

leadership on the extremely important policy matter of protecting individuals from genetic discrimination.

This bill would effectively and fairly protect against genetic discrimination in health insurance and employment. The group of members assembled to introduce this bill is bipartisan. We all worked together in the past on a bill that dealt strictly with genetic discrimination in health insurance, and today are introducing a bill that includes a new title to also protect individuals from genetic discrimination in employment. During the last Congress, our bill dealing with health insurance discrimination passed the Senate three times. I hope this new bill just has to pass once before the President can sign it into law.

As I have previously stated, I believe there is unanimous support for enacting legislation which prohibits discrimination in both health insurance and employment. The promise that genetic information holds for revolutionary advances in the diagnosis and treatment of diseases such as cancer, Parkinson's disease, heart disease and diabetes should not be hindered by fears about the discriminatory use of this information.

As a result of a lot of hard work and a hearing held by Chairman KENNEDY on February 13, 2002, we are able to introduce a bill today that reflects the cutting edge knowledge about genetic science and also reflects the current regulatory state with respect to medical records privacy. Both the original Snowe bill and the alternative Daschle bill were drafted years ago. The Human Genome has since been mapped. Comprehensive medical records privacy regulations, which will cover genetic information, have since been promulgated. And, the Equal Employment Opportunity Commission, EEOC, has since stated the need to expressly protect individuals from employment discrimination based on genetic information.

In other words, this bill provides the most informed policy to meet the goal of protecting individuals from discrimination without denying the promise of genetic science. Here are just a few examples of how our bill has been improved.

First, the definition of genetic information correctly reflects the science of genetics as the best minds know it today, not 4 years ago. Secondly, the medical records privacy regulation called for under the Kennedy-Kassebaum Health Insurance Portability and Accountability Act of 1996, HIPAA, is nearly final. The Kennedy-Kassebaum law clearly intended that genetic information be considered medical information, and, therefore, should be equally protected under the same privacy standards. The Snowe bill we're introducing today codifies that intent.

The President has also called upon Congress to pass legislation prohibiting discrimination on the basis of genetic information that is fair, reasonable and

consistent with existing discrimination statutes when it comes to protecting individuals against employment discrimination. Consistency is mandated to protect the rights of employees and employers alike. Consistency is mandated to protect the carefully designed process for enforcing and redressing employment civil rights legislation.

Therefore, I believe that federal legislation prohibiting employment discrimination based on genetic information must not deviate from other employment discrimination laws, namely Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act, with regard to enforcement and remedies.

Furthermore, we cannot enact new employment discrimination legislation without examining its interaction with existing laws. We must be careful to avoid enacting legislation that places employers between a rock and a hard place. That is, in order to comply with one law, an employer violates another. For example, an employer should not be placed in the impossible position of violating genetic discrimination legislation by virtue of its requirement to comply with the ADA or Family and Medical Leave Act. Nor should employers be held to conflicting standards governing the disclosure of genetic information.

Let me briefly address the issue of enforcement of employment discrimination claims on the basis of genetic information. Under Title VII and the ADA, Congress gave the Equal Employment Opportunity Commission the role of investigating and enforcing complaints of violations of these laws. Under both of these laws, a claimant must first file a complaint with the EEOC before being able to file a private suit in court.

The EEOC plays a critical role in the compliance with and enforcement of employment nondiscrimination laws. The EEOC's mediation activities also serve to expedite resolution of employment cases and reduce the backlog of such cases in our courts.

Federal legislation on genetic nondiscrimination that would allow a claimant to bypass the vital role that the EEOC plays undermines the efficacy of such legislation. Furthermore, what is the justification for allowing an individual claiming genetic discrimination to circumvent the complaint process that claimants of other basis of employment discrimination must follow?

With regard to remedies for employment discrimination based on genetic information, federal legislation should not disregard the remedy structure of other employment discrimination laws. The Civil Rights Act of 1991, which applies to remedies available under Title VII and the ADA, places a cap on consequential and punitive damages that is progressive with the size of the employer.

I cannot see the justification for allowing unlimited damages for employ-

ment discrimination based on genetic information. Why should someone claiming genetic discrimination, but who is asymptomatic, be able to recover greater damages than someone who is actually disabled in the present or who is a claimant of race discrimination? We must guard against enacting legislation that, in an effort to protect individuals who have been subjected to one type of discrimination, creates inequities for individuals who have been subjected to another type. Unfortunately, I read the alternative bill sponsored by Sen. DASCHLE to create just such an inequity.

The issue of confidentiality of genetic information in the employment context in relation to existing privacy laws might seem very complex. However, I think that the issue is not as complex as we make it out to be. First and foremost, an employer should not be held to conflicting legal requirements regarding the confidentiality of such information.

