a date on it in the pressure of a debate that is time limited is a good idea.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, our agreement is to go back and forth. I would like to be able to respond with our colleague and friend from Mas-

sachusetts losing his right to speak—to be able to respond to the questions from the Senator from Pennsylvania. Would I be permitted to speak for 4 minutes on this subject matter and then ask unanimous consent that my colleague may speak?

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, while the Senator from Virginia is here and the junior Senator from Massachusetts, let me point out what a logical response would be to the Senator from Virginia. All we have to have is the President of the United States file in the Federal Register now an objection to this particular rule and in 60 days this rule is effectively suspended.

There would be the opportunity then, if the Secretary of Labor working with the chairman of the committee had particular objections, that they would be able to make those recommendations; it would be in order. That is not what is being asked here in the Senate. We are being asked to give the death knell to this whole proposal. Under the CRA, they cannot come back with a substantial equivalent rule.

It is fair to ask what the history has been with regard to ergonomics. The fact is, since 1994 and 1995, there has been wholesale opposition to any ergonomics rules, under Republican and Democratic administrations. If you can demonstrate to me a single example where, at the Federal level or the State level, there has been any kind of support for those particular proposals from the business community that is leading the charge against it, your comments would make some sense. But it doesn't happen to be that way, and you can't show it. I won't take the time now away from the Senator from Massachusetts, but later I will take the time to go over what the history has been in opposition to this particular rule. It is right there, going back since Elizabeth Dole said there was a problem—day in and day out, battle after battle.

My good friend from Wyoming said California has a 1-page ergonomics standard, and the industry opposed that one. The Senator from Wyoming can't give us a single example of an ergonomics standard that has been supported—not one. And to think we are going to lead the American people on the basis of that exchange, that all we have to do is knock this down and in a very short period of time we will have some opportunity to consider a good, effective program that is going to protect the millions of Americans who tonight are at risk is asking too much of logic and understanding, I believe, from the American people. It "ain't" going to happen.

Mr. WARNER. Mr. President, we have a new President, a new Secretary of Labor.

Mr. KENNEDY. Then why not give it a chance? Where is this bipartisanship? We are trying to work out education,

bipartisanship on a Patients' Bill of Rights; but suddenly, 2 days later, we read in the newspaper that this is the death knell for this particular rule. Why not go back and say let's work that out? Why not withhold this particular resolution, give us, say, 60 days, 90 days, a chance to work it out, and then, if we can't, go ahead with the resolution?

You haven't even given the opportunity or the respect or the courtesy to those who support that proposal to try to even work this out. And it is putting at serious risk the well-being, the health, and safety of workers. Why not try it? OK, let's work out the minimum wage, work out a Patients' Bill of Rights. You can work out everything, but protecting American workers, that is the question we ask. Why not withhold this and give us 90 days to try to work that out? We will accept that challenge.

Mr. WARNER. Mr. President, the distinguished Senator from Wyoming—

Mr. KENNEDY. I ask unanimous consent that this not be on my time.

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

Mr. WARNER. We point out that the distinguished Senator from Wyoming, who spent so much of his career over the last year or so on this subject, clearly says it is like a house: We have to take it down to its very foundation and build it back up again. We have committed on the floor to do just this, if I understand my colleague from Wyoming. Am I correct in that?

Mr. ENZI. Mr. President, the Senator is correct. The reason we can't wait 60 or 90 days is that the CRA is time limited. Sixty working days from the time the thing was published is how long we have to reverse this rule. So we are put under the rule that was passed by everybody in this Chamber—not me, I wasn't here at the time, but everybody voted to do it that way, so that we would have the right to jerk agencies back that didn't listen.

They did not listen to anything said in the committee hearing that I held, that the Senator attended. Without cooperation, with that club of the President over his head, it was easy to see they didn't need to concede any points. That is not cooperation. That is not civility. We can get together and work on these things but not when one side thinks they hold all of the ammunition.

Mr. KENNEDY. Mr. President, if Senators wanted to have good-faith bargaining, we are glad to do it. We are glad to do it.

These recommendations represent the best in terms of the National Academy of Sciences and the other scientific organizations that have knowledge and understanding. This is special interest legislation. This is a political payoff. Make no mistake about it.

The business community has the same groups opposing this tonight on the floor of the Senate that have been opposing it since 1994—the National Co-

alition of Ergonomics, Industry Front—organized to oppose ergonomics standards with a war chest of \$600,000.

In March 1995, business groups tried to stop OSHA from developing a proposed rule for ergonomics standards; in 1995 again, National Coalition on Ergonomics opposed OSHA.

Please give an example of what you are for, Senator. Give us an example of what you are for.

It is silent over there. You haven't got an example of it. That is a reflection of the bankruptcy in their argument. They haven't had any examples of what they are for. Give us an example of what State has voluntary programs you would accept. Give us an example of an American business. We have examples of programs in ergonomics. We have not heard one statement of support for any one of them since this morning at 10 o'clock, and you will not hear it when the time comes to vote because they are not for it.

I take 15 more seconds to commend and thank my colleague and friend from Wyoming for his generous references—I think they were generous references—for our work on the needlestick legislation. I pay tribute to him because he was the leader, in the Senate on that particular issue, and I welcome the chance to work with him.

Mr. KERRY. I thank my colleague from Massachusetts for the force of his arguments which underscore the bankruptcy of the position of those who are in opposition.

I listened to my colleague from Wyoming a moment ago, and he suggested we have to do this because of the CRA. If my colleagues are serious about improving the ergonomics rule, they have a number of different options available to them. They could have a review and revision of the regulation if they wanted to. They could call on the administration to grant a stay against the regulation while further work is done to assess their concerns. They could petition the agency to modify or repeal the ergonomics standard and the Department of Labor could initiate a rule-making procedure to modify the rule.

None of those things are being engaged in here. We have all heard of crocodile tears. What we are hearing are crocodile promises about a willingness to come back and revisit this issue when it has been visited for 10 years. At every step along the way the record is absolutely replete with examples of how they have stood in opposition to any kind of rule. So when we hear them talk on the floor of the Senate today that they are prepared to come back with some kind of a rule, it is directly contrary to every part of the record of past years.

In March of 1995, the House passed a 1995 rescission bill prohibiting OSHA from developing or promulgating any proposed rule on ergonomics. Industry members of the Coalition on Ergonomics lobbied heavily for that measure.

In August of 1995, again, following intense industry lobbying, the House passed an appropriations bill prohibiting OSHA from issuing or developing any standard on ergonomics. They had ample opportunity in 1995, 1996, 1997, 1998, 1999, 2000, and even now to come up with some notion of what they are willing to accept.

As my colleague from Massachusetts pointed out—silence, absolutely no offer whatsoever. There is no need to move in the way they are moving now except, I suppose, that it is entirely in keeping with their approach to labor over the course of the last weeks.

President Bush has been in office for 7 weeks. Already he has had a pretty profound impact on the lives of workers in this country. On February 17, he signed four antiworker Executive orders that would, among other things, repeal project labor agreements which are employed at the discretion of States, repealing those so that contractors would not be required under any circumstances in many federally financed projects to be unionized—a blatant, fundamental assault on union labor.

He also dissolved the National Partnership Council which sought to get government agencies and unions to resolve their differences. Not a bad way to try to resolve the differences. That was a program we thought was working and offered a capacity to reduce the tensions. But, no, that is eliminated—revoked job protections for employees of contractors at Federal buildings when the project is awarded to another contractor. And now we are on the cusp of overturning yet another critical worker protection that would help alleviate suffering for hundreds of thousands of people.

I believe this is an assault on the fundamental rights of workers, and their fundamental right is obviously to have a safe workplace.

Twenty-one thousand people in Massachusetts were injured last year as a consequence of repetitive work motions or severe overstress as a consequence of the kind of work and movement they have in their work. It seems to me we are owed at least a good-faith offer of some outline in which our colleagues would feel this might be acceptable. What do we hear? We hear them say this law is too complicated.

Too complicated? The rule is about as simple as a rule could be. The employer has enormous leverage in this rule. The employer gets to decide whether or not a complaint by a worker is job related. The employer makes that decision. How complicated is it to empower a worker to come to the employer in a specific amount of time, draw to their attention the signs and symptoms of an ergonomic injury, the responsibility of reporting it, the employer has absolutely no further responsibility under the rule unless the employee reports that ergonomic injury and that injury lasts for 7 days after being reported.

If the employer then determined it was work related and they were exposed to a serious hazard, they craft an appropriate remedy.

That is precisely what our colleague from Wyoming just said he thought any employer in the United States would do. He just said if somebody sees a worker is hurt or if somebody saw they were going to reduce their own costs and expenses as a result of reducing their employees' exposure to danger, they would do it. That is literally what this very simple law asks them to do. Instead, we are going to go on with a situation where they could continue to delay and leave countless workers in the United States exposed to danger with a cost of injuries at about \$17 billion annually and a total cost to the economy of over \$50 billion when we measure it by the compensation costs, the workers' medical expenses, lost wages, and lost productivity.

We all understand what ergonomics are. We understand it is a fancy name for what happens to people who do certain kinds of jobs in our country that require multiple repetition of movement. We understand you can avoid these risks.

On January 18 of this year, the National Academy of Sciences and the Institute of Medicine released a report talking about these disorders. It talked about the scientific evidence that documents what these kinds of injuries do. They also pointed out the extraordinary cost to our economy.

One would think most of the businesses in the country would welcome an opportunity for a worker to simply walk up to them, explain that they believe a particular injury they have is related to the work they are doing, that it has lasted for longer than 7 days, make an evaluation about it, and then determine what they are going to do. That is all this law requires. It is not complicated.

They have also compiled a report entitled "Work Related Musculoskeletal Disorders" which summarized 6,000 scientific studies on ergonomics-related injuries, and it concluded that the current state of science shows that the people who are exposed to ergonomic hazards have a higher level of pain, injury, and disability; that there is a biological basis for these injuries, and that there exist today interventions that can protect against those injuries.

There have been 10 years of effort to try to come to the point of conclusion with respect to those kinds of injuries. Yet we are finding the resolution is not a bipartisan effort to try to pull people together and agree. It is not a bona fide effort to try to resolve the differences that may or may not exist. It is an effort to go ahead and literally kill the capacity of the agency to issue this or to revisit it.

I would like to share very quickly a couple of stories of real people in my State. At the Cape Cod Hospital, Beth Piknick was a registered nurse with a 21-year career as an intensive care unit

nurse. That career was cut short because of a preventable back injury that came from the responsibilities she was carrying out. The injury required major surgery, a spinal fusion, and 2 years of major rehabilitation before and after injury. That injury was devastating to Ms. Piknick, both professionally and personally.

Prior to her injury, she had led an extraordinarily active life. She enjoyed competitive racquetball, water skiing, and whitewater rafting, but, most importantly, she wanted to do her work and loved her work as an ICU nurse. That had been her career since 1971. The loss of ability to take care of patients led to clinical depression which lasted 4½ years. She now administers TB tests to employees at the hospital, and her ability to take care of patients, the very reason she became a nurse, is gone.

Her injury could have been prevented. So can the crippling injuries suffered by hundreds of thousands of other workers every year.

Another example—this story actually comes from *Business Week*, December 4, 2000. I quote from *Business Week*:

Sheree Lulos will never forget the night 5 years ago when her arms went numb. She had spent her 8-hour shift as usual, pouring a total of 12,000 pounds of plastic scrap onto a conveyor belt at a windshield factory in Springfield, MA. That night her arms tingled and burned. The next day she and her supervisors shrugged off the injury as temporary and she continued to work in coming months—until she could work no more.

This was not somebody looking for an excuse or a way out. She worked until she could work no more.

Doctors later told her that lifting and pouring for up to 60 hours a week, week after week, had damaged the nerves in her arms. So, today, at 44, Ms. Lulos says she can't even wash her hair without pain. "I cry in the shower because I can't keep my hands over my head to wash out the soap."

That injury also was avoidable. That injury at least ought to properly be reportable to an employer, for the employer to make a judgment about whether or not there is a relationship, a judgment that could very easily be made by a caring employer by simply listening to the employee, contacting the doctors, and making a legitimate attempt to determine whether or not there is a cause and effect between the injury the doctor has determined and that person's work.

What you have here is a message being sent that these kinds of injuries and the lives of these workers and their ability to get redress are not as important as the interests that are being served on the Senate floor in trying to defeat this effort.

An awful lot of businesses and trade associations have already implemented these kinds of programs, and they have seen productivity rise as fewer hours on the job are lost. When businesses ensure that their workplaces are safe and they protect workers from these types of injuries, the productivity across the board rises. When workers are healthy,

employers lose far fewer hours in their jobs. Programs implemented by individual employers reduce the total job-related injuries and illnesses by an average of 45 percent and lost work-time injuries and illnesses by an average of 75 percent.

These numbers mean something because they indicate results and they prove that making the workplace safe is crucial not only to increasing worker safety but also to increasing the capacity of a business to flourish.

I would like to give another example of that. A company in western Massachusetts that makes most of the paper we use to print the American dollar, Crane and Company, located in Dalton, MA, signed an agreement with OSHA to establish comprehensive ergonomics programs at each of their plants. According to the company's own report, within 3 years of starting this program, the company's musculoskeletal injury rate was almost cut in half.

Lund Silversmiths, a flatware manufacturer in Greenfield, MA, was troubled by very high workers compensation costs. One OSHA log revealed that back injuries were the No. 1 problem in three departments. By implementing basic ergonomic controls, lost workdays dropped from more than 300 in 1992 to 72 in 1997, and total workers compensation costs for the company dropped from \$192,500 in 1992 to \$27,000 in 1997.

So all this talk about workers compensation costs or the cost to business going up simply does not stand up against the measured examination of what has happened in those companies that have seen fit to try to raise their standards and respect the injuries that are done to workers through certain kinds of work.

The changes envisioned by the law we are voting on actually increase productivity. It saves businesses money and makes more money for our economy overall. This standard is a win-win for workers and for management. The fact is, it is almost common sense, if you examine the experience of most of those companies that have engaged in a reasonable approach to it.

I have heard some complaint on the floor by some people who try to suggest this supersedes workers compensation laws. The fact is, the provisions of this standard are not compensation, they are assurances that workers are not going to face financial disincentives to report muscular disorders. Work restriction protection, in stark contrast to workers compensation, is only a preventive health program, and the criteria for restrictions under the ergonomic standard have no relationship to the criteria for compensation, nor do they have any bearing on whether an injury or an illness is compensable.

OSHA has been including work restriction protection in its health standards for more than 20 years, and we know, as others have pointed out, the attorneys general of some 17 States—

Arkansas, California, Colorado, Connecticut, Georgia, Indiana, Iowa, Kentucky, Maryland, Minnesota, Mississippi, Missouri, New Mexico, New York, Oklahoma, Washington, and Wisconsin—have all filed comments with OSHA stating that worker restriction protection provisions of the ergonomics standard would not affect or supersede the workers compensation laws in their States.

To the best of my knowledge, there is no attorney general on record saying that it will.

The ergonomics regulation is not a new phenomenon. And it is not somehow the latest fad that represents some effort to try to enlarge rights beyond what they ought to be in the workplace.

Ten years ago, as we have heard, under a Republican President, Secretary of Labor Elizabeth Dole committed the Department of Labor to begin working on this standard. That was in response to a growing body of evidence at that point in time which showed that these repetitive stress disorders, such as carpal tunnel syndrome, were the fastest category of growth in occupational illnesses. Ten years now, and all of the records show countless numbers of efforts to prevent a legitimate initiative to make progress on this issue with any kind of alternative, any acceptable language, anything that suggests legitimacy in an effort to work out a compromise.

So many of us are, indeed, extraordinarily skeptical when we hear in the Chamber today that somehow what has not taken place for 10 years, what has been shown to be exactly the opposite of what is promised, which is an outright effort to kill any kind of standard whatsoever, is suddenly now going to be replaced by some act of good faith.

I repeat, if there was a legitimate effort to try to avoid the sort of draconian measure of the Congressional Review Act, which is an all-or-nothing, or an up-or-down vote, with this limited amount of debate, we could have done something else. If we were serious about improving the ergonomics rule, we could have simply taken action to review and somehow revise the regulation in a reasonable way. We could see the administration say we are not going to ask for this draconian effort on the floor. Why don't we have a stay? Or, as my colleague from Massachusetts pointed out, we could have, I think, a 60-day period before the implementation by merely putting a protest in place.

There are any number of ways in which we could approach this question. We could petition the agency itself to modify or repeal the standard.

But, once again, there has been no showing whatsoever about why the simple standard of a worker going to an employer and suggesting that the particular illness or problem they have is work related should not initiate from this benevolent employer that the Senator from Wyoming is referring to,

a legitimate effort to find out whether what they asked that employee to do in that plant is somehow causing them injury. If it is causing them injury, as they ought to be able to determine by a fair analysis from medical reports as well as an analysis of the work itself, they could make the determination to do what they think is appropriate.

There is no order to them of what to do. There is no mandate from Washington. There is no requirement of the long arm of government telling them with specificity what their options are. There is just a legitimate, common-sense, decent approach to the problems of a worker in a workplace that, as my colleague from Wyoming said, any decent employer ought to engage in.

What is happening here is an effort to deny decency to tens of thousands in Massachusetts, 600,000 on a national basis—maybe a million workers—who suffer annually. We could avoid that if we were to vote properly on the floor of the U.S. Senate.

I yield the floor.

**THE PRESIDING OFFICER.** The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I yield to the Senator from Louisiana 7 minutes, and then I ask unanimous consent to recognize the Senator from Ohio, Mr. VOINOVICH, for 7 minutes following Senator BREAUX's remarks.

**THE PRESIDING OFFICER.** Without objection, it is so ordered.

Mr. BREAUX. Mr. President, I thank my colleague for yielding me some time.

I rise as one who is going to support the resolution of disapproval but at the same time also speak to the fact that I think there are problems in the workplace that justifiably call for us to be involved in crafting solutions which would reduce or even eliminate those problems.

I am impressed by the study of the National Academy of Sciences which, incidentally, came after some final regulations were already promulgated, which point out that it is a problem that affects as many as 1 million people a year losing time and costing as much as \$50 billion annually in lost productivity.

Yes, there is a problem out there. Yes, there should be something we can do to address it. I suggest that while there is something we could do, this is not the right approach. It is the reason why I am going to support the resolution of disapproval.

My colleague mentioned that this rule is very simple and easy to understand. I would suggest that is not correct.

I was reading it. It is always dangerous when you actually read these regulations. I read the regulations, and I got to one part where it said, "Industries and jobs this standard does not cover." That will be interesting. Let me read that. It says, "Industries and jobs this standard does not cover. Agricultural employment and operation."

I said: My goodness, we are exempting agriculture from the regulations.

I went to another section, and it said, "Industries and jobs this standard covers." Lo and behold, it covers agricultural services, soil preparation, and crop services, including crop planting, cultivating, and protecting the crops. It also improves crop harvests. Those things sound an awful lot like agricultural practices to me. Yet in the other panel it says, agricultural employment and operations are not covered. But everything you have to do to plant crops and harvest them and protect them is, in fact, covered.

I went down and read some more. It says, "Maritime employment and operations are not covered."

Then I looked over to the other column. It said, "Boat building and repair is covered." That is sort of a maritime type of industry if there ever was one.

So I read it again. It said, "Maritime employment and operations are not covered." Commercial fishing in the other column is covered. That is sort of a maritime endeavor when you are commercially fishing in the ocean.

I get confused when it says shipbuilding and repair is not covered but, on the other hand, boat building and repair is covered. If it is a ship, you are not covered, but a boat is covered.

If you are an agricultural worker, you are not covered. But if you are engaged in crop harvesting, planting, and protecting a crop, then you are covered.

By any measure, I think this is not clear. It is not simple; it is very confusing.

More than that, I am concerned about an administrative procedure or process where we can do by administrative decision what legislators who are called upon to legislate cannot do to see how what we do affects people because I think it clearly affects a State's workers compensation laws. I am very concerned about that.

If you go to the back of the rules that we are looking at, it very clearly says something I think is understandable. It says, "Work restrictions protection: Employers must . . ."—not may, not can, not should but "employers must provide work restrictions protection to employees who receive temporary work restrictions."

This means maintaining 100 percent of earnings and full benefits for employees who receive limitations on their work activities in their current jobs or transferred to a temporary alternative duty job, and 90 percent of the earnings and full benefits to employees who are removed from work. That is good for 90 days or less, whichever comes first.

That tells me they may not replace your State workers compensation rules, which, in my State and most States, provide about two-thirds compensation for injuries in the workplace, which I strongly support, but it certainly is in addition to it. It is a supplement. It is more than the workers compensation laws provide. You have the workers compensation laws taking

care of certain types of problems in the workplace. Then you have an entirely new program that States are going to have to implement. And who is going to pay for it? Is the State going to be required to put up their share for the new program? Do the States have the money to do that? How much is it going to cost Louisiana, which is struggling to find enough money to participate in the Federal Medicaid program, because we did not have enough State funds to meet or match this? They look at an unfunded mandate, an additional supplemental benefits package that we have not enacted in Congress but that has been allowed to go forward because of an administrative rule process which I think is the wrong way to do it.

I differ from some who say, we don't want to do anything. I think we should do something to address these rules. I will be addressing legislation tomorrow in a bipartisan fashion which will say that, notwithstanding any other provisions of law, the Department of Labor may issue a new rule relating to ergonomics, so long as there are affirmative requirements and the new rule does three things: First, that it is directly related to injuries that occur in the workplace. That is what we are trying to effect.

I do not want someone who is injured in a water-skiing accident on Sunday to go to work on Monday and complain that the back problem was generated in the workplace. If it was in the workplace, fine, but if it was from something outside the workplace, and not directly related to the injury, I question whether it should be part of the process.

The second requirement of the legislation will be that the agency responsible for enforcing this new rule must have some type of mechanism to certify when an employer is in compliance. Right now, one of the big concerns is that employers do not know whether they come under the rules or not. There should be some mechanism to ensure that when they are in compliance, they can get certified by the appropriate agency that they have met the standards and should not be subjected to any other action because they have been certified as being in compliance.

The final thing it does is it says simply that in issuing a new rule, the Department of Labor shall ensure that nothing in the rule expands the application of State worker compensation laws. This goes back to the question of putting in new provisions, new monetary provisions, for workers without having the Congress take an action in that regard.

This is a new supplemental workers comp program that this rule establishes. I do not think we ought to do that without an act of Congress. We can argue whether it should be done or not.

I think this legislation really answers the question of whether we do all of this or whether we don't do any-

thing. I am suggesting we do something that makes sense. I think the way to get to this legislation is to pass the resolution of disapproval of what I think has been a rule that has been brought to this body but without the proper attention to detail that I think is so important.

I yield the floor.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER (Mr. SMITH of Oregon). Under the previous order, the Senator from Ohio is recognized.

Mr. NICKLES. Will the Senator yield for a moment?

Mr. VOINOVICH. Yes.

Mr. NICKLES. I thank my friend and colleague, Senator BREAUX, for his analysis, and also for his well-thought-out position. Also, I thank Senator DORGAN for his cooperation in scheduling the speeches.

I now yield to the Senator from Ohio as much time as he desires—7 minutes.

Mr. VOINOVICH. Mr. President, I thank the Senator from Illinois for his consideration.

I might say that my remarks were not done in conjunction with Senator BREAUX from Louisiana, but they are similar to the points he made today.

On November 14 of last year, OSHA published one of the broadest, most far-reaching regulations ever put forth by that agency. OSHA and other supporters of the ergonomics regulation have indicated that implementing this regulation is necessary to protect the health and well-being of the men and women of our Nation's workforce. This would be accomplished by establishing procedures designed to lessen the incidence of repetitive-motion injuries and other musculoskeletal disorders, or MSD's, in the workplace.

In my view, OSHA's efforts to safeguard the workplace against these kinds of injuries ultimately will prove more harmful than helpful to hard-working men and women throughout the Nation. In addition, this new rule could actually have the unintended consequence of hurting the people it is designed to help.

When one takes a closer look at how the regulation was developed last year, and at the provisions of the regulation itself, it is not surprising to see that the Senate is poised to vote to disapprove this regulation.

To be sure, OSHA has never finalized a rule of this magnitude in just 1 year's time. This final regulation is over 600 pages in length, and its impact covers more than 100 million employees and 6.1 million businesses in the United States. Even prior to its final publication, many employers had complained to me and to OSHA about the draft regulation's excessive length, confusing language, and potentially onerous mandates.

Despite having generated more public comments than any prior OSHA rule in history, the Clinton administration's OSHA appointees rushed through the rulemaking process. There has been

some speculation that these appointees believed that quick action was the only choice they had to get the rule finalized.

These individuals at OSHA even managed to thwart the will of Congress, which approved an amendment last year delaying implementation of the regulation for 1 year. This "in-your-face" attitude was deliberately confrontational. It was as if the previous administration said: We don't care what Congress wants, we are going to do what we want anyhow, and that's the way it goes. In their undertakings, they ignored legitimate concerns voiced by Members of Congress and the business community and ram-rodded this controversial, burdensome and exceedingly costly regulation.

On the subject of cost—I think this is an important issue—we have no real "hands-on" figure. OSHA estimates the cost complying with the regulation will be \$4.5 billion annually. The U.S. Small Business Administration—not the NFIB or the U.S. Chamber of Commerce, but the Federal Small Business Administration—has estimated the true cost of the regulation could be about \$60 billion per year. And other analyses puts the figure as high as \$100 billion annually.

Why has this rule caused so much controversy? Well, under this new rule, an employer would be required to implement a full-fledged ergonomics program if an employee were to report a symptom—a symptom—of an musculoskeletal disorder, as long as the symptom is aggravated, but not necessarily caused by workplace tasks.

In other words, if an employee comes to work with a sore neck from playing sports over the weekend, and his or her work "aggravates" the symptom, then an employer would have to develop a whole ergonomics program.

This could require employers to change an employee's workstation, change his or her equipment, shorten shifts, hire additional employees, or alter work practices. So, the employer is responsible for all of these changes and their costs even if the symptom is caused by factors or activities that exist outside of the workplace.

But there is more. In responding to a symptom of a musculoskeletal disorder, the employer must pay for visits to up to three separate health care professionals by the employee complaining of the symptom. However, the rule prohibits the diagnosis from including any information about the condition that may have been caused by factors or activities outside the workplace.

In fact, an employer can't even inquire about an employee's outside risk factors. That is absolutely incredible.

I am especially concerned about the regulation undermining a State workers' compensation systems, which is prohibited under the Occupational Safety and Health Act. For instance, if a condition is determined to be work-related, the employer must provide full

benefits and 100 percent of an employee's pay for up to three months while he or she is in a light-duty job, or 90 percent of pay and full benefits while not working. This is known as the regulation's Work Restriction Protection provision. This provision completely overrides the state's right to make its own determinations about what constitutes a "work-related" injury and what level of compensation injured workers should receive. What's more, it establishes a federally-mandated workers' compensation system for ergonomics only.

Ergonomics remains an uncertain science. While a recently completed National Academy of Science study reveals that musculoskeletal disorders are a problem in the workplace, much remains to be learned about the causation and potential remedies associated with repetitive-motion injuries. In fact, the National Academy of Sciences' study indicated that a number of non-work related "psychosocial" conditions, including stress, anxiety, and depression, could cause these conditions.

The tendency I see in Congress and in Washington is the belief that no one but Washington cares about the citizens of this Nation—not the local governments, not the State governments, and most definitely not the businesses. I think that is insulting.

It is ludicrous to think that State and local governments do not care, and any employer worth his or her salt is going to go out of their way to create the best working conditions for their employees. These individuals will do whatever possible to cut down the costs associated with work-related injuries and absenteeism.

As Senator KERRY from Massachusetts said, many businesses have gone forward with ergonomics programs. They know it is good for their employees, and they know it is good for the bottom line.

In fact, prior to the regulation's publication, many employers had voluntarily implemented workplace ergonomics programs. These programs are having an effect; OSHA itself has reported a 22 percent decrease in ergonomics injuries in the last five years. But what supporters of this regulation are saying is, even though more and more businesses are realizing that ergonomics is a good thing to do, we need to mandate a "heavy-handed" set of rules on the entire Nation and not think about the consequences of these actions. In my view, if they had, they would not have rushed through a regulation that will admittedly cost billion and billions of dollars to implement.

Instead, Congress and the administration need to take a more careful and balanced consideration of ergonomics in the workplace. We should be working with all parties—American businesses, labor, and State and local governments—to develop a workable ergonomics standard that considers all

costs and benefits and protects the health and welfare of the American workforce. I believe such an approach would be the most effective solution to the situation that Congress is faced with today.

Passage of the resolution before the Senate will give us the opportunity to proceed with a clean slate instead of letting stand a regulation that is burdensome, confusing and unsound.

I'm confident that, working with our new Labor Secretary, Elaine Chao, with the Bush administration, with my Congressional colleagues and other interested parties, we can come up with a better way to approach this issue.

Mr. President, I urge my colleagues to vote in favor of this resolution of disapproval.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I rise in opposition to the resolution before us related to ergonomics.

First, about the word "ergonomics." It sounds like a course that one intentionally skipped in high school, but it is much more serious. It relates to a worker's injury on the job, a worker's injury that, unfortunately, affects in America every year a million people who take time away from work to treat and recover from these work-related ergonomic injuries.

I come to this debate perhaps in a little different position than some of my colleagues because I come to it with some work experience in my life that has familiarized me with this problem as well as experience as an attorney representing people who have been injured on the job. When I was a college student, I worked in a slaughterhouse in East St. Louis, IL, Hunter Packing Company. It was a great job for a college student because it paid pretty well, but it was a tough job. It was dirty. The hours were long. I went to it every day realizing I was saving enough money to get through school.

In the 12 months that I worked in that slaughterhouse, I came to understand what it means to work on an assembly line. It was a hog production facility. The hogs that were brought forward for slaughter and processing were on a chain. The union I belonged to, the Meat Cutters and Butcher Workers, had negotiated a contract with the packing company. The contract said that 1 hour's work equals 240 hogs. During the course of a day of 8 hours, we were expected to process 1,920 hogs. Of course, if we could speed up the line, we might get off work in 6 hours. Every day we tested ourselves, or someone did, to see how fast we could process those hogs to go home.

The line would break down. We never quite knew what would happen. Day after day I would stand there on this line and watch these animal carcasses come flying by as I did a routine job on every single one of them. I was one of many employees in that facility.

I came to respect a hard day's work, the men and women who got up every

day and did this. I also came to respect the danger of that job. Some of the dangers were obvious. On that line one day a man I was standing next to passed out and was taken away; he died of a heart attack. Other people cut themselves with knives. Others suffered back injuries, neck injuries, and injuries to their hands. I would see this every single day. I came to appreciate a little more than some that working for a living in America can be dangerous unless there are people to protect you. In this case the protection came from a labor union doing its best to make the workplace safe.

It also came from Congress and the State legislatures that were responsible for a safe workplace. I came to appreciate that responsibility when I was elected to Congress in 1982 and to realize that I have a burden and a challenge, as a Congressman and a Senator, to make certain that the laws we pass are consistent with maintaining the safety of the workplaces across America.

My second experience, as an attorney in Illinois, was on workers compensation claims. I have listened to some of the statements made on the floor of the Senate today. I have to shake my head. Some of the people who are arguing against this bill have literally never tried a workers compensation case. For instance, there have been arguments made that under this ergonomics rule, it is not necessary that one is injured in the workplace to recover.

Time out. One of the first premises, when you go to a workers compensation case for someone injured on the job, is whether or not you were an employee. That is the first question. The second question is whether or not your injury was work related. If you can't get past those two hurdles, your case is thrown out, period.

Many of the employers on the other side of these worker injury cases tried to argue that the person wasn't an employee or doing an employee function at the time of the injury or, if he had an injury, it happened someplace other than the workplace.

That is not going to be changed by this ergonomics rule. What this rule will do is establish a standard of care for employees across America. A million American employees each year lose time from work to treat or recover from the injuries we are discussing. These injuries account for fully one-third of all workplace injuries that are serious enough to keep workers off the job—more than any other type of injury.

Those who oppose this rule and will vote for this resolution of disapproval are ignoring this reality. They are saying that regardless of the injuries to American workers, we should do nothing about it, nothing. The net result of voting for this resolution of disapproval is to put an end to the debate over whether we will continue to protect workers at America's workplaces.

That is a sad commentary. It is a sad commentary on this Congress—which started off with all sorts of promise, an evenly divided Senate that would work in a bipartisan fashion—that here, in one of its very first actions, it has decided to remove a protection in the workplace for millions of American workers.

The cost of these injuries is enormous. Many companies come by my office and argue that they just can't afford to make the changes necessary to make their workplace safer. We estimate it would cost about \$50 billion a year, these employers are currently paying out, for people who are injured in the workplace. There is no money being saved in an injured employee. Not only does it damage or even destroy the life of the worker, you lose the productivity, skill, and experience of that worker, and you pay for attorneys and for doctors and for compensation for that injured employee. It is penny wise and pound foolish for business to ignore the fact that safety in the workplace is profitable, profitable not only for the business but for all the people who work there.

Yet the business interests that have lined up today to defeat this have, frankly, turned their back on that reality. I am not surprised, when I look at what has happened over the last several weeks with the new administration, that this attack on the protection of workers in the workplace is coming to us today for consideration. We have already had a number of decisions made by the new Bush administration which have been clearly against the best interests of working men and women.

On January 31, the Bush administration suspended for at least 6 months the contractor responsibility rule. This was a rule finalized at the end of the Clinton administration and already in effect which required Government contracting officers to take into consideration a company's record of complying with the law—civil rights laws, tax laws, labor laws, employment laws, environmental laws, antitrust laws, and consumer protection laws—before awarding a Federal contract.

I introduced a bill in the 106th Congress that would have done essentially what this rule did. I believe if you break the law with regard to someone's civil rights, if you harm the environment, or if you defraud the Federal Government, you should not be able to compete for Federal contracts.

It is curious to me that one of the first acts of office by President Bush was to literally suspend this law for 6 months. With a stroke of the pen, President Bush has said it is OK to defraud the Federal Government, to pollute our Nation's streams, and then go on and bid for Government contracts, to be considered a good corporate citizen when it comes to awarding contracts that pay tax dollars.

Along with my colleagues, Senators KENNEDY and LIEBERMAN, I sent a let-

ter to OMB Director Mitch Daniels asking him why the administration took this action. I have not received a response.

This points out the mindset of this administration; that when it comes to businesses that break the law, they are prepared to look the other way. Sadly, this is part of the argument being made today. If a business decides to have an unsafe workplace and employees are in fact injured, it is the belief of some that it is none of the Government's business; that we should somehow absent ourselves from the discussion. I believe otherwise.

Let me tell you about a couple other things that have been done by the Bush administration in the early days. One of them relates to project labor agreements. Project labor agreements are nothing new. They have been around since 1930. They are negotiations at the outset of a Federal, State, or local construction project between contractors, subcontractors, and the unions representing the crafts that are needed on the project. Under a project labor agreement, or PLA, they try to reach an agreement on the terms and conditions of employment for the duration of the project, establishing a framework for labor management cooperation.

These project labor agreements have been around for 70 years. They benefit the Federal Government and the taxpayers because they dramatically lower the cost of construction projects for these taxpayers.

So what did President Bush do about these project labor agreements? He repealed them. Gone. With the stroke of a pen, President Bush eliminated project labor agreements. He even received a letter from a Republican Governor, John Rowland of Connecticut, urging him not to repeal it. Let me quote John Rowland's position on project labor agreements:

Public sector labor agreements have been in use for over seventy years and have proven to be extremely valuable tools used by public entities to manage large construction projects.

President Bush ignored the Governor of Connecticut. He ignored 70 years of precedent. He decided that instead of pushing for labor-management cooperation for the benefit of taxpayers, he would eliminate these project labor agreements.

Mr. President, I ask unanimous consent to have the letter from Governor Rowland printed in the RECORD.

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

DEAR PRESIDENT BUSH: It is my understanding you are considering issuing an Executive Order that may impact project labor agreements on federally financed or assisted construction projects. Public sector project labor agreements have been in use for over seventy years and have proven to be extremely valuable tools used by public entities to manage large construction projects. The State of Connecticut has successfully implemented project labor agreements for

many public projects that came in ahead of schedule and under budget.

Project labor agreements provide many economic benefits to the government owner. PLAs eliminate any uncertainty with respect to the supply of and cost of labor for the life of the project. This can generate significant cost savings and is especially important at the present time when there are substantial shortages of skilled construction workers. PLAs set standardized conditions and predetermined wages for all crafts on the project. This allows contractors to bid the work with labor as a constant.

With the greater certainty of estimated costs, cost overruns and change orders are reduced, keeping final expenses closer to the estimated cost of the project. Access to an immediate supply of skilled craft workers results in the likelihood that jobs will be completed on schedule. In addition, PLAs are negotiated to reflect the special needs of a particular project, including specific hiring requirements for local residents and minority and female employees.

Past experience supports the use of PLAs. Huge federal projects such as the Grand Coulee Dam in Colorado, the Shasta Dam in California, the Oak Ridge Reservation in Tennessee, Cape Canaveral in Florida and the Hanford Nuclear Test Site in Washington State were all built under project labor agreements. More recently, the PLA used on the Boston Harbor Project is credited with helping reduce costs from \$6.1B to \$3.4B, with 20 million craft hours worked without time lost to strikes or lockouts.

I hope you will see the benefit of implementing project labor agreements in our nation's large construction projects.

Thank you for your consideration of this important issue.

Sincerely,

JOHN G. ROWLAND,  
Governor.

Mr. DURBIN. The President also, in the first few days he was in office, on February 17, signed an Executive order requiring Government contractors to post notices stating that employees cannot be required to become union members in order to retain their jobs, and that those who don't join the union may object to paying the portion of agency fees that aren't related to collective bargaining. Contractors who fail to comply with this Executive order and fail to post these notices can be barred from bidding on Government contracts.

Interesting, isn't it? The President has said if you violate environmental laws, civil rights laws, or employment laws, we will still want you to do business with the Federal Government. But if you fail to post a notice in the workplace advising people they don't have to become union members to work on the job, you can be disqualified from Government contracts.

Another Executive order—the third one—rescinds a 1994 Clinton administration order requiring building service contractors in Federal buildings who have taken over work previously performed by another contractor to offer continued employment in the same jobs to qualified employees of the displaced contractor. Typically, we are talking about low-wage workers, janitors, or cleaning crews who will now lose jobs on Federal worksites when the Federal Government changes contractors.

The list, I am afraid, goes on. The message is clear for working men and women: This new administration takes a totally different view on protecting workers in the workplace than the Clinton administration of the last 8 years. Whether it is holding contractors of the Federal Government to the standard of obeying the law, whether it is making certain that we protect low-wage workers in the workplace, these sorts of things are not going to be held sacred nor protected by the Bush administration.

Here we come today to the floor with this whole question about safety in the workplace. This question of ergonomics is one that has been debated at length. It pains the Republicans, who by and large oppose this ergonomics rule, to realize that the first Secretary of Labor to point out this national problem that needed to be solved was none other than Elizabeth Dole, the wife of former Senator Robert Dole, and certainly a loyal Republican. She understood, as Secretary of Labor, that these injuries were important enough to merit study by the Federal Government in the promulgation of rules and standards to protect workers in the workplace.

But no sooner did she make this proposal than the business interests who were opposed to this protection of workers started a crusade against them. A crusade usually resulted in delaying the rule going into effect or demanding a study to justify the rule in the first place.

These ergonomic injuries, to date, have injured over 6 million workers in America. They range from such things as carpal tunnel syndrome, which many people have suffered from, to severe back injuries and disorders of the muscles and nerves. According to the Bureau of Labor Statistics, ergonomic injuries account for 34 percent of the injuries that caused employees to miss work in 1997. Truck drivers had the highest median days—10—away from work. Electricians, plumbers, pipefitters, and transportation attendants, each had 8 days.

Women are disproportionately affected by ergonomic injuries. In 1997, women made up 46 percent of the workforce and accounted for 33 percent of workplace injuries. Yet they accounted for 63 percent of repetitive motion injuries that resulted in lost time. Eighty-six percent of the increase in injuries due to repetitive motion are borne by women; 78 percent of the total increase in tendinitis cases were suffered by women.

I have one example, the nursing profession, a profession in which we are having a difficult time filling vacancies, which alone accounted for 12 percent of all of these types of injuries reported in 1997.

It is estimated that 25 to 50 percent of the workforce are Hispanic and African American workers. So minority workers will be particularly disadvantaged by the passage of this resolution

ending this workplace safety. Who has endorsed this ergonomics standard? Former Labor Secretaries Elizabeth Dole, Robert Reich, and Alexis Herman; the American Nurses Association; the American Academy of Orthopedic Surgeons; the National Academy of Sciences; the American Public Health Association; the National Advisory Committee on Occupational Safety and Health; and many others.

Tom Donahue is currently the President and CEO of the U.S. Chamber of Commerce. It is no surprise that he opposes this ergonomics rule. He said in his quote that the rule is “one of a flurry of onerous midnight regulations hastily enacted by the outgoing Clinton administration.”

I disagree with Mr. Donahue. To say this rule just arrived on the scene at the last moment is to ignore 10 years of history.

I guess, beyond that, back in 1979, President Jimmy Carter appointed a person at OSHA to look into these types of injuries. It has been said by Mr. Donahue and the Chamber of Commerce that the ergonomics standard is not supported by sound science. But after thousands of studies, literally 2,000 studies, including two by the highly respected National Academy of Sciences, the numbers are in; the data is there. The real life stories weren’t just flukes. We can’t ignore the fact that there is strong scientific evidence that certain activities in the workplace lead to injuries that cause pain, suffering, and loss of work.

Let me also point out the Chamber of Commerce says the standard in this rule is impractical; that it applies “to any job that requires occasional bending, reaching, pulling, pushing, and gripping.” That is not the case. This ergonomics standard does not apply to agriculture, construction, and maritime industries, as well as most small businesses across the country. Also, the Chamber of Commerce has grossly exaggerated the cost of compliance with this ergonomics standard, saying it could cost as much as \$886 billion over 10 years.

This is not the first time the Chamber has inflated the cost of a Federal standard to protect workers in an effort to defeat it.

It appears today they may have the votes to get the job done based on dubious statistics. The real average cost for an employer to change the workplace to make it ergonomically correct and safe is \$150. A single injury claim by a disabled or injured employee can be approximately \$22,000. Penny wise or pound foolish? Will we protect workers by sending them home safe and healthy at the end of the day by making a slight change in the workplace or will we invite injury and say we will pay the lawyers and the doctors and let the workers’ lives be forgotten.

This Congressional Review Act, which brings us here today, was one of the vestiges of the so-called Contract “on” America that was promulgated by

former Speaker of the House Newt Gingrich in his glory days. It appears that the Gingrich ghost is still rattling around the U.S. Capitol because if the components of this ergonomics rule have been waived, we will with one fell swoop put an end to this rule for perpetuity, or at least during the duration of the Bush administration.

This resolution cannot be amended or filibustered. A Senator can’t put a hold on the resolution. No more than 10 hours of debate are allowed and it passes with a simple majority. You wonder where the Republicans in the Senate and President Bush will turn next.

In the past, they have said they want to eliminate overtime. They think the 40-hour workweek is not sacred. People should work more than that and not be paid overtime. They have come up with the Team Act which basically allows those who are antagonistic to organized labor to organize around them. They have called for something called paycheck protection to take away the power of individual members of labor unions even to contribute to political campaigns to support the candidates of their choice.

I am afraid this resolution and this debate really tells us that working people in America are in for a tough time over the next 4 years. It certainly reminds us that elections have consequences, and that if a President who is elected has no sympathy for the working families; that the election of the President can change the course and direction of our policies in protecting workers in the workplace.

It is a sad commentary that we have forgotten how important it is that we who enjoy the benefits of a great economy must always realize that there are hard-working men and women who get up every single day and go to work, do a good job, and only expect the basics—fair compensation for hard work, no exploitation in the workplace, and a safe place to work.

The Republicans on the floor—a few Democrats will join them—have forgotten the third one, the requirement for safety in the workplace. For them, these are faceless people who are just statistics. They are “business costs” to be borne. I think it is much more. It is a question of whether, in fact, we value labor.

In my own home State of Illinois and some of the cases I am aware of we have had workers—mothers, for example, with small children—who worked for a company for many years, lifting things from one place to the other, different sizes and weights of boxes, including Madeleine Sherod of Rockford, IL. At Valspar Corporation, which makes paint, she was lifting cartons of paint back and forth with a weight of 20 to 90 pounds each. She performed this job for at least 13 years. Her first injury occurred about 15 years ago, and she was diagnosed with carpal tunnel syndrome. She had surgery to relieve the pain.

As a mother of five, her ability to perform the normal tasks as a parent were hindered. She was unable to comb her daughter's hair, wash dishes, sweep floors, and other day-to-day tasks working moms must perform.

A few years after working there, she had another injury and was diagnosed with tendonitis and had tendon release surgery. And even today, she wears a wrist brace to strengthen her wrist. Being extra cautious is part of her everyday life.

She recently found a lump on her left wrist and is preparing for a third surgery.

The reason I raise this is that the workers at Valspar, and at companies across America, deserve protection in the workplace.

Another business very near Rockford, IL, in the town of Belvedere, is an assembly plant for the Neon automobile owned by DaimlerChrysler. I visited that plant several years ago. I was impressed with all the robots, shiny cars, and the good work ethic in the plant. I came back a few years later and was impressed even more to find they had changed the workplace to make it easier so workers would not have to bend down to pick up a fender for construction of a car, and they would not have to jump into an automobile on the assembly line and try to wrestle an instrument panel in place. Things had changed in the workplace. A few simple machines resulted in a much easier workday for the men and women who work there.

I salute DaimlerChrysler and other such companies that have made changes in the workplace that are in their best interests, too. Healthy, productive employees are the best thing a company can have. To ignore that reality, as was the case with Valspar, is to invite injury and pain for the workers, less productivity, more cost for medical bills and for worker compensation claims.

Perhaps the Republicans who are opposing this work safety rule don't realize it, but they are increasing the costs of business. They are making workers' injuries a compensable charge against any visit that will cost them in terms of how much they have to spend to be successful.

I salute not only DaimlerChrysler but also Caterpillar Tractor, the largest manufacturer in my State, which from 1986 to 1989 started noticing a high incidence of back injuries. They went into their plants at a worker training program, made changes in the height of worktables and fixtures and eliminated excessive employee bending and twisting. New tool designs were put in place, new materials to reduce lifting and repetitive motions. As a result of that decision and that effort by Caterpillar Tractor in 1990, the incidence of back injuries decreased by 27 percent.

DaimlerChrysler, as I mentioned earlier, over a 3-year period during which one million instrument panels were in-

stalled, had no workers compensation claims reported. Installation of the panel can now be performed by two employees instead of five or six.

A pharmaceutical operation changed their work processes and found out by 1994 that lost time accidents had decreased from 66 to 4, and recordable injuries decreased from 156 to 60. Workers compensation losses decreased tenfold. A safe workplace is a good investment. It is not only the moral thing to do; it is an economically smart thing to do.

The President, with his Executive orders, and the efforts by my Republican colleague here to eliminate this ergonomics rule, basically try to turn their backs on this reality.

I will vote against this resolution. I feel I have an obligation to the men and women working in my State to make sure their workplace is safe, that they come home from that workplace after a hard day's work well compensated and well regarded. I don't believe employees in this country are disposable items. These are real live men and women trying to raise families and make this a great nation. For us to ignore that on the floor of the Senate and to repeal this ergonomics rule is to turn our backs on worker safety. It may be the first time in the history of this country since the days of Franklin Roosevelt we have decided to take a step backward in protecting the men and women who go to work every day.

If you value work, you should value workers. If you believe a safe workplace is a good standard in a country as good as America, you should vote against this resolution.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. BURNS. Mr. President, I have been listening to this debate most of the afternoon. I have heard three or four of the speeches on the floor this afternoon and listened to those who oppose what we are doing with this rule, as if they are the only ones who worked in their lives.

When I was a young lad on the farm, I would have loved to have had this rule that says you can only lift 25 pounds 25 times a day. I would get my hay work done pretty quickly. Those bails weighed 75 pounds, and if I only had to move 25 of them a day and the day was ended, you were done, I would have gone for this in a big way.

I pay special recognition to my friend from Wyoming, Mr. ENZI. His work on the Small Business Committee and his work in this issue has been stellar. Ergonomics and this rule caught the scrutiny of a lot of folks who serve in this Congress. It would have gone on had it not been for one thing: the disingenuous approach by the previous administration to put this rule into place.

These rules and regulations are being enforced and were put in place by Presidential fiat, not by legislation passed by a national Congress. In the principle of self-government, this is exactly the

wrong way we represent the people of this Nation. This particular rule is being objected to by so many in Congress not over whether it is basically bad or basically good. It is because of the way it was done.

The Labor Department put out a rule for comment. We remember that rule. But when the rule was finally put in and after the comments were received, after all that was done, what went into the Federal Register was a bill or rules and regulations of a different order.

It was written by unelected Federal employees who were accountable to no one. Everybody says it is 10 years of work, and 9 weeks of taking comment, and then on to the Federal Register. The problem is there are 600 pages issued on a rule that probably will in some way or other be amended to take care of ergonomics in the workplace.

My State of Montana just came out of an era of 15 years of a workers compensation fund that was under attack.

It was costing the citizens of Montana an unreasonable amount of money because of lump sum settlements. Eight years ago, a new Governor took over and did some things to make it right, to make it affordable.

I was a county commissioner. We had a nursing home that was under the authority of the commissioners of Yellowstone County, MT. There is no doubt about it, keeping employees, and especially nurses and those skilled people it takes to take care of our elderly, was tough to manage. It was a hard job but also very expensive as far as the operators of that facility are concerned, for the simple reason workers compensation rates were just going through the roof. We finally got that under control, and now it is operating where employees and employers are satisfied with the workers comp fund in the State of Montana.

Basically, this rule and this regulation on ergonomics nationalizes workers compensation. It overrides States rights and the funds that are found in those States. In fact, an employee, even one hurt off the job if the job contributes to the pain of that injury, could be almost a double dipper. The rule is very vague. And of course it takes an attorney to figure it all out. So we could have a field day here.

No employer wants to permit an employee to work in an unsafe place or under unsafe conditions. It doesn't make a lot of sense for an employer to train an employee, make him a valuable part of that company or corporation or that team, and then allow him or her to work in a workplace where ergonomics would limit the employment life of that employee. It does not make sense at all. That is not good management, and I think American corporations understand that.

So I rise today in support of the enforcement of this particular law, especially one that was put in place in 1995 and supported by all. Those who support the law will tell everybody, but they will not support the enforcement.

That doesn't make a lot of sense to me either.

I think on this particular issue it is time for those who supported the administration, which did the majority of its work by rule and fiat, to do their work and write a rule on ergonomics that makes sense, so I support S.J. Res. 6.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the Senator from Iowa is going to be here shortly to be recognized. We had two Senators from that side go on. I would like to take maybe 4 minutes, and then by that time the Senator from Iowa will be here to make his comments.

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

Mr. KENNEDY. Mr. President, there have been a great many statements that, when this rule was promulgated, it didn't take into consideration any of the points that were being raised by business. That, of course, is completely hogwash. We know there is an ergonomics crisis in the country. Most of the time, the ergonomics rules would go into effect in order to try to protect workers; right? Not these rules and regulations though. Even though the employer need not act under the rule until there is, first of all, an injury. An injury has to trigger it. That is a major difference, and that was a tip in terms of business.

What was the second tip in terms of business? The second tip in terms of business is, who makes a judgment whether the injury is work related? Is it the employee? No, it is the employer. The employer makes the judgment whether the injury is work related.

Who makes a judgment, once we find out there is an injury, and it is a result of ergonomics, and it is work related, about whether that particular individual is going to continue to be employed or whether their work will be shifted in a way so they do not suffer continued, ongoing additional injury? Is it the employee? No, it is the medical officials of the employer.

My goodness, you could not ask for an ethic or rule that bent over further to take into consideration the interests of the employer. We don't hear any discussion on the floor of the Senate of the particulars of the rule. All we hear is, "We are not going to cede the power of elected officials to bureaucrats." We do it every day. We do it every day in the Food and Drug Administration that has requirements to make sure pharmaceutical drugs are going to be safe and efficacious. If they are not safe and efficacious, they are not approved, they don't get the approval of the regulators.

When was the last time we elected a chair of the FDA? We do not do it. They are appointed by the President. We confirm them, but they are not elected officials.

Who looks out after health and safety in other inspections that take place?

It is not elected officials. It is those who are appointed. We have heard that same speech eight times today. We heard eight times how these officials at OSHA are not elected. I hope we can come, as we are going into the final hours, to have a different view.

I see my friend from Iowa on the floor. I yield the floor.

Mr. HARKIN. Mr. President, I add to what the Senator from Massachusetts just said, how about the U.S. Department of Agriculture, the Food Safety and Inspection Service that inspects all our meat plants and processing plants? These are not elected either, but we trust them to maintain a safe and wholesome food supply in America.

I have been working on this ergonomics rule in the appropriations process since Elizabeth Dole first addressed the issue 10 years ago. One of the reasons I worked on it is that I have seen it firsthand. I have seen people I know, close friends of mine, who have suffered these kinds of injuries because of the kind of work they do. I remember what the former Republican Labor Secretary said when she first ordered the ergonomics studies. She said repetitive strain injuries are "one of the nation's most debilitating across-the-board worker safety and health illnesses of the 1990s."

She was right. We have study after study that shows 1.8 million of America's workers suffer from repetitive strain disorders each year; 600,000 of them suffer from injuries so serious they lose time from work. These injuries drain \$45 billion to \$50 billion a year in human and economic costs.

Some employers have ergonomics programs in place because they are good employers and they are smart. They know what the bottom line is. They know ergonomics is a good business practice. But 60 percent of all general industry employees work in places that have not yet addressed ergonomics risk factors.

Who are those workers? They are cashiers, nurses, nursing home attendants, cleaning staff, assembly workers in manufacturing and processing plants, computer users using keyboards on a daily basis, clerical staff, truck drivers, meat cutters—these are the people who are affected. Nearly a third of all serious job-related injuries are musculoskeletal disorders, and women workers are the hardest hit. Women make up 46 percent of the workforce, but in 1998 they accounted for 64 percent of repetitive motion injuries and 71 percent of those reported carpal tunnel syndrome cases. So voting to repeal the ergonomics rules means turning our backs on America's working women who are trying to provide for their families. Wiping this rule out with no amendments and with limited debate is a blow to the working women of America.

This bill before us, this measure we have before us that we are about to vote on today—make no mistake about it—is an anti-women bill, because it

hits the women of America the hardest, and because they are the ones who are doing the kind of jobs that are most affected by repetitive motion injuries.

That is what the Congressional Review Act would do. It would affect the women of this country. The Congressional Review Act resolution is an extreme measure that has never been used before. It passed in 1996. We all know what the congressional intent was, which was to repeal rules that were either hastily issued without scientific basis, or that clearly overreached an agency's mandate. That was the intent of it.

The ergonomics rule doesn't fit into either category. It is based on hundreds of scientifically backed studies, including two major studies by the National Academy of Sciences. In fact, our Republican friends—the opponents of this rule—kept calling for more studies of ergonomics and these repetitive stress disorders. What did we do? We authorized another National Academy of Sciences study in 1997. Then the Republicans wanted to delay the rule until the study came out. The study came out in January. Once again, the National Academy of Sciences found that there was scientific evidence that workplace exposures cause MSDs, and that the kinds of measures required by the OSHA's mandate are the most effective means to prevent these injuries. This rule falls under OSHA's mandate to protect America's workers from workplace injuries.

We always want to have studies done. Usually I hear my Republican friends say we can't do this or that until we have a good scientific basis. That is fine. I think we should have a good scientific basis for what we do. Here we have the scientific study. We have hundreds of scientific studies that have found the same thing. Now—with this measure—they're saying the studies don't matter.

I don't understand why we're even using this extreme measure that we have before us when opponents of ergonomics have two other avenues they can use to modify or even repeal the rule. They could request this administration—the Bush administration—to review the rule to modify or even repeal it. Of course, they also have the court system. They have already filed 31 petitions contesting the rule in the U.S. Circuit Court in Washington, DC.

Mr. REID. Mr. President, could I ask the Senator from Iowa to withhold for the purpose of a unanimous consent request.

Mr. HARKIN. Yes. I would be glad to withhold.

Mr. REID. I have been told by the Senator's staff that he may have 4 or 5 minutes more. Is that right?

Mr. HARKIN. Not more than that.

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

Mr. President, I ask unanimous consent that the vote occur today on adoption of S.J. Res. 6 at 8:15 p.m., and that paragraph 4 of rule XII be waived, and

the time between now and then be divided as follows: Senator KENNEDY or his designee in control of 80 minutes; Senator NICKLES or his designee in control of 40 minutes.

Mr. REID. I ask it be 80 minutes plus the Senator from Iowa being able to complete his statement because we interrupted him. It would be a couple more minutes. But it would be close.

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

The Senator from Iowa.

Mr. HARKIN. Mr. President, I wonder why we are jumping the gun with this resolution when there are already other avenues open to repeal a rule which took a decade in the making. Why are we using a measure that would in a sense prevent any similar rule from even being issued unless Congress mandated it? It is an extreme measure. We should oppose it. It violates the original intent of the CRA. It violates the spirit of how we do business in the Senate with amendments and timely debate.

The eight-page ergonomics rule is complaint based and flexible according to each workplace and job. It will save employers billions of dollars every year by preventing the debilitating injuries to their workers.

As has been said, this is a preventive measure. What is wrong with prevention? We ought to be more involved in both preventing illnesses and in preventing injuries. But no.

I understand the votes are on that side of the aisle, plus a few on this side, I understand, to overturn this. So what we will do is continue to spend billions and billions of dollars every year patching, fixing, and mending; spending billions of dollars in workers compensation, spending billions of dollars in Medicaid and perhaps Medicare later on to take care of people who have suffered musculoskeletal disorders, carpal tunnel syndrome, and repetitive motion disorders.

We are penny wise and pound foolish around this place.

Again, if businesses think this is onerous—and I have looked at the rule and it is not—we are going to have a big tax bill coming through here.

Why don't we provide businesses tax relief if they have to comply with this, if they can show it costs money? I would be in favor of giving them whatever tax writeoff they need to comply with the ergonomics rule because again it would be money better spent than trying to patch, fix, and mend lives later on, not to mention the human suffering that comes along with this.

This is an unwise move we are making in the Senate. I have been listening to the debate off and on during the day. Of course, I followed some of the reports in the media about this. I got to thinking to myself that if OSHA issued a rule today that mandated that workers in the construction industry had to wear hard hats, it would never get through the floor of the Senate. If they issued the rule to say that construc-

tion workers will wear hard hats, we would have opponents ready to repeal it.

No one would think of going on a construction site without wearing a hard hat, least of all the workers, because both the industry and the laborers know how much it has done to save lives, save injuries. And, yes, save money.

This is the same with ergonomics.

Talk about shortsightedness. This is something that will save lives and save human suffering. It will prevent injuries, cost us less money, be good for business, good for America, and especially good for our working women.

I guess the railroad train is on the track. They are riding the horse. As I understand it, they have the votes to repeal it. But I say it is a dark day for the working people of America, and especially a dark day for the working women in America who are going to continue to suffer in the workplace the kind of injuries that will cause them a lifetime of suffering and a lifetime of not being able to fully use their abilities in the workplace.

Mr. KENNEDY. Mr. President, will the Senator yield for a question?

Mr. HARKIN. I am delighted to yield to my chairman.

Mr. KENNEDY. Could the Senator review for the membership again why this has to be all or nothing? As I understand the current situation, all the President would have to do, if he wanted to change the rule, is file in the Federal Register and wait 60 days. There would be notice that there were going to be changes in the rule and the process would move forward with public comment and the administrative practices and procedures would move ahead. There could be adjustment and changes, and OSHA could take account of the 9 years of rulemaking, the study by the National Academy of Sciences, the months of hearings, and the scientific reports that have been accumulated. Why not follow that route in a sense of bipartisanship?

Is the Senator not troubled, as I am, with this take-it-or-leave-it attitude? We thought we were going to have a bipartisan effort in order to work through some of our differences. The Senator is a member of our education committee. We are working in a bipartisan way.

He was there early this morning at 9 o'clock, talking with the representatives from the White House on these issues.

Mr. HARKIN. Right.

Mr. KENNEDY. We were trying to work out, on the Patients' Bill of Rights, a bipartisan effort. Now, when it comes to protecting workers, we have to take it or leave it—no effort to accommodate, no effort to compromise, no effort in the area that has been identified as the most dangerous for workers in this country from a health and safety point of view. And they say: "Just take it or leave it." Ten hours of debate, and we go out of

the Senate with an effective "trophy" for the Chamber of Commerce on this.

Can the Senator express his own view about this dilemma we are in?

Mr. HARKIN. I think what the Senator has said is absolutely correct. That approach makes too much sense. For example, it does seem to me that if we are rational, reasonable, human beings, and that we do want to work in a bipartisan fashion, which is the only way we are really going to be able to accomplish anything this year—except something such as this, which is rammed through on account of a fast-track procedure—if we truly want to work in a bipartisan fashion, then we ought to be talking about, if there are problems some people have in the ergonomics rule, well, then, the logical, reasonable, responsible way would be, as Senator KENNEDY has said, to let the administration propose some modifications that would be published in the Register.

There would be a 60- or 90-day—I forget which it is—hearing period in which outside interests could come in and testify as to whether they thought that part of the rule was bad or good or should be modified. At the end of that hearing process, the administration could then propose changing that, modifying that, to meet the objections some people may have.

That seems to me to be the responsible way to proceed, not this kind of fast-track Congressional Review Act that we have on the floor of the Senate today whereby we have 10 hours of debate with no chance of amendment.

Maybe there are some reasonable modifications that might be made to the ergonomics rule. Maybe there are. I do not know every little item in the rule. I do not pretend to know every little item in the rule. Maybe there are some. But if there are, this is not the way to proceed—to just say: its all or nothing. Let's just throw it out the window—after more than 10 years of work.

When these kinds of things happen on the Senate floor, and in the Congress, I can begin to understand more and more why the American people are losing faith in us, why they do not think we really pay attention to them and their needs, why they believe we may be out of touch with the common people of America. Because I think the average American would understand that there is a reasonable, responsible way of approaching this. And what we are doing here today is unreasonable, irresponsible, illogical, and harmful—harmful to perhaps some of the least powerful people in this country.

Is this rule going to affect Members of the Senate or the House? No. It will not affect our staffs. It is not going to affect people of higher income. Let's face it, most of the people who suffer from these injuries are some of the lowest paid people in America. They are the people who are working in our meatpacking industries, our poultry plants, who are making low wages,

working at tough jobs. They are our cashiers and our clerks and our keyboard operators, our cleaning women—the people who clean the buildings at night, our janitors. They are our nursing home people. These are some of the lowest paid and some of the hardest working people in America. This is who it affects.

That is why we should not support this resolution to repeal the rule. That is why we should proceed in a responsible, reasoned manner. Let the President suggest some modifications, have the hearing process, and move ahead that way. What we are doing here today is unreasonable and should not be done.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I yield 5 minutes to the Senator from New Mexico.

Mr. KENNEDY. I thought I was next. Parliamentary inquiry.

Will the Senator yield for a parliamentary inquiry?

Mr. ENZI. Yes, if it counts against your time.

Mr. KENNEDY. We have tried to accommodate a timeframe here for this for other Members. The other side has used 40 minutes longer than we have. My understanding is that the 80 and 40 minutes were going to be at the end of Senator HARKIN's statement. That is what I agreed to. Now I am told by the Parliamentarian that the latter part of his statement is all being taken out of my time because it is in response to a question.

I had a limited amount of time left. I have been here all day, and I am quite prepared to accommodate those who want to set the time, but I object strenuously to that interpretation.

I would like to just renew the request that has been made by the Senator from Wyoming that we have the 80- and 40-minute allocation that was meant earlier.

The PRESIDING OFFICER. Is there an objection?

Mr. ENZI. We talked about doing that as of 6:15, which would have made the vote at 8:15, which is what the hot-line has gone out for. How about on that 10 minutes used, if each of us put up half of it and we still have the vote at 8:15?

Mr. KENNEDY. Fine.

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

Mr. ENZI. Mr. President, I yield 5 minutes to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I was not part of that discussion. I have not used a lot of time. I have some strong feelings on this subject, but clearly I have not been here on the floor because there has been a great debating team on both sides.

Mr. President, I first ask unanimous consent that an editorial of November 21, 2000—that was a Tuesday—in the largest paper in New Mexico, the Albuquerque Journal, be printed in the RECORD.

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

[From the Albuquerque Journal, Nov. 21, 2000]

#### OSHA DETERMINED TO RUSH RULES INTO EFFECT

Employers are sweeping the corners for workers in a tight labor market and striving to increase productivity levels that already are the envy of the world.

Does this sound like the sort of business climate in which employers would ignore ergonomic problems that sap productivity or create hard-to-fill vacancies?

The U.S. Department of Labor, which still subscribes to an antique notion of proletariat oppressed by capitalists, seems eminently capable of disregarding the present reality even as it acknowledges it.

Charles N. Jeffress, head of Labor's Occupational Safety and Health Administration, says companies in the United States and abroad have developed policies on ergonomics that have reduced injuries caused by repetitive tasks.

Of course they have and done so without being hammered by OSHA because it makes good business sense. Such injuries cost employers in terms of lost productivity, lost experience and training when workers leave a job, and higher worker's compensation expenses.

But companies figuring out what works best in their particular operation is not good enough for OSHA, which is preparing to throw a one-size-fits-all regulatory blanket over workplaces from sea to shining sea. And not to be outdone by private-sector productivity doing it just as fast as is bureaucratically possible over the objections of elected members of the legislative branch.

Last winter, congressional leaders like Sen. Pete Domenici, R-N.M., had to fight to get businesses time to review the proposals and submit public comment that supposedly is taken into consideration by OSHA in the final drafting of rules.

The controversial prescription for U.S. industry was pivotal in the pre-election posturing over the spending bill covering labor, education and health. Although that package awaits post-election action by Congress, OSHA plans to hustle the new rules into effect Jan. 16. That's before the National Academy of Sciences completes a workplace ergonomics study less likely to be biased by ideology or constituency loyalties. It is also just days before a new administration that might have a different perspective takes the reins of office. Must be a coincidence.

Mr. DOMENICI. Mr. President, I think the Senator from the State of Iowa has it all wrong when he cites this as one of the reasons the American people are discouraged with what we do here—that if they watch this process, they will be discouraged. Quite to the contrary, if the American people knew what was going on in this set of regulations 600 pages long, issued just before the President walked out of the White House, dramatically affecting thousands upon thousands of small businessmen, who do not have the wherewithal to even look at these 600 pages' worth of regulations, they would ask: What was going on in the White House that just left?

They had hearings, they had proposed regulations, and all of a sudden they drew up a new set as they walked out the door that has a dramatic impact on every single small business in my State, hundreds and hundreds of them, perhaps a few hundred million dollars' worth of impact on them. And they had no hearings in Congress, no statutory proposal to change the law that is changed by these regulations. And all of a sudden, they wake up and they are supposed to be subject to these regulations through OSHA, a department of our Federal Government that at least in the last 8 years has been seen by most small businesspeople in the United States as against their interests without doing any good for the public. That is how they see OSHA most of the time.

So having said that, I want to say that what we are doing now, under this very interesting statute—that got passed up here because I do not think those on the other side of the aisle thought we would ever be to a point where we would use it and have a President in the White House who would sign the resolution we adopted—I think they thought it is just a give-away, just a throwaway; that is, this legislation providing for review in Congress, and the submission to the President, of a rule that would set aside the regulations.

I think it is a reality check. I think it is saying to OSHA, and the former President, and the Department of Labor: Take some more time. We want the job done right. We do not want it one-sided. We want it fair.

Frankly, in the typical bureaucratic fashion that so much besets OSHA, they issued this rule on November 14—600 pages long, weighing more than 2 pounds. That is not a very typical document that small businesspeople have the opportunity, the time, or the resources to evaluate. But you can count on it, they will be in some major class action lawsuits, or who knows what else the trial lawyers will find as a nest egg within the 600 pages of this regulation.

Having said that, I will read a few paragraphs from an editorial in the Albuquerque Journal. It is considered a fair newspaper and this is what they said in their editorial:

Employers are sweeping the corners for workers in a tight labor market and striving to increase productivity levels that already are the envy of the world. Does this sound like the sort of business climate in which employers would ignore ergonomic problems that sap productivity or create hard-to-fill vacancies?

A very good question in this editorial.

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

Mr. ENZI. I yield the Senator 2 more minutes.

Mr. DOMENICI. Continuing from the editorial:

The U.S. Department of Labor, which still subscribes to an antique notion of a proletariat oppressed by capitalists, seems eminently capable of disregarding the present reality even as it acknowledges it. . . .

[OSHA] says companies in the United States and abroad have developed policies on ergonomics. . . .

But companies figuring out what works best in their particular operation is not good enough for OSHA, which is preparing to throw a one-size-fits-all regulatory blanket over workplaces from sea to shining sea.

That is the relevant part of their editorial. It had some more in it that is in the RECORD. I suggest, in addition to what I have just described about the regulation, it is very expensive. We seem to pass these kinds of rules and regulations thinking there is no end to what the American economy can pay, whether it is \$4 billion or \$200 billion or \$500 billion or \$100 billion. The American economy will just hum along and continue paying. Frankly, I think we will see tonight that those who represent the people, in particular, small businesses, are going to say that is not true. Enough is enough. I hope we use this new law tonight and then I hope the Department of Labor and those interested in ergonomics regulations will proceed with due caution to adopt a more fair and better set of regulations that will protect everybody, not just those who want to make onerous regulations.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I yield 10 minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. I thank our leader on this and so many other issues, the Senator from Massachusetts, for yielding the time to me.

I rise today to join my colleagues, Senators KENNEDY, DURBIN, WELLSTONE, and HARKIN, and so many others, to state my opposition to S.J. Res. 6, which uses a novelty, the Congressional Review Act, to halt the Department of Labor's final rule on ergonomics.

S.J. Res. 6 states:

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That Congress disapproves the rule submitted by the Department of Labor relating to ergonomics and such rule shall have no force or effect.

Not compromise, not just one size should not fit all, but no effect, no rule. Many of my colleagues have come to the Chamber and spoken about how this CRA resolution is not aimed to kill the ergonomics rule; rather, it pulls the rule to allow for additional time to further study the issue. Maybe my friends who have made that point haven't carefully read the congressional review of agency rulemaking, title 5, chapter 8 of the United States Code, or perhaps they hope we haven't. Let me take this opportunity to read it aloud for everybody now. Section 801(b) states:

(1) A rule shall not take effect or continue if the Congress enacts a joint resolution of

disapproval, described under section 802, of the rule. (2) A rule that does not take effect under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.

This is not a review. This is a killing. If the opponents of the resolution wanted a review, they could, as the Senator from Massachusetts said a few minutes ago, in questioning the Senator from Iowa, call on the Secretary of the Department of Labor and request a review under the Administrative Procedures Act. That would mean that ergonomics would still breathe life. That would mean that we might modify certain provisions of which we might not approve. It would not end it.

The truth is, some of my colleagues are hoping that 10 hours of debate and one 15-minute rollcall will abolish over 20 years of research and nearly \$1.5 million of taxpayer money to fund congressionally mandated studies on ergonomics.

I have heard the arguments my colleagues have made this afternoon. First, that we need more study of ergonomics. Ergonomics is not a new issue. Between the Government and the private sector, there have been over 20 years of research aimed to better understand worker injury and workplace safety. It is 2001, and I am hearing my colleagues on the other side of the aisle say these regulations are premature. But in 1990, then-Secretary of Labor Elizabeth Dole directed the Department of Labor to examine the repetitive stress injury category of occupational illnesses, which statistics showed were the fastest growing type of worker injury.

That was back in 1990. They were then the fastest growing type of injury because of changes in the workplace.

In the 1980s, 20 years ago, there were articles and studies in medical journals that addressed ergonomics. The New York Times ran an article on September 4, 1985, which discussed the widespread growth of carpal tunnel syndrome and repetitive stress injury. New? These are not new. In fact, businesses from my State came in my office last week and explained to me they began studying repetitive stress injury as early as 1979, 21 years ago.

In truth, to many who work, who suffer these injuries, the final ergonomics rule has come too late. This standard could have been implemented many years ago and helped hundreds of thousands of workers if it were not for the numerous attempts by Congress to halt Department of Labor action on this issue.

Opponents also argue it will cost employers \$100 billion a year. Not true. OSHA estimates the cost at \$4.5 billion and predicts savings to employers of \$9 billion a year in productivity loss and workers compensation.

The Bureau of Labor Statistics in my State of New York reported that more

than 48,000 workers had serious injuries from ergonomic hazards in the workplace, and that was only the number of private sector employees. There were an additional 18,444 public sector workers who had injuries serious enough for them to lose time from work. Here we are, in this—thank God—productive 21st century, we are trying to find ways to make workers more productive. We have millions of person days lost in terms of working because of ergonomic injuries, and we shy away from dealing with the problem.

Speaking of workers compensation, opponents of ergonomics claim this new standard will supersede workers compensation law. Not according to the attorney general of my State. Eliot Spitzer has joined with 16 other attorneys general to file comments with OSHA saying the new ergonomic standards will not affect or supersede the worker compensation laws in their States. If we allow this resolution to pass, all we will really have accomplished is saddling American workers, American businesses, American citizens with a huge burden: the cost of lost wages and productivity for hundreds of thousands of individuals who report work-related MSDs each year.

Change is never easy. It is always simple to get up there and say: Let it continue as it is. Yes, there are some businesses that are doing this work now. Most are not, to the detriment not only of themselves but to the detriment of America. Change is difficult, but if we didn't change, we would not be the leading economy and the leading country of the world.

Modify? Why not. Eliminate, put a dagger through the heart of ergonomics after 20 years of study? We shouldn't do that.

I hope my colleagues will oppose this ergonomics standard, will reconsider their position, and not undo 20 years of effort to help safeguard the health and safety of American workers, which is undoubtedly our most precious resource.

I yield the remainder of my time.

Mr. KENNEDY. Mr. President, I yield

7 minutes to the Senator from Hawaii.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, on November 14, 2000, the Occupational Safety and Health Administration (OSHA) issued its final ergonomics program standard. This program will spare 460,000 workers from painful injuries and save approximately \$9.1 billion each year. This new standard took effect on January 16, 2001, and will be phased-in over four years.

While OSHA has issued its final ergonomics program standard and this new standard has taken effect, some of my colleagues are still trying to eliminate this rule. They may claim that it is unwise to issue such a standard because it is based on unsound science and has been rushed through the regulatory process. Nothing could be further from the truth.

Mr. President, I am here today to remind my colleagues that OSHA worked on developing ergonomic standards for over 10 years. It is not something new. It has been around since world War II, where the designers of our small plane cockpits took into consideration the placement of cockpit controls for our pilots.

We, in Congress, must not forget our commitment to America's workers. We must reduce the numbers of injuries suffered by our workers. We cannot continue to look the other way when each year more than 600,000 workers suffer serious injuries, such as back injuries, carpal tunnel syndrome, and tendinitis, as a result of ergonomic hazards. In 1999, in the State of Hawaii, more than 4,400 private sector workers suffered serious injuries from ergonomic hazards at work. Another 700 workers in the public sector suffered such injuries. These injuries are a major problem not only in Hawaii, but across the nation. It affects truck drivers and assembly line workers, along with nurses and computer users. Every sector of the economy is affected by this problem. The impact can be devastating for workers who suffer from these injuries.

This Resolution of Disapproval is not the right approach. It would bar OSHA from issuing safeguards to protect workers from the nation's biggest job safety problem. I remind my colleagues that there are normal regulatory procedures that can be utilized if the Administration has concerns over the existing program standards. The Resolution of Disapproval is not necessary.

American families cannot afford the repeal of this long awaited regulation. More importantly, American workers cannot afford losing this important worker protection. Injuries that result from ergonomic hazards are serious, disabling, and costly. Carpal tunnel syndrome results in workers losing more time from their jobs than any other type of injury. It is estimated that these injuries account for an estimated \$20 billion annually in workers compensation payments.

Many of these injuries and illnesses can be prevented by allowing this standard to be fully implemented. In fact, some employers across the country have already taken action and put in place workplace ergonomics programs to prevent injuries. However, two-thirds of employers still do not have adequate ergonomic programs in place.

We have an opportunity to prevent 460,000 injuries a year and save \$9 billion in workers' compensation and related costs by voting against this resolution. This resolution is unnecessary and unwarranted. Congress should remember and honor the commitment made to the nation's workforce when it established OSHA in 1970 and vote against the Resolution of Disapproval.

The PRESIDING OFFICER. Who yields time?

Mr. ENZI. Mr. President, I yield 2 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, I wanted more time, but I think almost everything has been said, except only in Washington can we have the opinion that no good decision is made unless it is made in Washington, DC. We had a news conference some time ago—in October—about what the regulations cost the American people. The average family of four right now pays \$6,800 a year just for these regulations.

In the Clinton administration, the average number of pages of regulations per day in the Federal Register was 319. The previous record was 280 pages.

I remember when OSHA first started. I was in the State senate at that time. I remember when I was in Michigan and I held a book up and said—I was going to talk to the National Association of Manufacturers. I said: I bet I can close down anybody in here just with these regulations.

One guy called me on it and we went out and closed him down. Overregulation is an extremely burdensome thing.

I think as far as the extreme broad reach of this program, single incident trigger—all these points have been made. I want to just bring it closer to home and share with you a couple of things and ask that they be put in the RECORD. We have had over 1,000 letters from the various businesses and others who believe their businesses have been threatened.

I ask unanimous consent these excerpts of letters be printed in the RECORD.

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

The OSHA ergonomics rule threatens our company's future and the jobs of the employees who depend upon us. It will result in increased food prices for Oklahoma consumers.—Ron Cross, Stephenson Wholesale Company, Inc. Durant, OK.

Please support the CRA to repeal the OSHA Ergonomics Regulations. The rule may have had good intentions, but the way it was executed was terrible. I own a small business and do not need much more government weight on my back to induce me to just pull the plug and shut it down.—Jeff Painter, Claremore, OK.

It would greatly increase costs in my practice.—Dr. Bob Barheld, McAlester, OK.

And if I am forced to pay 100% of employees' pay and benefits while they're on ergonomics leave for three months aka the 'work restriction protection' requirement, I'll be out of business. Doris Lambert, Quick Lube, Lawton, OK.

We are greatly concerned by OSHA's final ergonomics regulation. If fully implemented in its current form, this regulation will likely impose huge administrative burdens, require the purchase of expensive new equipment, and dictate the reconfiguration of many of our facilities. It may actually cost jobs—while not ensuring that a single workplace injury will be prevented.—V.E. Hartnett, Con-Way Southern Express, Oklahoma City, OK.

Mr. INHOFE. Mr. President, I urge my colleagues to vote in favor of this

Congressional Review Act. This was put together back in 1996 at a time when we decided that maybe it was time for Congress to get a handle on the bureaucracy and time that we had a successful trial of this CRA, and I ask you to support it.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 5 minutes. We have heard a good deal of rhetoric on the part of those who have opposed this regulation.

We have heard that the rule is 600 pages long. This is eight pages. It can be found in the November 14, 2000 Federal Register starting at page 68846.

Mr. President, in reviewing this, I daresay it might take someone 15 or 20 minutes to read through it. We have heard a great deal about how can any business in this country be able to understand what is expected of them. I daresay anybody who has been watching this debate and has the opportunity of looking through the CONGRESSIONAL RECORD tomorrow will be able to get through these in very quick order.

I just looked, for example, at the basic screening tool which is the standard which would be used by employers. It is very clear. It sets forth the risk factors the standard covers. It talks about repetition and about the amount of repetition that might be evidenced in an ergonomic injury. Then it goes down to the issue of force. Most people, small businessmen or large businesses, are going to be able to understand these standards, which cover lifting more than 75 pounds at any one time, more than 55 pounds more than 10 times a day, or more than 25 pounds below the knees and above the shoulders or at arm's length more than 25 times a day.

I think most people with a high school education could understand whether their workers were at risk. The rule also addresses awkward postures. They have three different illustrations, such as repeatedly raising or working with hands above the head or elbow, above the shoulders, more than 2 hours total per day; kneeling or squatting more than 2 hours total per day—kneeling and squatting are not very difficult to understand; working with the back, neck, or wrist, twisting more than 2 hours total per day. Those are the three criteria for awkward postures.

Most people can understand that. It is very readable and understandable. Then the rule goes back to contact stress, using the hand or knee as a hammer more than 10 times per hour, more than 2 hours total per day. It just goes on, and it is very understandable, Mr. President, and that is really what this whole proposal is all about.

All we have to do is ask the more than 1 million workers in our society, the great majority of whom are women, who have trouble using their fingers, wrists, arms, shoulders, backs, and lower backs. They understand

what is happening to them in the workplace. This is no great challenge. How can we ever expect anybody to understand what is happening? Very simple. As we have seen from every report, it is happening and putting more than 100 million Americans at risk every day in more than 6 million workplaces. It is happening to at least 1 million Americans, according to the Academy of Sciences, who are losing work every day. They understand it.

This idea that we have to go through 700 pages is just baloney. Here are the regulations. They are understandable, they are comprehensible, they are clear, and they are reasonable. They are completely opposed by the Chamber of Commerce that has spent millions of dollars trying to defeat the rule because they would put at risk American workers in the workplace, and that is wrong.

I yield 10 minutes to the Senator from Wisconsin.

**THE PRESIDING OFFICER.** The Senator from Massachusetts.

**MR. FEINGOLD.** Mr. President, I thank the Senator from Massachusetts for the time and especially for his tremendous leadership and eloquence on this issue.

Mr. President, I rise today to express my support for the Occupational Health and Safety Administration's final ergonomics standard, and to express my opposition to the attempt to overturn this standard by using the Congressional Review Act.

After more than 10 years of research, public hearings, and public comments, OSHA's final ergonomics standard was published in the Federal Register on November 14, 2000. The standard took effect on January 16, 2001, extending basic protections to workers across our Nation.

Each year, more than 1.8 million American workers suffer from workplace injuries caused by repetitive motions including heavy lifting, sewing, and typing. These injuries have an impact on every sector of our economy, and are particularly prevalent among women because many of the jobs held predominately by women require repetitive motions or repetitive heavy lifting. These preventable injuries cost more than \$60 billion annually, \$20 billion of which is from workers' compensation costs.

In addition to costing American businesses millions of dollars, repetitive stress injuries are costing American workers their health and, in some cases, their mobility. This means that some workers will lose the ability to do certain activities—activities ranging from simple tasks like fastening buttons to more meaningful things including picking up a child or participating in sports.

In past Senate debates on this issue, one of the chief arguments against an ergonomics standard has been that more scientific research was needed to prove the connection between repetitive motions and the physical injuries

being suffered by hundreds of thousands of workers each year. Even though there was already a significant body of research outlining the need for national ergonomics standards from sources including the National Academy of Sciences, the National Institute for Occupational Safety and Health, and the General Accounting Office, opponents of a Federal standard argued that the standard needed to be delayed until another NAS study was issued.

That NAS study is out, and its conclusions are clear: There is a connection between repetitive motion and physical injury, and these injuries are preventable. According to the study:

The weight of the evidence justifies the introduction of appropriate and selected interventions to reduce the risk of musculoskeletal disorders of the low back and upper extremities. They include, but are not confined to, the application of ergonomic principles to reduce physical as well as psychosocial stressors. To be effective, intervention programs should include employee involvement, employer commitment, and the development of integrated programs that address equipment design, work procedures, and organizational characteristics.

Further proof can be found in existing ergonomics programs. Companies across the country have reduced the instances of preventable workplace injuries by designing and implementing their own ergonomics programs. In my home State of Wisconsin, the popular maker of children's clothing, OshKosh B'Gosh, redesigned its workstations. This commonsense action cut workers' compensation costs by one-third, saving the company approximately \$2.7 million.

Another Wisconsin company, Harley-Davidson, cut workplace ergonomics injuries by more than half after implementing an ergonomics program.

An employee of a health care facility in my hometown of Janesville, WI, said the following about the joint efforts between her management and fellow employees to design a program to combat the back injuries that are all too common among health care workers:

I am here today to tell OSHA that working in a nursing home is demanding and hazardous work. Those hazards include back injuries as well as problems in the hands, arms, shoulders, and other parts of the body . . . I am also here to testify that the injuries and pain do not have to be part of the job . . . Together [management and labor] have identified jobs where there are risks of back injuries. After getting input from employees, the employer has selected equipment that has improved the comfort [and] the safety of patients as well as the employees.

. . . What we are doing at the [nursing home] is proof that it is possible to prevent injuries with a commitment from management and the involvement of employees. Our injury prevention program is a win-win for everybody: Management, labor, the patients, and their families. I urge OSHA to issue an ergonomics rule so that nursing home workers across the country will have the same protection that we have at the health care center.

There are many other success stories in Wisconsin and around the United States.

I commend the efforts of those companies which have proven that responsible ergonomics programs can—and do—prevent injuries resulting from repetitive motions. Unfortunately, though, not all American workers are protected by ergonomics programs like those I have described.

For example, one of my constituents who testified at an ergonomics event in my state has endured three surgeries over a ten-year period to repair damage to his spine caused by repetitive motions at his job. In his testimony, this man said,

Pain is my constant companion and I still need pain medication to get through the day. It is an effort just to put my socks on in the morning. I will never be healthy and pain free.

Another one of my constituents described the impact that an injury he sustained at work—while lifting a 60–80 pound basket of auto parts—has had on his once-active lifestyle:

This pain has limited me in many ways . . . I used to teach soccer to kids. Now I can't walk more than half an hour without pain in my legs and spine. I have to prepare myself for fifteen minutes in the morning just to get out of bed.

Injuries such as those suffered by my constituents—and indeed by workers in each one of our States—will be prevented through OSHA's ergonomics standard.

What we are talking about is an impact on real people. They are our constituents, our family, our friends, our neighbors. We should not overturn a standard that will help to stop preventable injuries from forever changing the lives of countless Americans who are working to provide their families and themselves with a decent standard of living.

I recognize that some industries and small businesses are concerned about the impact, financial and otherwise, that this standard will have on them. I have written to OSHA on behalf of a number of my constituents to communicate their concerns, and I will continue to communicate their concerns regarding the implementation of this standard.

Overturning this standard under the Congressional Review Act is not the answer. This resolution does not simply send this standard "back to the drawing board" as some have suggested. If we adopt this resolution of disapproval, we will be stripping away all the protections that went into effect on January 16, 2001. It will be as if the 10 years of research, public hearings, and public comments that went into the drafting of this standard had never happened, and OSHA will not be permitted to work to promulgate another ergonomics standard until specifically and affirmatively told to do so by the Congress.

Let's be clear what a vote on this issue is. A vote for this resolution is a vote to block any Federal ergonomics standard for the foreseeable future. It is a vote to erase protections that will help to prevent hundreds of thousands

of workplace injuries this year alone. It is a vote to require businesses to continue to spend millions of dollars in workers compensation and other costs resulting from senseless injuries that could have been prevented.

The Congressional Review Act, which allows no amendment, and which allows only limited debate, is no way to legislate. We should not be doing business this way in the Senate, but we do, and we all know part of the reason why—the wealthy interests who seek to influence the decisions we make on this floor. Thanks to the soft money loophole, wealthy interests with legislative agendas can donate unlimited amounts of soft money to both of our political parties. The results are an undeniable appearance of corruption that taints the work of this Senate, and the ergonomics debate is a perfect example. There are certainly plenty of wealthy interests weighing in on the ergonomics issue. So I think it is time I called my first bankroll of 2001 by sharing with my colleagues and the public some of the unregulated soft money donations being made by interests lobbying for and against overturning the ergonomics rule.

Take the American Trucking Association, which has also been a generous soft money donor to the political parties. Along with its affiliates and executives, the American Trucking Association gave more than \$404,000 in soft money in the 2000 cycle.

They have weighed in against the ergonomics rule, and they do so with the weight of their soft money contributions behind them. The same is true for a host of other associations fighting to see the rule overturned: in the last cycle, the National Soft Drink Association and its executives gave more than \$141,000 in soft money, the National Retail Federation doled out more than \$101,000 in soft money, and the National Restaurant Association ponied up more than \$55,000 in soft money to the parties.

To be fair, I will also mention the other side of the soft money coin, the unions that have lobbied to keep the rule in place. They include the AFL-CIO and its affiliates, which gave more than \$827,000 in soft money in the last election cycle, and the Teamsters Union and its affiliates, which gave \$161,000 during the same period.

Repetitive motion injuries can and should be prevented. I strongly believe that we should have a national standard that affords all workers the same protections from these debilitating injuries. We should not overturn this standard. The health and mobility of countless American workers is at stake.

I urge my colleagues to support the hundreds of thousands of workers who suffer from repetitive motion injuries each year by opposing this resolution of disapproval.

I yield the floor.

Ms. MIKULSKI. Mr. President, I rise to oppose this resolution which seeks

to overturn OSHA's new standard that protects workers from workplace injuries. It is bad for American workers and bad for our economy.

This resolution would prevent OSHA from implementing an ergonomics standard that would establish basic safety standards for American workers. This standard would protect workers from on-the-job injuries caused by working conditions that involve heavy lifting, repetitive motions or working in an awkward or uncomfortable position.

American workers deserve a safe workplace, yet each year more than 600,000 people suffer ergonomics injuries. Who suffers most from ergonomic injuries? Women. Women represent only 46 percent of the workforce, but they suffer 64 percent of the repetitive motion injuries.

Who are these women? They're the caregivers—like the home health care worker who bathes a housebound senior or the licensed practical nurse who cares for us when we are hospitalized. They are the factory workers who build our cars and process our food. They are the cashiers and sales clerks who are the backbone of our retail economy. And they are the data entry clerks who keep our high-tech economy moving forward.

There are terrible human costs to these injuries. Women account for nearly 75 percent of lost work time due to carpal tunnel syndrome and 62 percent of lost time due to tendinitis. These are painful, debilitating injuries that prevent you from doing even simple activities like combing your hair or zipping your child's jacket.

We can't measure the pain and suffering of workers who are injured at work, but we can measure the economic costs. These injuries cost our economy over \$80 billion annually in lost productivity, health care costs and workers compensation. In fact, nearly \$1 out of every \$3 in worker's compensation payments result from ergonomics injuries.

OSHA's ergonomics standard wasn't slapped together at the last minute or in the dark of night. The effort was initially launched by Labor Secretary Elizabeth Dole in 1990 and the standards have been in development over the past 10 years. During the development phase there were 10 weeks of public hearings and extensive scientific study, including the National Academy of Science's study which concluded that workplace interventions can reduce the incidence of workplace injuries.

The result of this long and careful study is the OSHA ergonomics standard issued last November. These standards would require all employers to provide their workers with basic information on ergonomic injuries—including their symptoms and the importance of early reporting. These standards would take action whenever a worker reports these activities and employers would be required to correct the situation. Correction could mean better equipment or better training.

What will OSHA's new rule mean? It would prevent 300,000 injuries per year and it would save \$9 billion in workers compensation and related costs. It's outrageous that the first major legislation considered by the Senate this year would turn the clock back on worker safety. This would be the first time in OSHA's 30 year history that a worker health and safety rule has ever been repealed.

As a great nation, it is our duty to protect our most valuable resource—our working men and women. I urge my colleagues to join me in opposing this resolution.

Mr. CORZINE. Mr. President, I rise today in strong opposition to the resolution that would overturn worker safety regulations designed to prevent ergonomic injuries. OSHA's new ergonomic standard addresses the nation's most serious job safety and health problem—work related musculoskeletal disorders. According to the Bureau of Labor Statistics, in 1999 more than 600,000 workers suffered serious workplace injuries caused by repetitive motion and overextension. These injuries can be painful and disabling, and can devastate people's lives. Workers in a wide variety of jobs and locations are affected, from textile workers in New Jersey to white collar workers throughout our nation. These are real people and their lives are being affected in very real ways. At the same time, their injuries impose huge costs on our economy as a whole, roughly \$50 billion a year.

Mr. President, OSHA has been working to address ergonomic problems for 10 years, under both Republican and Democratic administrations. In fact, the agency first began its involvement under Labor Secretary Elizabeth Dole. At the time, Secretary Dole called repetitive strain injuries, and I quote, "one of the nation's most debilitating across-the-board worker safety and health illnesses of the 1990's."

Unfortunately, after going through a very lengthy rulemaking process, critics of OSHA's efforts have continually put roadblocks in the agency's path. These critics have questioned the seriousness of the ergonomics problem and called repeatedly for additional scientific studies. It's been a strategy of denial and delay.

Now, however, there's no longer an excuse for inaction. This January, the National Academy of Sciences and Institute of Medicine released a report documenting the severity of the problem. The report confirmed that workplace exposures do, indeed, cause musculoskeletal disorders and that OSHA's approaches to the problem are effective. This should not have been a surprise to anybody, but now its undeniable.

Mr. President, I realize that many businesses are concerned that OSHA's regulations will impose costs. And it's true that, according to the Department of Labor, employers will pay roughly

\$4.5 billion annually. Yet, Mr. President, employers also will reap significant savings when employees avoid repetitive motion and other injuries—savings that are estimated to exceed \$9 billion annually, more than twice the up-front costs.

Mr. President, let me be clear: I am not ready to endorse every dot and comma in OSHA's regulations. But even if some of the burdens of OSHA's regulations are excessive, the answer is not to completely eliminate the regulations. It's to fix them, either administratively or, if necessary, through appropriately crafted legislation. By contrast, this resolution adopts a sledge hammer approach. It will kill the entire OSHA regulations and effectively block the agency from pursuing any other regulation that is substantially similar. That just goes too far. I am new to the Senate and have spent most of my adult life in the private sector. So I want to emphasize that I know most businesses, or at least most successful businesses, do care about their employees. They want to do the right thing. And they realize that businesses do better when employees are healthy.

Unfortunately, some businesses are less responsible. And it's our job to protect their workers. Because if we don't do it, nobody will. And the result will be more injuries, and more needless suffering. I urge my colleagues to oppose this resolution. And I want to thank Senator KENNEDY and many of my other colleagues for their leadership on this important issue.

Mr. SHELBY. Mr. President, I rise today to address the Occupational Safety and Health Administration's, OSHA, recent rule on "Ergonomics." I have said in the past and I will say again, this rule falls short of sound science and good policy. In fact, this ergonomics rule is a poison pill for American industry and its workers in the midst of a slowing economy.

In theory, an ergonomics regulation would attempt to reduce musculoskeletal disorders, such as Carpal Tunnel Syndrome, muscle aches and back pain, which, in some instances, have been attributed to on-the-job activities. However, the medical community is divided sharply on whether scientific evidence has established a true cause-and-effect relationship between such problems and workplace duties. We need to understand the sound scientific basis to support such a costly and burdensome rule. It is in the interest of employers and employees to reduce, to the greatest extent possible, the painful, time-consuming and profit-consuming impact of ergonomics injuries.

Unfortunately, the regulation assumes that employers aren't already doing everything possible to take care of the health and well-being of employees. In fact, recent data seems to indicate that the number of work-related injuries is declining. In the last seven years, the incidence of injuries attributed to ergonomics has gone down by a third, 26 percent in carpal tunnel syndrome and 33 percent in tendonitis.

OSHA finalized this rule during the 11th hour of the Clinton administration. As a result of OSHA's last minute actions, small business owners across the country have faced unnecessary confusion, fear and misunderstanding regarding their explicit responsibilities, the compliance standards and the liability that they may face as a result of the new rule.

It is still unclear how these new regulations will be viewed in light of State workers compensation laws. Most believe that it overrules these state laws and as a consequence, workers claiming ergonomics injuries will be allowed to collect more than what would traditionally be allowed under the workers compensation laws in their States. In addition, the regulations are extremely unclear as to what must cause the onset of the injury. For example, if you are a member of a softball league on your own time and you develop a repetitive motion injury from swinging the bat that is further agitated by your work as a computer programmer, you could conceivably claim that you have suffered an ergonomics injury.

This ergonomics rule is conservatively estimated to cost Americans \$4.2 billion a year. Hundreds of small businesses will surely fold under the weight of this burdensome regulation. Too often the people who suffer the most from unfettered government regulatory actions are not only the small business owners, but their employees, the very people that OSHA purports to protect by this rule.

We do have a recourse. Under the Congressional Review Act, Congress has the final say. I would like to encourage my colleagues to weigh the options and hopefully come to the same conclusion that I have: These regulations are a poison pill for American industry and American workers.

Mrs. CARNAHAN. Mr. President, repetitive stress injuries are a serious problem in the workplace of the 21st century. Workers affected by repetitive motion injuries range from poultry employees to nurses to the growing number of employees who spend their day in front of the computer.

Repetitive stress injuries are not only extremely painful to workers, they also strain our economy due to lost productivity. According to the National Academy of Sciences, approximately one million workers a year suffer severe repetitive stress injuries that cause them to miss time at work. Given the widespread occurrence of these debilitating injuries and their impact on the economy, it is appropriate for the government to take steps to protect workers.

In January, the previous Administration enacted a regulation to help prevent repetitive stress injuries in the workplace. The issue before the Senate is whether Congress should enact a "disapproval resolution" to invalidate this new regulation.

Over the course of the past few weeks, numerous Missouri workers

have expressed their desire for protection from repetitive motion injuries in their workplaces. Likewise, many business leaders are concerned that the current regulation is overly broad, and that the cost of implementation will be prohibitively expensive.

This is obviously a complex and difficult issue. It deserves a thoughtful approach by which all interested parties can express their views and the full range of expert opinion can be evaluated.

This issue comes to the Senate under a procedure that does not allow for the type of careful and detailed decision making required for such an important topic. Under the Congressional Review Act, a vote in favor of a "disapproval resolution" will cancel the ergonomic regulation. Such a resolution would also prohibit the Department of Labor from developing new ergonomic regulations in "substantially the same form" as the current regulation.

Since this is the first time the Congressional Review Act has been used, I asked Labor Secretary Chao for assurances that the Department of Labor would take steps to provide legal protections to workers from repetitive stress injuries if Congress canceled the ergonomics regulation. Secretary Chao could not provide such assurances.

Secretary Chao did not assure me that the administration would issue legal protections, commit to a timetable for addressing this issue, or provide a description of the changes in policy that would be sought.

Furthermore, it is clear that if Congress does not cancel the regulation, the Department still has many options at its disposal. It could suspend the current rule, conduct an administrative review, and make appropriate changes.

Since this is such an important issue, the prudent course is for both workers and employers to engage in an open and full dialogue in an effort to reach consensus. I do not believe that overturning the current regulation would contribute to this process. In fact, it could prematurely end the government's efforts to protect workers from serious injuries. Consequently, I will vote against the resolution.

Mr. BAUCUS. Mr. President, today I rise to express my frustration with the OSHA ergonomics standard.

Let me be clear that I am not frustrated with this rule because it attempts to improve workplace safety. Musculoskeletal disorders, MSDs, are clearly a serious problem. They account for nearly a third of all serious job-related injuries. As this issue has come before the Senate, I have been a consistent supporter of finding a workable solution to the ergonomics issue. I have voted to let the Administration move forward with the rule-making process while new scientific evidence is brought to light.

I believe, however, that this OSHA Ergonomics Standard is not the solution we've been looking for. This rule

is constructed in a way that places a potentially heavy financial burden on many small businesses in Montana at a time when those businesses are struggling to keep their doors open. Instead of issuing a rule that places the burden primarily on businesses, let us work to establish a rule that works with the business community, that helps provide both a better work environment for workers and assists businesses in making necessary adjustments.

Let us also level the playing field. The OSHA Ergonomics Standard does not apply to employers covered by OSHA's construction, maritime or agricultural standards, or employers who operate a railroad. These exemptions could create unfair advantages in certain industries. That is not right.

Additionally, the OSHA Ergonomics Standard supercedes state worker's compensation plans, against OSHA's own provision that it not "supercede or in any manner affect any workmen's compensation law." Clearly, any standard should be coordinated with state worker's compensation provisions.

Finally, let us address MSDs proactively. The OSHA Ergonomic Standard is a reactive rule. Workers must explicitly wait for symptoms to occur before they can voice a complaint. Let's instead take what we already know about MSDs in the workplace and work to prevent MSDs altogether.

My vote is not a vote against health and safety in the workplace. I will remain a strong proponent of efforts that protect workers from workplace risks. My vote is a vote for finding a better way to balance the needs of business and labor, and a vote to keep undue financial pressures off of Montana's already struggling economy, especially our small business community.

**Mrs. LINCOLN.** Mr. President, I want to state at the outset that I support Federal workplace safety regulations to ensure that all employees are protected against hazards that exist in their place of employment.

I also believe that OSHA should be permitted to impose an ergonomics standard on employers to reduce the number of muscular skeletal disorders, MSDs, that can be linked to repetitive motions that workers perform as part of their job. However, to be effective such a standard must be reasonable in scope and proportional to the number of reported muscular skeletal disorders that occur in a particular workplace.

I do not support the ergonomics rule we are debating today because it falls short of that standard. After talking to literally hundreds of constituents and touring dozens of factories and plants in my state, I am convinced that the current ergonomics rule is unreasonable in terms of the requirements it imposes on businesses and unworkable with regard to the vagueness of the standards with which employers are expected to comply.

The complaints I hear the most are that the cost of compliance is virtually

unlimited and that even employers who make good faith efforts to meet the standard can never be certain they've done enough because the rule is unclear about when compliance is met. It will take months, maybe years, for the courts to unravel the true meaning of this rule. And it is my belief that rule making should not be left up to the courts. Frankly, I think those who oppose this rule have a valid argument and therefore I intend to support the Resolution of Disapproval.

I do not think, however, that the debate on a Federal ergonomics standard should end with this vote. The vast majority of business owners I've spoken to about this issue are taking genuine, affirmative steps to facilitate a safe and productive working environment for their employees. After all, it's in their best interest not to have workers who are injured and unable to perform capably.

I intend to hold them to their word by introducing legislation that will require OSHA to draft a new ergonomics standard within 3 years. If the current standard is not workable, and I do not think it is, then I believe OSHA has an obligation to work with employers and employees to write a revised rule that will reduce the number of MSDs in the workplace without penalizing businesses that want to do the right thing.

In closing, I want to express my disappointment with the take it or leave it approach pursued by the Senate Leadership in this matter. In recent weeks we've heard a lot about working together in a bipartisan fashion from the President and Senate leaders, but we certainly have not followed that course of action today. I wish my colleagues on the other side had demonstrated a willingness to find a middle ground in this debate but the only option we have been given is an all or nothing vote with no alternatives. That is not my definition of bipartisanship and I do not think it is a productive way to build trust across the aisle. I hope my colleagues will work harder in the future to make their pledges of bipartisanship a reality.

**Mr. NELSON of Florida.** Mr. President, I approach the debate on this resolution with a considerable degree of disappointment. To put it bluntly, it should not have come to this.

It is absolutely clear that there is a need for workers to gain protection for ergonomic injuries. All one has to do is spend time in any workplace environment to see the stresses that can lead to serious back, shoulder, arm, and wrist injuries. These injuries are just as real, and in many cases just as debilitating, as more obvious injuries that are more likely to be covered under state worker's compensation laws.

In 1990, then-Secretary of Labor Elizabeth Dole recognized the need to provide protection from these injuries and directed the Occupational Safety and Health Administration, OSHA, to issue a rule. After ten years of research, de-

bate, and comments from the business community, labor, and Congress, that rule was issued last November.

The rule has many virtues. One of its most prominent advantages is that it focuses on prevention. For the first time, it requires employers to take measures to educate and train their employees on how to avoid ergonomic injuries. It is backed up by sound science that demonstrates how ergonomic injuries occur, and helps provide the means to prevent them. These provisions alone will help keep millions of injuries from occurring, sparing workers pain and suffering, and their employers lost productivity. In addition, workers who suffer these injuries finally would receive compensation while they receive treatment and, according to 17 state Attorneys General, this does not interfere with their existing worker's compensation laws.

I also would concede, for all the virtues of this rule, that it has some serious problems. It places a particularly onerous burden on small businesses, which may not have the resources to fulfill all of the rule's requirements. A better crafted rule would provide some relief for small businesses. The rule also is highly ambiguous with respect to its application to agricultural workers. While it says that agricultural workers are exempt from the rule, it is not at all clear who that includes. Are workers in nurseries, on-farm packaging and processing plants, or other jobs done in a farm setting covered by this rule? I am told by those in the agriculture community that there is great confusion on this question. A better crafted rule would provide clarity on this point. There is also confusion about how a particular injury may be classified as ergonomic, if there is a dispute between a worker and an employer. I agree with those in the business community who have expressed these and other concerns.

So the rule has virtues, and it has problems. My sense is that we need a rule, but that the rule needs improvement. Unfortunately, the choice we face on this vote is not whether we should improve the rule, but whether there should be such a rule at all. Under the Congressional Review Act, we are given only one choice yea or nay on the rule. And if we vote to disapprove the rule, we have effectively killed any chance of ever providing workers with the protection they need. That is because once we kill it, OSHA is prohibited from ever coming forward with a rule that is deemed to be "substantially similar." This is a highly flawed process for evaluating a somewhat flawed rule. It leaves us no option to make recommendations on how this rule can be made better.

Given our options, the best approach, in my view, is to vote to sustain the rule, and then work with the Administration to issue new guidelines to revise, clarify, and tighten up imperfections. I understand that Secretary of

Labor Elaine Chao already has indicated a willingness to work with Congress to address ergonomic injuries. The best way for us to do that is by improving the existing rule, not blowing it up.

Given the choice that we are presented with by this resolution, I cannot in good conscience cast a vote that will effectively eliminate the possibility of ever protecting workers from ergonomic injuries. I will vote against this resolution and, if it is defeated, I will commit to work with my colleagues and the administration to correct the flaws.

Mr. LIEBERMAN. Mr. President, I rise in opposition to this joint resolution introduced under the Congressional Review Act to overturn the Occupational Safety and Health Administration's ergonomics rule. It is truly unfair and unjustified, after 10 years of study and delay, to eliminate this regulation which will bring needed protections to America's working men and women, tens of millions of them.

It was more than a decade ago that increased numbers of injuries and worker compensation claims led Labor Secretary Elizabeth Dole to ask for a rulemaking on an ergonomics standard. At the time, Secretary Dole, a member of the previous Bush administration, insisted on, and I quote, "the most effective steps necessary to address the problem of ergonomic hazards on an industry-wide basis."

We are not talking here about an imagined problem or phantom injuries. We are talking about the nation's most vexing workplace health and safety crisis. We are talking about the very real back, wrist and other musculo-skeletal pain and injuries that force a million people to lose time from work each year and that send 600,000 of them in search of medical treatment. We are talking about workplace injuries that sap an astonishing \$50 billion from the economy each year in lost wages and productivity. In Connecticut alone, 13,500 private sector employees and 2,200 public sector workers suffered from musculo-skeletal disorders in 1998, the last year for which statistics are available.

Just two months ago, the National Academy of Sciences and the Institute of Medicine published the comprehensive and definitive study Congress had asked for two years ago. It concludes unequivocally, and I'm quoting here: "... there is a relationship between exposure to many workplace factors and an increased risk of musculo-skeletal injuries ..." and "the evidence justifies the introduction of appropriate and selected interventions to reduce the risk of musculo-skeletal disorders."

It just doesn't get any clearer than that. And yet, supporters of this resolution are still resisting implementation of an ergonomics standard, as they've consistently done since Secretary Dole's call for a regulation that would protect workers 10 years ago.

Despite convincing scientific evidence, from the Department of Labor, the Bureau of Labor Statistics, and the National Academy of Sciences, a vigorous campaign that for years denied millions of workers common-sense relief from their suffering still persists, five months after the standard has been issued. The buzzer has sounded. The game is over. We should all now be getting together to make this common-sense regulation work.

This ergonomics rule is a reasonable one. It does not prescribe controls. In fact, an employer need not make any workplace changes until a worker suffers an injury and the employer concludes it is work related. The kind of changes we are talking about include low-cost solutions such as raising or lowering a work station or chair to eliminate awkward postures, putting wider grips on hand tools, or modifying work schedules to include rest breaks or job rotation.

We know these kinds of adjustments work because many employers have successfully experimented with them voluntarily. In 1992, for example, a grocery store chain headquartered in Connecticut projected \$2 million in worker compensation costs at its east coast stores. The safety manager estimated that work-related musculo-skeletal disorders cost from \$9,000 to \$18,000 per claim and accounted for 54 percent of illnesses at the company. After the company implemented an ergonomics program to purchase adjustable work tables, semi-automatic wrapping machines, vertical scanners and special training for warehouse workers, claims decreased by 50 percent. Workers are protected and money is saved. Incidentally, such voluntary employer-initiated ergonomics standards are "grandfathered in" by the OSHA rule.

The problem is, many employers have done nothing, despite a 10-year-long public process, including weeks of hearings and testimony from thousands of witnesses, and final issuance of the rule last November. I know that some of my colleagues think the common-sense protections contained within this rule are too costly for business, or too burdensome, administratively. But my own close examination convinces me that the cost-benefit analysis tips clearly to the benefit side. Although OSHA estimates implementation of the regulation will cost employers \$4.5 billion a year, that is outweighed by the estimated \$9.1 billion in estimated savings in compensation, medical expenses, and added productivity. OSHA estimates the average cost of fixing each problem job will be just \$250—a small price to pay to relieve the constant physical pain so many workers suffer and to keep those workers productive. Keep in mind, these official calculations don't even take into consideration the intangible benefits that will accrue to healthy employees and their families.

I'd like to add a final word about the process which brings the rule back be-

fore us today. The Congressional Review Act, approved in 1996 as an alternative to more onerous regulatory reform legislation, gives Congress the power to pass resolutions disapproving of recently adopted federal regulation. Here in the Senate, it establishes fast track procedures limiting committee consideration and floor debate.

But the CRA has never actually been used to strike down a rule and I don't think we should set that precedent today. Not only are we being forced to make a hurried decision, without benefit of committee hearings and reasoned judgment. This resolution of disapproval contains a sweeping termination of the entire rule, with no exceptions or direction on how to fix it. In other words, OSHA's hands would be tied in the future, forbidding the issuance of any rule "substantially the same."

There is a more appropriate forum for the technical, scientific, economic or legal arguments opponents wish to make against the rule and that's the U.S. Court of Appeals for the District of Columbia Circuit, where 31 petitions brought by opponents of the rule are pending. Furthermore, opponents may petition the Bush Administration to stay, modify or even repeal the rule, which OSHA can do through a new rulemaking, if it concludes such an action is warranted.

So, I'd say to my colleagues, even if you have concerns about the terms of the ergonomics rule, you should oppose a disapproval resolution under the Congressional Review Act. There are other, better ways to protest this regulation, if protest you must. This resolution opens a procedural door under the CRA that a lot of us should want to keep closed.

OSHA has listened hard to both sides of the debate and adjusted, accommodated and readjusted for 10 long years. Last year, the federal government finally fulfilled its responsibility to protect millions of American workers by approving OSHA's ergonomics rule. We must not undermine the progress we have made and jeopardize the safety and well-being of the millions of Americans who rely on us to do the right thing. I ask that each of my colleagues carefully consider the facts on workplace injuries and their debilitating toll on both workers and employers. Then consider the hurt and pain we can so easily prevent by upholding this ergonomics rule and defeating this unfortunate resolution.

Mr. NELSON of Nebraska. Mr. President, I rise today to express my opposition on procedural grounds to the resolution of disapproval of OSHA's ergonomics standard. This worker protection measure, initiated by then-Secretary of Labor Elizabeth Dole in 1990, is aimed at helping diminish the roughly 600,000 repetitive motion and over-exertion injuries incurred each year in the workplace. Using a resolution of disapproval to erase the standard is unnecessary and severe. Revisions to the

existing standard are needed, but they will not be realized by the passage of this measure.

While many businesses have taken steps to remedy repetitive motion and overexertion injuries, the problem persists and needs to be addressed. The measure currently under consideration, the resolution of disapproval, does not offer much in the way of sensible solutions. In fact, it is a resolution that resolves nothing, it may actually exacerbate the problem by prohibiting OSHA's ability to issue similar measures in the future to address problems caused by repetitive motion. In my view, it is a misuse of the process to force a vote that will short-circuit these regulations. At the very least, it is an unusual delegation of responsibility to the legislative branch by the executive branch when administrative responsibilities are available.

While I plan to vote against the resolution of disapproval, I do have a concern about OSHA's current ergonomics rule, and I have asked Secretary Chao to initiate as soon as possible the administrative options available to her to revise the current rule. Businesses have raised concerns about a number of aspects of the rule, such as its scope; its impact on ergonomics programs businesses already have in place; its effect on state workers' compensation laws; and the cost of compliance. I am particularly concerned about the impact of compliance on small businesses in Nebraska and elsewhere.

However, it is my experience that administrative options provide greater opportunity to reach reasonable consensus on issues addressed through federal regulation. This is why, rather than supporting the extreme measure before us today, I have asked for the Administration to exercise its administrative authority.

By supporting the resolution of disapproval, Congress ignores administrative measures which could produce a more reasonable response. These concerns can be addressed most effectively by an administrative rather than a legislative approach. Both businesses and their workers would benefit from a sensible administrative solution.

Mr. NICKLES. How much time remains on both sides?

The PRESIDING OFFICER (Mr. ROBERTS). The distinguished Senator from Wyoming has 26 minutes, and the distinguished Senator from Massachusetts has 48 minutes.

Mr. KENNEDY. Mr. President, we have had some comments about the importance of the kinds of protections being debated in the Senate this evening; that is, the ergonomics protections. These are the regulations to protect against ergonomic injuries.

We have had a good deal of criticism of OSHA in the past, criticism of regulations that have been issued to try to protect American workers. I know there are many who have spoken in support of this resolution, in opposition to the ergonomics rule, who have

been strongly critical of OSHA over a long period of time.

Let me mention a few facts. According to the National Safety Council and the Bureau of Labor Statistics, the job fatality rate has been cut by 75 percent since 1970. That is 220,000 lives saved since the passage of the Occupational Safety and Health Act. Injury rates have also fallen. According to the Bureau of Labor Statistics, there were 11 injuries and illnesses per 100 full-time workers in 1973; by 1998, it was 6.7 per 100 workers.

Declines in workplace fatalities and injuries have been greater in those industries where OSHA targeted standards and enforcement activities. In manufacturing, the fatality rate has declined by 66 percent and the injury rate by 37 percent since the passage of the Occupational Safety and Health Act. Similarly, in construction, the fatality rate has declined by 78 percent, the injury rate by 55 percent.

Now some examples of rulemaking and what the results have been. We know now there is a problem. Secretary Dole, more than 10 years ago, pointed it out. We have the Academy of Sciences that accumulated the facts to demonstrate it, and we have millions of Americans who have the ergonomic injuries that reflect it.

Look at what has happened other times OSHA has taken action. After OSHA issued a standard on grain handling, the number of fatalities in this dangerous industry dropped from a high of 65 in 1977, before the standard was in place, to 15 in 1997, a 77-percent decline.

OSHA's lead standard has prevented thousands of cases of lead poisoning in lead smelting and battery manufacturing. Since the lead standard was issued, the number of workers with high blood-lead levels has dropped by 66 percent.

Thousands of construction workers were buried alive in trench cave-ins before OSHA strengthened the trenching protections. Fatalities have declined by 35 percent, and hundreds of trench cave-ins have been prevented.

Before OSHA issued the cotton dust standard, several hundred thousand textile industry workers developed brown lung, a crippling and sometimes fatal respiratory disease. In 1978, there was an estimate of 40,000 cases amounting to 20 percent of the industry's workforce. By 1985, the rate dropped to 1 percent.

This is the record. This is what happens when you issue sound regulations to protect American workers in the workforce and in the workplace. Thousands of lives have been saved. Millions of Americans have been helped. This is the record. That would be the case with regard to ergonomics if the regulations went into effect. But we are told no, no, no.

What price are you going to put on 220,000 American lives? What price are you going to place?

According to the Academy of Sciences, we are spending \$50 billion a

year on ergonomic injuries. They are not Democrats. They are not Republicans. They are looking at the facts. Mr. President, \$50 billion a year is what we are spending at the present time.

Here we have *Business Week*—not a Democratic magazine, maybe a Republican magazine—that says it is common sense to put in the ergonomics regulations and the financial savings will be considerable. *Business Week* talking about the same regulations we have had promulgated as a result of study after study by the National Academy of Sciences and others.

Yet we are being told tonight we cannot have them, they are too complicated—too complicated. We just reviewed them. They are simple, understandable, and they will save American lives.

I see the Senator from New Jersey on the floor, and I yield him 10 minutes.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. TORRICELLI. I thank the Senator from Massachusetts for yielding and commend him for his leadership on this issue.

So many millions of Americans have only us between their work, the labor that they may love or do, a necessity to feed their families, and the inevitability of injury if we do not act.

The Senator from Massachusetts has noted, indeed, the irony that 10 years ago it was Secretary of Labor Dole who, responding to reports of increased repetitive stress injuries in the workplace, responded by initiating the development of these standards. Secretary Dole called the issue "one of the Nation's most debilitating across-the-board worker safety and health issues." Good for her. She was right then, as we are right now.

Opposition by industry and their allies in the Congress has at various times stopped, delayed, forced needless studies—anything—to stop the development of a standard designed only to protect the health and the safety of working Americans.

During these delays, the Bureau of Labor Statistics issued reports showing that the number of work-related ergonomic injuries was increasing. Senator KENNEDY just cited these numbers. In 1997, they reported that ergonomics-related injuries accounted for one-third of all lost workday injuries and illness—one-third, amounting to thousands and thousands of people unable to perform their labors, sustaining serious injury.

Finally, last year while the National Academy of Sciences worked on its own second congressionally ordered study, Congress allowed OSHA to develop and issue an ergonomic standard. After 9 weeks of public hearings, 1,000 witnesses, 7,000 written comments, 10 years of study and debate, OSHA issued the standard this past January. How many studies, how many more years, how many more consistent conclusions? The Congress had a right to ask

for the studies. Maybe it was proper to be deferential, to let time pass until we understood the issue better. But can there be anyone in the Senate, after 10 years of debate and all these studies, through Democratic and Republican administrations, who genuinely doubts any longer the health impact on the American worker?

It leads one to believe it is not a doubt about the health of our workers. In my judgment, it is a question of fidelity with their cause. The nonpartisan National Academy of Sciences twice reported a clear relationship between work-related activities and the occurrence of injuries such as back strains. According to the National Academy, workplace ergonomic injuries have led to carpal tunnel syndrome, back injuries, permanent nerve damage in the hands, neck pain, and tendonitis. Many of the workers who suffer from these injuries are crippled by debilitating wrist, shoulder, and back pain. Some have had to change jobs or even stop working.

This, obviously, is not good for workers. But can anyone actually argue this is good for business? Workers needlessly crippled, missing thousands and thousands of hours of work, needing replacement, costly medical treatment? If you didn't care about the workers, why would you still be here arguing this? This isn't good for the workers. This isn't good for business. This just isn't good for the country.

There should be no constituency for those opposing these standards. The NAS studies provide us with the science to show just how important this issue is. The point is, if you didn't have the studies, if you hadn't studied it again, the injuries and the way they affect lives and these businesses—we are replete with examples.

After 14 years as an information technology analyst for the New Jersey courts, Susan Wright started to develop numbness and tingling in her fingers. Here is my study: When she turned a doorknob, Susan would feel something akin to an electric shock in her hands. By 1998, she had undergone two operations. Susan's operations were a success and her office has recently had ergonomics training to prevent future injuries such as Susan's.

But not every story ends with a success. Another constituent of mine, Pattie Byrd of Trenton, has a permanent disability in her right hand from constant work-related computer use.

Susan's and Pattie's injuries could have been prevented. The loss of their labors in their place of employment was not necessary. The cost of training replacements was not necessary. The lost efficiency was not required. Their pain and their medical expenses were not necessary. It all could have been avoided, and that is what these standards are for.

They are not limited to computers or office workers. It is a problem for every sector of the economy. They affect industries ranging from meat packing to

nursing to truck driving to construction.

In the Nation, 1.8 million people report work-related injuries such as carpal tunnel syndrome, tendinitis, and back injuries each year; 1.8 million. Last year more than 600,000 of those injuries were serious enough to cause them to miss work, which is why we stand here, not just for the workers—as if that were not good enough—but this is a massive problem in the economy, for the functioning of our businesses, our offices in every sector of the economy.

The new OSHA standard is expected to prevent hundreds of thousands of these injuries. After 10 years and 6 million unnecessary ergonomic-related injuries, it is now time. Critics still argue that the OSHA standard is based on bad science. Others fear the standard will cost too much for business. The facts simply do not bear out these concerns. The National Academy of Sciences report requested by this Congress reaffirmed the scientific evidence underlying the standard is strong.

If you weren't going to accept the results of the study, why did you ask for it? If you don't believe in the National Academy of Sciences, why do we fund them? If you were not going to accept all these years of analysis, all these independent and objective reviews, why did we wait?

One gets the impression that it is not the evidence, it is not the credibility of the studies, that nothing is going to meet the threshold where this Congress will act to protect American workers. Maybe that is the worst commentary of all.

It is estimated this standard will cost \$4.5 billion annually. Maybe. But it can also save \$50 billion a year in compensation payments, lost wages, and lower productivity. The costs associated with the OSHA standard will be minimal compared to the savings.

It is right for these workers. It was a good commentary on this Congress and the previous administration that we acted. It will similarly be a bad commentary on our sensitivity to our people, the workers of our country, and a bad commentary on this Congress if now we act to undo that which we did, which was right, after so many years of waiting, after such overpowering evidence.

The workers of this country deserve an advocate. It is said that every powerful special interest in America has some advocate in this Congress. On this night we determine who are the advocates—who will stand for the average American worker who faces these injuries, this loss of wages, this pain and suffering? Let me make my position clear. There have been enough studies, enough time has passed, enough people have suffered. Let the standards stand.

I yield the floor.

The PRESIDING OFFICER. The distinguished Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I compliment and congratulate my colleague, Senator ENZI from Wyoming, for his leadership on this issue. He has been shepherding the floor, along with Senator HUTCHINSON from Arkansas, and they have done a great job. I think there has been illuminating debate. I also wish to congratulate my friend and colleague, Senator KENNEDY, on this issue. We do disagree on a couple of issues, but he is still my friend. I respect him.

I feel very strongly that we as Senators should protect the legislative functions of Congress and the constitutional division of powers between the legislative branch and the executive branch. Congress, according to the Constitution, is supposed to write the laws. In fact, article I of the Constitution says that Congress shall write all laws. The tenth amendment of the Constitution says all other laws are for the States and for the people. Nowhere in the Constitution does it say the executive branch, the branch that was charged with enforcing laws, is to legislate.

I tell my colleagues and I urge my colleagues who are maybe predisposed to vote no on this resolution of disapproval to consider this very carefully. In a free democracy, a democracy where we have elected representatives to represent our constituents, we do not have and we cannot allow unelected bureaucrats to pass laws.

The law of the land, the bill that created OSHA, the Occupational Safety and Health Act of 1970, is still the current law of the land and it states—this is the conference report:

The bill does not affect any Federal or state workmen's compensation laws, or the rights, duties or liabilities of employers and employees under them.

That is still the law of the land. Very clearly in the statute it says we are not passing workers comp. It says we are not creating a Federal workers compensation system. It says we are not superseding or changing the State workers comp laws.

I refer my colleagues to this regulation. It states:

You must provide that the employee with work restriction protection which maintains the employee's employment rights and benefits in 100 percent of his or her earnings—

That is compensation. It goes on—

You must provide [talking about employers] that the employee with work restriction protection which maintains the employee's employment rights and benefits in at least 90 percent of his or her earnings.

That is compensation. That is workers compensation for not working. That has only been done at the State level. Now we have a Federal workers comp law. That is not consistent with the existing act. In other words, the Clinton administration's department of OSHA is breaking the law. They are exceeding the law. They do not have the constitutional authority to enact a Federal workers compensation system.

I heard one of my colleagues say that is not a Federal workers compensation

system. The heck it is not. You are paying people not to work. You are paying people for injuries. That is workers compensation. That is covered by State laws. That is covered, for every single State in the Nation has worker compensation laws.

This one, it just so happens, has compensation that has higher levels than any State in the Nation.

Those are the facts. How in the world can we as a legislative body delegate that to some unelected bureaucrat in the Department of Labor? We did not. We have never done it. As a matter of fact, we prohibited it. But the Clinton administration tried to do it anyway. They tried to jam it through on January 16.

I heard some people say you are using this Congressional Review Act as, I believe Senator CLINTON said, a legislative time bomb to undo this legislation that people have been working on for 10 years. The CRA was written and was supported, I might mention, by every person in this body because it passed by unanimous consent, so that Congress would have a chance to review these laws.

If there is an economic impact of \$100 billion, Congress had better have an input so it can prevent it, stop it, or overturn it. Because we are elected officials, we should be held accountable.

Who is the legislator in OSHA who wrote this regulation? Who is going to hold them accountable? They are gone. As a matter of fact, the Clinton administration showed contempt of Congress and contempt of the new administration by trying to jam through this enormously complex, burdensome, and expensive regulation with 4 days left in their administration.

My colleague from Massachusetts said this regulation is only eight pages. I count the pages a little differently. This little part of the regulation is 608 pages, which is interesting. The regulation that was promulgated by the Clinton administration in 1999 was 310 pages. Look at what happened in that year. Yes, they had a few hearings; 1 year later, 608 pages. It about doubled.

Guess what. It is a lot more complex than this. My colleague said it is only eight pages. Let's look a little closer at some of the details and some of these pages. I guess this goes beyond eight pages. It talks about job hazard analysis tools. We have tools for the job strain index and one for revising the NIOSH lifting equation. That is referred to. That wasn't part of the eight pages. If you look at it in the regulation, you need to pull that up. We pulled it up. We found the NIOSH regulation.

There are 164 pages. They came up with standards for lifting. As a matter of fact, they have lifting equations. If you lift anything, I guess you go to this NIOSH standard—164 pages. You get lots of information on how much you can lift.

This is all part of the standard—these little equations here.

I believe some people said you can read these regulations in a matter of 20 minutes.

I will insert this one page in the RECORD, and I defy anybody to tell me what it means:

The multitask lifting analysis consists of the following three steps: Compute the frequency independent RWL, FIRWL, and the frequency independent lifting index. That is FILI values for each task using the default PM of 1.0.

Compute the single task RWL. That is the STRWL, and the single task lifting index, STLI, for each task. Note in this example that interpolation was used to compute the FM value for each task because the lifting frequency rate was not a whole number. Remember the task in order of decreasing physical stress as determined from the STLI value starting the task with the largest STLI.

I could go on and on and on. This is almost funny. But it is not funny because we don't change it, and if we don't stop this regulation, and stop it tonight, everybody in America is going to be trying to figure out what STLI means, and what all of these other little acronyms stand for, and so on. And they are going to say: You mean to tell me we can't move 20 pounds of force? We can't lift items more than 75 pounds? You mean to tell me that every single grocery store in America is going to be in gross violation of these standards? You mean that every single person involved in bottling or every single person involved in moving is going to be in gross violation of these standards and we will never, ever be able to comply with these ridiculous standards that were jammed through in the last 4 days of the Clinton administration? We are going to make them violators of the law and fine them or we are just going to say hire lots more people. Is that the purpose of it?

Let's look at the next standard. Here is one dealing with vibration. I think this was referred to earlier. This deals with vibration. I ran a manufacturing plant. I will tell you that any manufacturing plant in America has a lot of vibration, sanding, grinding, and people doing a lot of different types of motion that require vibration.

Again, this was not included in Senator KENNEDY's pages. I think there are only 22 pages, but it is pretty complex. I look at the formula for complying with this. I used to do very well in math, I might mention, in college. But, for the life of me, it is going to take somebody a lot smarter than I. Maybe colleagues who support this regulation can figure out what this equation means where T is equal to whatever that equation says. We are going to tell Americans who have companies that have vibration, grinding, and motion that they have to comply with this ridiculous formula—that thousands of businesses are going to have to comply with this? That is in this regulation that somebody said was eight pages. It is in this 800-and-some pages that are in the regulations.

Some people said: Where do you get 800 pages? The regulations promulgated

608 pages. But they refer to several studies including studies like this that add up to another 227 pages, at least. It is actually more than that, because one of the studies we can't even get a copy of. I have excellent staff, but no one can get a copy of it. We don't know how many pages are in one of those referred to in the job hazard analysis tool to which they referred.

They give Web sites so people can download so they can get this kind of equation and basically say comply, because the big hand of the Federal Government is going to come in and hit you hard if you do not. As a matter of fact, they will tell you that you have to change your business, maybe relocate your business, or redesign your business. Somebody from OSHA is doing all of this. Somebody who is unelected can put that kind of mandate on every business in America, presumably because they know better. They know better than the State in workers comp? Again, it is in violation of the law because some bureaucrat was able to come up with that? I just totally disagree.

I heard a couple of Members comment saying: Wait a minute, the people fighting for this are fighting for special interests—the Chamber of Commerce, the National Association of Manufacturers, or NFIB. Hogwash. The only thing that was special interest was the Clinton administration trying to jam this regulation through in the last 4 days of the Clinton administration. This is the special interest. This regulation is the special interest that the Clinton administration was trying to jam through.

Congress, thank goodness, passed a law that said we can review in an expedited form regulations that cost a whole lot of money. That is the reason we are using the CRA. Some people said: If you use that, you can't even talk about this regulation and ergonomics is dead forever. That is not what the Secretary of Labor said. The Secretary of Labor said:

I intend to pursue a comprehensive approach to ergonomics, which may include new rulemaking that addresses the concerns levied against the current standard. This approach will provide employers with achievable measures that protect their employees before injuries occur. Repetitive stress injuries in the workplace are important problems. I recognize this critical challenge and want you to understand that safety and health in our Nation's workforce will always be a priority in my tenure as Secretary.

In other words, she is going to work to reduce work injuries. I will work with her, and I think every Member of the body should.

What we shouldn't do is promulgate a regulation and say: Here it is. You are stuck with it. It may cost over \$100 billion a year. We don't care how much it costs.

That is ridiculous. Let's work with the new Secretary of Labor. Maybe we don't need to repropose a new regulation. Maybe we can do a lot of things that will reduce workplace injuries

without saying to States that we don't care what your worker comp laws are, we are going to come up with a Federal workers comp.

If this is so good, if we are successful in repealing this, which I hope we will tonight and I hope soon in the House, if my colleagues want this to become the law of the land, I encourage them to introduce it as legislation. I am only assistant majority leader, but I will encourage my colleagues to have hearings on this. If they really think we need a Federal worker compensation law, let's have a hearing on it. Let's discuss it. Is that what the Federal Government should do? At least I will be comfortable that it is going through the legislative process.

My biggest objection to this is that the Clinton administration could not get something through by legislation, so they did it by regulation. I find that in contempt of Congress; I find it in contempt of the Constitution, in violation of the Constitution, in violation of the OSHA law that was written in 1970, as I plainly showed just a moment ago.

Some people are born to regulate. The author of this legislation states exactly that. Martha Kent, who was the former Director of the OSHA Safety Standards Program, in May of 2000, in an interview that she gave with the American Industrial Hygiene Association, said this:

I absolutely love it. I was born to regulate. I don't know why, but that's very true. So long as I'm regulating, I'm happy. . . . I think that is really where the thrill comes from. And it is a thrill; it's a high.

She may love to regulate. She also got into the legislative business. We are in the legislative business. We should protect our legislative rights. Her legislation may be well intended, but it is not very good. It is enormously expensive. It needs to be stopped. And then let's work together to see if we can do some things in a bipartisan fashion through the legislative process, through the normal process—not jamming a reg through in the last couple days of a lame duck administration—and come up with some things that will help American workers.

This bill does not help American workers. This bill would result in a lot of businesses going bankrupt, a lot of people losing their businesses, unemployed people. That is not healthy. That is not good for the American workforce and certainly not good for technology.

So I urge my colleagues to vote in favor of the resolution.

I again notify my colleagues there will be a vote at 8:15 tonight.

Mr. President, I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I yield 12 minutes to the Senator.

The PRESIDING OFFICER. The distinguished Senator from Minnesota is yielded 12 minutes and is recognized.

Mr. WELLSTONE. I thank the Chair.

Mr. President, I had a chance to debate this resolution earlier today. But after hearing my colleagues throughout the day, I want to respond one more time. While I am on the floor, I want to thank Senator KENNEDY for his great leadership on this resolution, and, for that matter, for always being there for working people in the country.

In my hand are reports from a lot of different businesses in Minnesota—I mentioned three of them earlier—that have an ergonomics standard, a very successful standard. Interestingly enough, that is exactly what this OSHA rule is patterned after—best practices by the private sector. I also hold in my hand this report by the National Academy of Sciences which is titled “Musculoskeletal Disorders.” Again, this is precisely what many of the critics of this rule wanted. They wanted the Academy to do a study. The Academy did a study and they found out some enormous problems in the workplace.

The Academy also found out there were, indeed, practices that could be put in effect that could make a huge difference in terms of lessening the injuries, lessening the disability, lessening the pain. Interestingly enough, again, this OSHA rule is really a reflection of this Academy study.

I think I have decided, after listening to this debate, that for some of my colleagues—who are friends; but this is a policy disagreement—it never will be time for this kind of protection for our workforce, for the many men and women in our workforce. There are more women than men in the workplace.

I cannot believe that so many of my colleagues have been so exercised throughout the day that OSHA, an agency that has the mission of looking out for the health and safety of workers in the workplace, would promulgate a rule dealing with really one of the most serious problems in the workplace today—repetitive stress injury.

I cannot believe the shock that I hear from Senators who are in favor of this resolution, that OSHA, of all of the agencies, should promulgate a rule which deals with repetitive stress injury and would provide protection to men and women at the workplace.

This is the mission of OSHA. This is a rule that has been 10 years in the making—going all the way back to Elizabeth Dole and up to now.

I really think this debate is about another issue, which I want to raise in the few minutes I have remaining. I am trying to understand the intensity of the opposition, since many of the arguments I have heard made, I do not think fit with a lot of the facts, fit with 10 years of work. I am trying to figure out why the rush to judgment. Why are my colleagues so determined to overturn this rule which provides protection for people? And here is what I have decided.

I think in many ways this opposition is opposition to the mission of OSHA. This legislation was not without controversy. And really, when we started talking about occupational health and safety, it was a bit like environmental protection. In fact, these are environmental issues. This is the environment at the workplace.

What we said, when we created OSHA some 30 years ago, was that the private sector is what makes the economy go. And the private sector can make a profit; and that can be good, up to the point where you are putting people at the workplace—or for that matter, the water, or the air, or the land—in jeopardy.

Then what we said was, commercial logic stops, and public interest logic starts. That is what is upsetting many of my colleagues. What we have here is a rule that is all about public interest. What we have is a rule that says it is important for the private sector to be as successful as possible; but there comes a point when hard-working people are injured at the workplace—quite often disabled, quite often in pain, quite often in pain for the rest of their lives, and never able to work again—when we get to that point, the commercial logic stops and the public interest logic starts.

Of course, unfortunately, because I worry about the result tonight, for many working people, many ordinary citizens do not own the capital; they do not own the big companies. They just work hard. They work at these jobs. Do you know what else. People know they are going to be in trouble. They know what the repetitive stress is doing to them. They know what the effect is on their lower back from the lifting. They know it. They know they are going to be in trouble. They know they could be disabled.

But this is a class issue. These men and women do not have the options that Senators have, and, frankly, most of our families have, and most of our friends have, which is to easily go to other work. They do not have that option.

So these ordinary citizens—which I do not mean in a pejorative sense but in a positive way—look to us. They look to Government. They look to Government to be on their side.

I think it is a tragedy that this resolution could very well pass tonight. I think it is unconscionable that this resolution could very well pass tonight. I believe, once again, the message of passing this resolution tonight is to say to many citizens in our country, who are not the big players and the heavy hitters—and they are not powerful, and they are not high income, and they do not have a lot of lobbyists—I think the message to them is: You are expendable.

We have heard about the cost—\$100 billion. I am trying to figure out from where in the world that comes. That is a theoretical estimate, as far as I can tell, looking at the figures and trying

to figure out how anyone arrived at that. I do know that OSHA says it is \$4.5 billion, but that is offset by savings.

I have heard other Senators talk about savings—savings in that now people can work; savings in that people do not have to go for workers comp; savings in that people will be more productive.

Do you know what I think is the greatest savings of all? The greatest savings of all, which apparently does not get figured into any of the dollars, is when you can have women and men who can work to support their families, work without being injured, without being in pain, without being disabled, being able to live their lives, being able to support their families.

That is what this rule is about. Don't trivialize this question. That is what this rule is about. I hope my colleagues will vote against this resolution.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I yield myself 10 minutes.

To hopefully dispose of some of the differences that have been expressed this evening about the size of the rule, I stand by the actual OSHA standard, which is 8 pages long. It is written in plain English. It is accompanied by 16 pages of fact sheets and appendices. The remaining 583 pages that are being mentioned here as part of the 600 pages comprise the preamble and background materials required by the regulatory process.

It is interesting how the regulatory process requires that. That is as a result of what they call the SBREFA and other laws that Congress has passed, as well as of Executive Orders of President Reagan and former President Bush. This material is required. If my colleagues would like to do something about it, let us get the Administration to change that. Otherwise, this material will be required to be submitted.

I am a believer in OSHA. I mentioned earlier the progress that has been made. Let me mention very quickly what some of the results have been as a result of the work of OSHA between 1973 and 1998.

In the area of manufacturing, you had 15 deaths per 100 full-time workers in 1973. In 1998, that was down to 9.7. In the construction industry, the number was 19.8 in 1973. In 1998, it was 8.8, virtually half. In total, the case rate in mining, 12.5 percent in 1973; 4.9 percent in 1998. These are real results. These are lives saved.

You have a similar record in terms of illnesses and occupational hazards. That is the result.

I am not saying that every time OSHA promulgates a regulation it is necessarily right, but what you have heard today on the floor of the Senate is a wholesale assault on the Occupational Health and Safety Administration.

It does make a difference whether we have Administrators of OSHA who are

committed to OSHA or whether they are not. Under the Reagan Administration, injury rates increased from 7.6 per hundred in 1983 to 8.9 per hundred in 1992. We had Administrators who were not committed to OSHA. During the Clinton Administration, we had a reduction in injury rates from 8.6 per hundred in 1993 to 6.3 per hundred in 1999. This is the lowest rate in OSHA's 30-year history. These are lives that are saved. These are illnesses that are prevented. These are protections for America's workers. That is what this issue is about.

We hear, well, we didn't elect those people over at OSHA. We haven't elected the people at the FDA who promulgate the rules and regulations to make sure our pharmaceuticals will be safe and efficacious. We require them to be so. We rely on those rules and regulations. There are regulations to ensure the safety of medical devices and cosmetics.

We look to the Consumer Product Safety Commission to issue rules and regulations to require safety in toys. We look to the FAA to protect our airline passengers. We look to the Clean Air Act and the Clean Water Act to make sure the air we breathe and the water we drink will be pure. The officials at EPA who issue regulations to do this are not elected. They promulgate regulations. As a result of regulations, we have the safest food in the world. We have the best pharmaceuticals in the world. We have the best medical devices. We have the purest air and we have the cleanest water. Period. We have the safest workplaces. Period. That is as a result of regulation. Period.

That brings us to what we are faced with tonight. We have a rule that is targeted on the No. 1 health and safety issue affecting workers in the workplace. As has been pointed out all day, this does not come as a surprise. And it was not in the last 4 days of the Clinton administration. It was the result of more than 10 years of study.

The fact is, those who are effectively eliminating this rule have to understand what all of us understand: Over the last 10 years, every single attempt to try to promulgate rules and regulations has been opposed and fought every step along the way. This has been illustrated by many of our colleagues. There have been add-ons, riders to various appropriations. There have been attempts to block new regulations right from the very beginning.

We are not coming to this as an institution with clean hands because we know the forces that have been out there for the last 10 years opposing any ergonomics regulations. They are opposed to rules and regulations promulgated by OSHA, but they are also opposed to rules and regulations that are voluntary, developed by various business groups. The business community and the Chamber have been out there opposing even those voluntary efforts. They have been opposing every State regulation.

It would be one thing to say we don't really need it because the States are already doing it. They are not doing it because of the power of the special interest groups that have been resisting it. We haven't heard, after all day long, one single example of one ergonomics regulation that is supported by those who want to eliminate this rule. Not one. I have listened. I have waited. I have sat here all day long. There is none, not a single one, because they are not for any of it.

And there is another misleading argument that has been made by my colleagues with regard to states. They claim that the ergonomics rule undermines state workers' compensation laws. This is false. The WRP payments required by the rule are not workers' compensation. Seventeen state attorneys general have written telling us that.

WRP is preventative. Workers will not report ergonomic injuries if they will lose money to support their families. Only if those injuries are caught early can people be saved from permanent disabilities.

WRP and workers' compensation are entirely separate. The employer's doctor decides whether a worker gets WRP. All standards for eligibility for workers' compensation remain unchanged.

The standards which protect workers from lead, benzene, cadmium, formaldehyde, methylene chloride and MDA include WRP, and the federal courts have said it's perfectly fine.

But we would kill this rule because its opponents have the votes. This idea that, well, tomorrow we will pass a nice resolution to get the Department of Labor to work out something, they ought to be able to do it quickly and everything will be hunky-dory, is baloney. There isn't the slightest chance in the world of it.

This is the first time in 30 years that an OSHA rule is being overturned, as it is here tonight. We ask ourselves why, why are we doing this when we know that there is a real problem? It isn't just us who know it is a problem, it is the millions of Americans who are affected and hurt every year that say it is a problem. Every group that has studied it has said it is a problem. Every women's group in the country knows it is a problem. They are the ones who are bearing the burden. Seventy percent of all the injuries happen to women in our society.

It is a big problem. According to the Academy of Sciences, \$50 billion worth of a problem. We know the problem is out there. We know there have been months, years of study, hearings, study after study after study out there to try to come forward with these regulations.

Now, in a matter of a few hours today, we are virtually dismissing them. The proposal that is supported by the Republicans will deny OSHA the opportunity to promulgate meaningful regulations in this area. The statute

will not permit them to issue substantially similar regulations. We will not be providing those protections. It is a major weakening in terms of the protections for American workers.

This it is for the 100 million American workers who today, tonight, and tomorrow go to workplaces, the more than 6 million workplaces across the country. If we are not going to protect them now, there is no one who is going to protect them.

We have a recommendation that has been studied and reviewed. We know what is at risk. If we do not do this, we know the people who are going to be constantly hurt, working families being hurt day in and day out in the future.

This is our last chance. Unless we protect them, the result is going to be devastating.

This resolution is antiworker, antiwoman, and, basically, I believe, a political payoff for groups that have been involved in fighting this and making the contributions to undermine the safety and security for American workers.

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

Mr. KENNEDY. This is wrong, Mr. President. I hope it will not pass.

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

Who yields time?

Mr. DASCHLE. Mr. President, I yield myself 10 minutes of the time allocated to me.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. DASCHLE. Mr. President, let me begin by complimenting the Senator from Massachusetts for the extraordinary work, his leadership, the commitment he has made, and the passion and eloquence he has again demonstrated on this issue. No one cares more deeply about working people and has committed more of his public life to working people than has he. This fight, again, is an illustration of the deep, passionate commitment he holds for working Americans. I congratulate him and thank him.

As others have noted, it was in 1990, over 10 years ago, then-Labor Secretary Elizabeth Dole announced that the Federal Government would take what she called “the most effective steps necessary” to reduce ergonomic hazards that injure and cripple millions of workers every year.

It took 10½ years of research and three exhaustive studies, but we finally have a modest, reasonable ergonomics rule. And now, only after 10 hours of debate, with no public hearings, we are on the verge of wiping out that 10 years’ worth of work.

Before we vote on this misguided measure, let me be very clear. Men and women across this country will be injured and crippled because of the pressure for this quick political victory. Millions more will have to live with the same pain that Shirley Smith lives with tonight.

Mrs. Smith is the mother of four. She used to work in a poultry processing factory in North Carolina. She cut chicken breasts on a fast-moving line, using a dull knife, until she could not hold the knife anymore. At 41 years old, she was disabled by her work. She can’t work anymore. She can’t do a lot of things anymore. Listen to her words:

I go to bed in pain, I wake up in pain. I can’t do things like I used to—like playing football with my kids. I can’t fix a big meal like I used to, or hang up clothes, or do yard work at all. I can’t even go to the grocery store because I can’t push the cart alone.

Shirley Smith is, unfortunately, just one in a million. One in a million.

The most recent report by the National Academy of Sciences found that, in 1999 alone, 1 million people took time away from work to treat and recover from work-related ergonomic injuries—a million people. That is 300,000 people more than live in the entire State of South Dakota.

More workers lose time from work because of ergonomic injuries than any other type of workplace injury. That is a fact, not an assertion. One out of every three workplace injuries serious enough to keep workers off the job is caused by ergonomics.

The cost of these injuries is staggering. When you add up compensation costs, workers’ medical expenses, lost wages, and lost productivity, it comes down, conservatively estimated, to \$50 billion a year. Carpal tunnel syndrome is one of the most common types of repetitive motion injuries, causing workers to lose more time from their jobs than any other type of injury, even amputation. The loss to businesses is immense. The cost to workers is even worse.

Repetitive stress injuries are serious injuries. They can cause permanent crippling and unending pain. Women are especially at risk. While women make up 40 percent of the overall workforce, they account for more than 64 percent of repetitive motion injuries. Two out of every three women hurt on the job are hurt because of ergonomic job hazards.

Opponents of this ergonomics rule condemn it as an eleventh hour rule-making by an outgoing administration. Let me tell you, that is not true. This all started, as I said a moment ago, by a Republican, the Secretary of Labor, Elizabeth Dole, when she announced, at the beginning of the rulemaking process in August of 1990, that something had to be done.

In 1992, her successor, also a Republican, then-Secretary Lynn Martin, issued an advance notice of proposed rulemaking on ergonomics. For the next 7 years, the Federal Government examined virtually every study done on ergonomics and workplace injuries. And before issuing a final rule, OSHA extended the comment period just to be sure they had given everybody a chance to comment. They held 9 weeks of public hearings, heard more than a thousand witnesses, and reviewed over

7,000 written comments. The rule-making process was public and, obviously, it was exhaustive.

Only after doing all of that did OSHA issue its final rule last November. This ergonomics rule reflects an extraordinary amount of public comment and advice and the latest scientific understanding of workplace injuries. Both the National Academy of Sciences and the National Institute For Occupational Safety and Health—the leading experts—agree: ergonomic hazards in the workplace cause injuries. Moreover, these experts agree that minor modifications to the workplace can prevent ergonomic injuries. So if ergonomics is as big a problem as we have been now told and if the minor modifications called for in this OSHA rule can help, then why not allow it to work?

The rule the Department of Labor crafted is sensible, flexible and modest. To begin with, it exempts many industries such as agriculture and construction. In industries that are covered, the rules contain only one universal requirement—one. It requires employers to inform workers about signs and symptoms of ergonomic injuries and give them a way to report such injuries. That is it.

Only if an employee is injured, and the employer determines the injury is work related, is the employer required to take measures to address the job hazards. And when it is all said and done, it is the employer who determines what constitutes an appropriate remedy. This, to me, is the most remarkable aspect of it all—who is the arbiter of the decision about work-relatedness and what must be done to remedy the situation? The employer. The employer is the one who decides whether an employee has a work-related injury. The employer makes the decision whether and how to address the problem.

Does that sound onerous to you? Does it really sound like a one-size-fits-all approach? I find it hard to believe that anybody could answer yes to those questions. But even if you do believe those things, this resolution of disapproval is exactly the wrong approach. Instead of a deliberative and thoughtful review, the Congressional Review Act is an all-or-nothing approach. After 10 years of work, it all comes down to 10 hours of debate and not one hearing. With so much at stake, it strikes me that this is exactly the wrong way to proceed.

There has to be a better way. There is a better way. Instead of throwing out this rule, OSHA could go back to the drawing board today, under this administration’s guidance, and change the ergonomics rule in any way, shape, or form they wish. They could do it today. They could start that process today.

Under current law, all they have to do is publish a notice of intent to reopen the rule in the Federal Register and provide an opportunity for public comment, period. Instead of encouraging that sort of inclusive process,

this resolution constrains OSHA's ability to regulate in this area in the future. We know that.

Backers of this resolution insist that it merely requires OSHA to rework its rule. I hope they are correct. I hope they are correct.

I hope that Secretary Chao will take seriously her responsibility under the Occupational Safety and Health Act to "assure, so far as possible, every working man and women in the Nation safe and healthful working conditions." I hope she will read the rich record that was developed to support this rule.

I hope she will direct the Labor Department to work aggressively to craft a new rule. I trust she will not be misled by those who oppose ergonomic standards.

I take for granted simple tasks such as cooking dinner with my wife, dressing myself, opening doors, and turning the page of a book. Shirley Smith can't take these things for granted. For her, and millions of other Americans who have been disabled on the job, these simple tasks require heroic strength. By repealing this rule, we are letting her down.

I yield the floor.

**THE PRESIDING OFFICER.** The time requested by the distinguished Democratic leader has expired.

**MR. KENNEDY.** I yield 2 minutes to the Senator from Delaware.

**THE PRESIDING OFFICER.** The distinguished Senator from Delaware is recognized for 2 minutes.

**MR. BIDEN.** Mr. President, I am not going to go over the familiar arguments that are real, that this is about the wrong way to go about this. This debate reminds me of a famous expression attributed to Oliver Wendell Holmes: Prejudice is like the pupil of the eye: The more lights you shine on it, the more tightly it closes.

This is like a religious argument. This is like a holy war. This is like the debate we are going to hear on the bankruptcy bill: a lot of hyperbole and talk about how bad this is.

The fact of the matter is these arguments sound very familiar. In fact, in the many years I have had the honor of serving in the Senate, I have heard them often. Every time we debate the wisdom of raising the minimum wage so low-income workers can make a viable living, we hear it is going to put people out of business. The fact is it never happens. It does not stop my earnest colleagues from making the exact same arguments again and again every time we raise the issue.

It is not just in the context of debating the minimum wage that I recall arguments about businesses facing the prospect of having to shut down to comply with Federal rules and regulations. In fact, virtually every time OSHA issues a ruling, claims are made about the enormous costs businesses will incur.

In 1974—and I am dating myself—when OSHA issued the ruling to reduce worker exposure to vinyl chloride, the

cancer-causing gas, we were warned that the entire plastics industry would fold.

I add my voice to those who are appalled that the Senate is even dealing with the issue of reversing OSHA's rule.

It was during the Administration of President George Herbert Walker Bush that the Labor Secretary, Liddy Dole, began the 10-year long process that resulted in OSHA putting forth this regulation to protect American workers.

During that 10-year period, every interested party—from business to labor, scientists and academics, politicians, lobbyists and ordinary citizens—had more than ample time to raise whatever concerns they had. The Occupational Safety and Health Administration weighed the arguments and came out with a regulation designed to protect millions of American workers whose jobs often lead to various injuries and ailments.

I understand that some of my colleagues may disagree with this regulation. And they have every right to do so. They may even go so far as to support those who already have gone to court to file legal challenges, or they may decide to work on legislation that might in some way amend or negate OSHA's rule. That would be an appropriate way to proceed.

But this rushed debate is beneath the Senate. We puff out our chests when people refer to us as "the world's greatest deliberative body."

Where's the deliberation?

Where are the hearings?

Where are the witnesses?

How can we act with such impunity after 10 years of work that took into account every expert out there, including the input of the National Academy of Sciences?

I am not indifferent to the arguments made by my friends in the business community. I know they feel that there are costs involved in implementing this rule, and these costs are real.

I ask my friends to look at some facts. Injuries to workers are not bad just for those individuals. There are real losses to employers in terms of higher insurance costs and lost productivity.

Most business men and women understand this and are responsive because it makes good business sense. I have heard from those expressing their concerns with the OSHA regulation, but these Delaware business people who are out in front of the curve, who have already taken precautionary measures to protect their workers, who will not be greatly affected because they value their employees and want to protect them from potential job-related harm.

Let me conclude by responding directly to my colleagues who argue that adhering to these guidelines is so onerous and expensive that it will put many companies out of business.

These arguments sound familiar. In fact, in the many years I've had the

honor to serve in the Senate, I have heard them often. Every time we debate the wisdom of raising the minimum wage so that low-income workers can make a livable wage and climb above the poverty line, we hear the argument that unemployment rates will surely rise.

The fact it never happens does not stop my earnest colleagues from making the exact same argument again the next time we have that debate.

It is not just in the context of debating minimum wage that I recall the argument about businesses facing the prospect of having to shut down to comply with a Federal law or regulation.

In fact, virtually every time OSHA issues a ruling, claims are made about the enormous costs businesses will incur. In 1974, when OSHA issued a ruling to reduce worker exposure to vinyl chloride, a cancer-causing gas, we were warned the entire plastics industry would fold.

The industry said it would cost from \$65 to \$90 billion to meet the new standard. OSHA estimated it would cost one billion dollars. Who was right?

Neither.

OSHA overestimated by a factor of four. The plastics industry got busy and eliminated the vinyl chloride hazard at a cost of just under \$280 million. They were off in their estimates by many billions of dollars.

The same thing happened when OSHA proposed limiting worker exposure to cotton dust, and again with formaldehyde, and again with lead, and on and on. We hear about astronomical dollar figures and the threat that businesses and entire industries will come to an end.

Then, later, we learn that businesses, using their creative skills, come up with innovative measures to deal with the challenge, and solve their problems in a cost-effective way.

I say to my colleagues, let's not get caught up in hyperbole. If there are legitimate questions, there are remedies under our democracy. After 10 years of consideration, we cannot roll back these worker protections in just a few hours of debate and then continue to refer to this institution as a "deliberative body."

We might as well just get rid of OSHA entirely if we roll back this regulation. I know some of my colleagues think that is not such a bad idea, but I cannot believe a majority of my colleagues think American workers, and the institutions of government we revere, do not deserve better than what is proposed today.

**THE PRESIDING OFFICER (Mr. ENSIGN).** The Senator's time has expired. Who yields time?

**MR. KENNEDY.** Mr. President, as I understand it, we have 2½ minutes remaining, and the remaining time will be used by the Senator from Wyoming.

**THE PRESIDING OFFICER.** The Senator has 2½ minutes.

**MR. KENNEDY.** The Senator from South Dakota has stated it so well in

the final moments of this debate. We are being urged in the Senate, at the start of this administration, to reach out our hand and try to find common ground on public policy issues. We are attempting to do that in areas of education, health care, and in many other areas. That is what we want to do with this regulation.

We would like to have the process followed where the President makes a petition in the Federal Register and then there will be an opportunity to review this rule and do it in a sensible, responsible, bipartisan way, but not to throw out 10 years of work. That is what we are asking. That is what we are requesting. That is what we think is reasonable and responsible to protect the lives and well-being of our fellow Americans.

On the other side, if they refuse to do so, they are effectively saying that the interest of the workers, primarily women, can be sacrificed on the chopping block of political expediency. That is unacceptable.

If the safety of workers is going to be compromised tonight, what will it be tomorrow? Will it be the safety of our food supply, the safety of our air, the safety of our water, the safety of our prescription drugs, the safety of medical devices, the safety of our airports? What will it be tomorrow?

This is the wrong way to proceed. We are saying let's reach out and try to work this out. Let's not cast the interest of the workers on the chopping block. I urge my colleagues to vote against this resolution.

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

The Senator from Wyoming.

Mr. ENZI. Mr. President, I yield myself the remainder of our time. I ask unanimous consent, since I have listened so many times to the example of the chickens and the processing of the chickens, that the response by the Senator from Arkansas be printed in the RECORD.

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

[From the Wall Street Journal, Mar. 6, 2001]

#### STRESSED POLITICS

In the final days of the Clinton Administration—and with apparently as much attention to detail as the pardon process—more than 600 pages of ergonomics regulations were hastily finalized. These regulations would force every employer to adopt a complete ergonomics program if just one “symptom” of stress is found in an employee, even if that employee developed the injury in athletics or weekend gardening.

This week, however, after 65 years of increasingly abdicating its lawmaking responsibilities to federal bureaucrats, Congress may finally assert its authority and rescind Mr. Clinton's unworkable ergonomic regulations. Forcing a rewrite of repetitive stress injury rules would not only save billions, but also shock bureaucrats into the realization that if their rule making is too sloppy or unscientific there are ways of stopping them.

The debate that begins today in the Senate was made possible by the 1996 Congressional Review Act. It allows a simple majority of

both houses of Congress to reject federal regulations that have an impact of at least \$100 million a year. In part because the regulations must be rescinded within 60 days of final promulgation, Congress hasn't really used the weapon. That goes some way toward showing how outrageous these last gasp Clinton ergonomics regulations must be.

Indeed, a glimpse at the details of the regulations reveals just how unreasonable they are. For instance, employers must pay for up to three doctor visits for employees complaining of repetitive stress injury and the doctor can report no information about whether the condition was caused outside the workplace. Businesswoman Tama Starr recounts other glaring problems with the regs in her nearby essay.

President Clinton's own Small business Administration estimates that the regulations will cost firms between \$60 billion and \$100 billion a year. But the Occupational Safety and Health Administration is nonetheless able to claim the cost would be only \$4.5 billion a year by factoring in dubious projections of health care cost savings.

Believe it or not, the AFL-CIO calls repetitive stress injuries “the number one job safety injury issue in America” and is calling in its chits with Democrats by demanding they vote to uphold the regulations. As of now, Republicans have enough Democratic votes to prevail, but pressure to keep the regs is mounting. Among their most devout backers are trial lawyers, who look at ergonomic litigation as the potential Next Frontier of jackpot justice.

Today's ergonomics debate in the Senate could send a signal to both employers and employees alike that regulatory reform is possible. It also will show which of the moderate Democratic Senators who talk a good game about reducing burdens on business will vote the same way. Employers should pay close attention to how Senators Lieberman, Edwards and Kerry—all of whom are potential presidential candidates—end up voting.

We have no doubt that ergonomic injuries are a growing problem in some occupations. Icing OSHA's unworkable 600 pages of regulations will still permit the Bush Administration to issue “guidelines” to prevent injuries while it rewrites the rules. Should the Congressional Review Act be triggered, for once it will be the federal bureaucracy that will have to adapt its desires to the marketplace rather than the otherway around. That alone makes today's debate and vote worth weighing in on.

Mr. ENZI. Mr. President, I ask unanimous consent that an editorial from the Chicago Tribune be printed in the RECORD.

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

[From the Chicago Tribune, Mar. 6, 2001]

#### ROLL BACK THE OSHA WORK RULES

Last November, the Clinton administration did an end-run around Congress and rushed into place a set of massively costly rules to govern repetitive-stress injuries in the workplace. Member of Congress have an opportunity this week to rescind those rules and take an orderly, science-based approach to ergonomic injuries.

They should do just that.

Repetitive-stress injuries such as carpal tunnel syndrome are, no doubt, a serious problem. But the Clinton team's answer was to blame the workplace for causing them and ask questions later.

The rules effectively make employers wholly liable for injuries that employees may have suffered outside of work, but

which may be aggravated by work. They override existing state workers' compensation laws, mandating higher payments for ergonomic-related complaints. In short, they amount to a simplistic—and expensive—meat-ax solution for a complex scientific puzzle that researchers still don't fully understand.

They come at a huge cost. Although the Occupational Safety and Health Administration puts the price tag on its rules at \$4.5 billion, the Economic Policy Foundation gauges the cost to business at a staggering \$125.6 billion.

In their lame-duck haste, the Clinton team decided not to wait for a detailed report on ergonomic injuries that had been commissioned by Congress and was being prepared by the National Academy of Sciences.

The new workplace rules took effect Jan. 16. The report—which was intended to inform any debate about such rules—was released Jan. 17.

The study provides some ammunition to both sides in this debate. It found that most common musculoskeletal disorders—accounting for 70 million visits to doctors' offices a year—are caused by work conditions as well as “non-work factors.” According to the study, “the connection between the workplace and these disorders is complex, partly because of the individual characteristics of workers—such as age, gender and lifestyle.”

That study should now be the focus of debate—and still can be.

The Congressional Review Act, passed in 1996, allows Congress to get rid of regulations within 60 days of the time they're issued by federal agencies. If a “resolution of disapproval” is approved by a majority in the House and Senate and signed by the president, the rules are history. The act also prohibits the regulations from being reissued in “substantially the same form.”

A Senate vote could come as early as Tuesday.

It is in the best interests of employers and employees to make workplaces as safe as possible. That keeps workers healthy and saves money. But this was bad rule-making. Time for Congress to undo it.

Mr. ENZI. Mr. President, throughout the day we have heard mention of newspapers that have said using this Congressional Review Act is the right way to go, what OSHA has proposed is the wrong way to go. We had this debate in July. We said OSHA was not listening, they were proposing an ergonomics rule that would not work, and in a bipartisan way, this body adopted an amendment to an appropriations bill that said they could not do it for a year. That was to give us some time to work on it.

That passed on the other side, and then, through the conference process, it got messed up to the point where it was moot. That was passed by both bodies.

That should have been a warning to OSHA that we were concerned about the way they were doing the rule, that they were not listening to anybody. OSHA forced a flawed process, and they wound up with a flawed rule. That is rogue rulemaking, and we cannot allow it to happen.

I am so thankful that Senator NICKLES and Senator REID worked on a bill 5 years ago that makes this action possible. That was a bipartisan act to make sure that if agencies did something we did not like, especially in

light of the fact that we are charged with seeing that those agencies let us pass the laws, this was our opportunity to say: You did it wrong; we are going to jerk the chain and make sure we do it right. That puts a huge responsibility on us. I do not think there is anybody in this body who does not think there is an ergonomics problem, but what we want is a solution that will help the worker, not just cost money.

This is a little book of some of the hearings my subcommittee held. We have addressed these issues. It is in part where we know for sure that OSHA did not listen. We held hearings on the things they were talking about and did not find any testimony in favor of some of the things they were proposing.

As one listened to the debate today, one would think every employer was trying to hurt their employees. If they do, they cannot stay in business; they need employees. During the course of the testimony given by the assistant director of OSHA, I was fascinated to see, since I had been in the shoe business before, that two New Balance shoe manufacturing facilities cut their workers compensation costs from \$1.2 million to \$89,000 per year and reduced their lost and restricted workdays from 11,000 to 549 during a 3-year period.

I had to ask the assistant director just what kind of a fine process they had to have in place to get these people to do this magnificent work. It is one of many examples. There are many examples in here of employers who have done the right thing and made huge differences to their workers, as there are examples of individuals who have been hurt by work ergonomics.

I had to ask: How much did you have to fine these New Balance shoe folks to get them to do that outstanding work?

You will not be surprised to find out that his shocked answer was: We did not have to fine them. Of course, you do not have to fine them. You have to help them find solutions. That is what this rule misses.

It does not help anybody to know exactly what to do, particularly if it is a small businessman. They have to carry around 2 pounds' worth of regulations and learn them well enough—it is not just 2 pounds; there are all those other additions to it I mentioned—they have to learn them well enough to do the job or they get fined substantially because this rule is about fines. This rule is not about helping people and the small businessmen.

The Senator from Iowa mentioned earlier he did not really know the rule that well, but then he does not have to because we cannot be fined under this. We do not have to meet these same obligations. Every small businessman in this country is going to have to know that stuff or pay the price.

We heard how 10 years of effort went into this. Every time people mention that I think about my dad interviewing people for the shoe business. One of the

things he always asked was how much experience they had. A lot of times they had a lot of experience—10, 20, 30 years of experience in the shoe business. One of the things he always told me was that sometimes after he hired them he found out what they had was 1 year of experience, 30 times.

That is what they got on OSHA. Until they actually get to the point where they publish something that people can look at and evaluate, you don't have but 1 year's experience 10 times.

If it is flawed, it is still flawed. If it is a rotten tree, rotten to the core, you can't just prune it. If it has a bad foundation, you don't want to build on it. So we can't take what has been done and work on it.

Now, another comment made today is the employers have all of this power, the employer can say what is happening. Let me state what the employer can't do under this rule. If somebody gets injured, he cannot talk to the doctor and find out how he got injured and how he could be saved from it because he is not allowed to investigate that. That has always been a capability under workers compensation. The employer has always been able to find out what hurt his employee and how he could change it.

Another thing that is mentioned is this is only 8 pages of rules. I have to remind Members, whether it is 8, 400, 600 or 800—and it really is 800—it is not like filling out your tax forms. If you do a simple form, you probably only have to do 2 pages, but if you only pay attention to those 2 pages, you don't pay attention to all the pages and regulations that come with it, you are not going to get it done right. I challenge anybody to be able to fill that thing out without looking at a single reference. Again, thousands of pages.

That is what we are doing here, forcing on the American small businessman thousands and thousands of pages of work. We showed some of the formulas they have to have. I think everybody ought to have to be able to translate that formula before they vote against the Review Act tonight.

It has also been mentioned that we spent millions of dollars for the National Academy of Sciences to do studies. I have to say, some of the quotes from the National Academy of Sciences remind me of some of the things that people do with the Bible—a little bit of selective reading.

I have to say something about OSHA. We said wait. Did they wait? No, they didn't wait. Now we hear all the quotes about how the National Academy of Sciences said it is OK to do this rule. Well, read that and I don't think you will agree that the National Academy of Sciences thinks that is the proper way to go.

But remember, OSHA didn't even wait to find that out. They were so adamant, so focused on doing exactly what they wanted to do; they didn't listen to us; they didn't listen to any of

our staff; they didn't listen to any of the committees. They went ahead and did what they wanted to do.

I talked about a flawed process. They paid people to testify; they brought them in and practiced them; they rewrote their testimony; they paid them to tear apart testimony. What galls me the most, they paid them to tear apart the testimony of the people testifying on the other side.

We cannot let that happen in the United States. People have to have their own right to testify without being taken on by government money.

As I mentioned, this bill was pushed by OSHA through a forced process and they wound up with a forced rule. We cannot let that rule stand. I ask Members to vote for the resolution and to vote against the OSHA rule.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The question is on the passage of the joint resolution. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

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

The result was announced—yeas 56, nays 44, as follows:

[Rollcall Vote No. 15 Leg.]

YEAS—56

Allard	Fitzgerald	McConnell
Allen	Frist	Miller
Baucus	Gramm	Murkowski
Bennett	Grassley	Nickles
Bond	Gregg	Roberts
Breaux	Hagel	Santorum
Brownback	Hatch	Sessions
Bunning	Helms	Shelby
Burns	Hollings	Smith (NH)
Campbell	Hutchinson	Smith (OR)
Chafee	Hutchinson	Snowe
Cochran	Inhofe	Specter
Collins	Jeffords	Stevens
Craig	Kyl	Thomas
Crapo	Landrieu	Thompson
DeWine	Lincoln	Thurmond
Domenici	Lott	Voinovich
Ensign	Lugar	Warner
Enzi	McCain	

NAYS—44

Akaka	Dodd	Lieberman
Bayh	Dorgan	Mikulski
Biden	Durbin	Murray
Bingaman	Edwards	Nelson (FL)
Boxer	Feingold	Nelson (NE)
Byrd	Feinstein	Reed
Cantwell	Graham	Reid
Carnahan	Harkin	Rockefeller
Carper	Inouye	Sarbanes
Cleland	Johnson	Schumer
Clinton	Kennedy	Stabenow
Conrad	Kerry	Torricelli
Corzine	Kohl	Wellstone
Daschle	Leahy	Wyden
Dayton	Levin	

The joint resolution (S.J. Res. 6) was passed, as follows:

## S.J. RES. 6

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress disapproves the rule submitted by the Department of Labor relating to ergonomics (published at 65 Fed. Reg. 68261 (2000)), and such rule shall have no force or effect.*

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Virginia.

## MORNING BUSINESS

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate now be in a period of morning business with Senators speaking for up to 10 minutes each. I think the distinguished Senator from Illinois is going to proceed, and then I shall return to follow him.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak in morning business.

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

## SCHOOL SHOOTINGS AND GUN SAFETY

Mr. DURBIN. Mr. President, I rise tonight to express my deep sadness for the families and victims of yesterday's high school shooting tragedy in California.

Yesterday, Charles "Andy" Williams, a 15-year-old high school student, snapped. By all accounts, this was a child who was a frequent victim of bullies and was picked on by others at school. A troubled child is a sad reality in America today, but a troubled child with a gun is a tragedy waiting to happen.

Gun safety is not the only issue this tragedy highlights. We need to encourage adults and students to listen more carefully and take swifter action when young people make threats of gun violence. We need more counselors in our Nation's schools who can help young people deal with the pressures of growing up. But we also must prevent troubled children from obtaining firearms.

Once again, I come to the floor to renew my plea—the American people's plea—for Congress to do the right thing, to pass commonsense gun safety legislation. We can continue to throw our hands in the air, shrug our shoulders, and hope this problem will go away by itself—sadly, we know better—or we can begin to face the reality of our situation: We live in a country populated by 281 million people and an estimated 200 million firearms.

Our Consumer Product Safety Commission can regulate the design of a

toy gun, to make sure it will not pinch the finger of a child, but the National Rifle Association has made sure that this same agency has no authority to regulate the safety of a real gun that could blow off a child's finger or worse.

Anyone—let me repeat, anyone—can walk into a gun show today and walk out with an unlimited supply of firearms—no documentation, no background check, no questions asked. And yet we express surprise when, year after year, our children are left defenseless as they attempt to dodge bullets at their schools. We use words such as "tragedy" and "shock" to describe the aftermath of school shootings, when we know they are foreseeable—we know they are foreseeable.

Some in this Senate have argued that the reasonable gun safety legislation we have proposed on this side of the aisle will not reduce gun violence. They said the same thing about the Brady bill, too. They were wrong then; they are wrong now.

It is not enough to wait for deaths caused by gun violence and then "enforce the law" against those who violate it. We must work to aggressively prevent gun violence before it happens, not merely enforce the law after the school shootings.

We must cut off the avenues for children to obtain firearms.

The American people are very clear on this issue, but Congress drags its feet, offering empty excuses for why we cannot pass any gun safety legislation. And what are the excuses? A background check at a gun show cannot be passed by Congress, according to the NRA, because it violates the second amendment. Requiring a child safety lock to be sold with a handgun somehow, according to the NRA, imposes an unreasonable burden on gun stores and manufacturers. A 3-day waiting period for a handgun—well, the NRA says that clearly violates our second amendment constitutional right.

This is a phony facade and a phony argument, one that continues to endanger our children in the one place in their lives they should expect to be safe at every moment—at school. In all likelihood, after the headlines on this most recent shooting will die down, this Congress will return to blissful ignorance with respect to the gun problem in America. But how many more tragedies, such as the one we have seen in California yesterday, have to happen before Congress finally takes action? How many?

Statistics from the Centers for Disease Control reveal that gun violence takes the lives of over 30,000 Americans every year, including 4,000 children. No other nation on Earth has this many gun deaths. When will this problem be big enough for Congress to care? Maybe at 35,000 deaths, 40,000, 100,000? What will it take?

I watched yesterday while this California shooting tragedy unfolded, and I couldn't help but recall Columbine. Only 2 years ago, I walked into that

Cloakroom and watched the live television coverage of students and teachers running and hiding in an effort to escape open gunfire at a school in a "safe neighborhood." I remember the terror and shock on their faces. I remember the child hanging out of the window with one of his arms extended and bloody. I remember the funerals of the 12 young students and the teacher who died as a result. Almost 2 years have passed since the Columbine tragedy. Now we have another high school tragedy in another safe neighborhood, but still Congress refuses to enact sensible gun safety legislation.

Last May mothers across America celebrated Mother's Day, not by staying home with their families and cooking their favorite dish or by getting breakfast in bed. They went out and marched. They marched against gun violence. I joined them on the shore of Lake Michigan as hundreds, maybe thousands gathered to make it clear to Congressmen and Senators alike that they had had enough as mothers. They called on Congress to pass commonsense gun safety legislation. Several of my colleagues and I participated in the march. These moms are mad. They will have their day.

This is a new Congress with a 50/50 split. We found time in this new Congress to consider voiding worker safety legislation. We will find time in this Congress to deal with bankruptcy, clamping down on those who file for bankruptcy but not on the credit industry. And now, sadly, we will find time for a lot of other issues other than gun safety. We haven't heard any clamor from the other side about the need to address gun violence. Mothers are burying their children before they have a chance to raise them while this Congress stands idly by.

Commonsense gun safety legislation, that is all the American people are asking for. As yesterday's shooting tragedy in California tells us, this Congress must act and act now.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. 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. REID. I ask unanimous consent that when the final order is entered this evening, the Democratic time for morning business be controlled as follows: 10 minutes each for Senators Feinstein, Feingold, and Lincoln, and 15 minutes for Senator Clinton and Senator BIDEN.

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

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.