The HIPAA medical records privacy regulation I mentioned before governs the disclosure of all medical information, including genetic information, by health plans, health care clearinghouses and certain health care providers. Therefore, an employer who is acting in its capacity as a group health plan will be subject to the HIPAA privacy regulation. Federal legislation that prohibits discrimination in health insurance and employment on the basis of genetic information should not create confidentiality requirements for employers acting as group health plans that conflict with the privacy regulation. Again, Sen. Daschle's bill would create this kind of conflict.

On a subject as important as the use and disclosure of genetic information, we must understand and build from existing federal laws and regulations. With this foundation and the benefit of today's understanding of genetic science, I look forward to passing legislation to prohibit discrimination in health insurance and employment on the basis of genetic information.

#### LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Madam President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred January 30, 1993 in Wilmington, NC. A gay man was dragged from a bar and beaten. The assailants, Colin C. Hunt, 20, Patric G. Gardone, 23, and Walter G. Watkins, 26, were charged with four counts of assault in connection with the incident.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of

hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation, we can change hearts and minds as well.

#### ADDITIONAL STATEMENTS

##### TRIBUTE TO GENERAL WILLIAM H. FAIRBROTHER.

• Mr. MCCAIN. Mr. President, I rise today to honor a great American patriot, Brigadier General William H. Fairbrother, USAF, Ret. General Fairbrother passed away on January 27th at Air Force Village II in San Antonio. My deepest sympathies go out to his wife, Patricia, and his daughters, Bonnie and Nancy.

William Herman Fairbrother was born in Endicott, NY, on March 28, 1923, the son of Lieutenant Herman and Caroline Fairbrother. He grew up on a variety of Infantry Posts, to include the Panama Canal Zone and Manila, Philippine Islands. Bill entered the United States Military Academy at West Point on a Congressional appointment from the 34th District of New York. When he arrived at West Point he knew the prepared sling, the hasty sling, and had qualified with the 30-caliber water-cooled machine gun which made it easy to shoot expert with the M1 Garand plebe year. Academics, however, were something else. With the help of "Sully's Cram School" in Washington, DC the previous year he did fairly well in the first half year. But after that it was a continuing struggle to stay proficient. Because of many moves, high school had been rushed and spotty, and four years of Academy study being rushed into three because of World War II made the task even harder. On the other hand, flying, which was his first love went smoothly. Primary flight training in Texas and then Basic and Advanced at Stewart during the three years went without problems. It was during the Plebe year that he picked up the nickname "Fair-B" in keeping with the academy tradition to reduce the spoken word to its simplest form.

Fair-B graduated with the class of 1944, the D-Day class, albeit rather far down the list. On the very next day, in the Cadet Chapel, he married his childhood sweetheart, Patricia Ross of Kenmore, New York and they lived happily ever after. P-40 and P-47 training, together with those of the class selected for the Fighter business, followed with time at many different bases, as the Service endeavored to cram as much military experience into the class as they could before sending them overseas. Shortly thereafter it was off to Ie Shima Flying P-47's against the Japanese. After the war the unit moved over to Okinawa and Patricia joined him there in 1946. They, along with many other pioneer souls, set up house-keeping in a Quonset hut. , Bonnie, his first daughter, was born in Okinawa in

1947. In December 1947, Fair-B brought the family back to the U.S. to Selfridge, Michigan. The duty was with the 56th Fighter Group flying F-80's and F-86's, where he was squadron adjutant and group adjutant. It was during this time, in 1948, that his second daughter, Nancy, was born. In 1951 it was off to Minneapolis in the Air Defense Control Center business. There he was assigned as an aircraft controller and control center chief with the 31st Air Division. Flying time was cadged from the local guard squadron, which was equipped with P-51s. Then in 1953 cold weather assignments continued, this time to Rapid City, South Dakota and the 54th Fighter Interceptor Squadron at Ellsworth Air Force Base. This was probably the happiest assignment in his career, with over two years of the time there being in command of the squadron. Initially, the airplanes were P-51s, then F84Gs and finally F-86Ds. He had always said that next to being a Captain and Fighter Squadron Flight commander, the position of Fighter Squadron Commander was the best job in the Air Force.

Exchange duty with the Royal Air Force at RAF Manby, England followed in June of 1956. The assignment was attendance at the RAF Flying College. The family thoroughly enjoyed this short tour living in the small East Anglia town of Sutton-on-Sea, going to English Schools, learning the language, dealing with pounds, schillings and pence, and driving on the left side of the road. Fair-B accumulated a respectable amount of time in British Aircraft to include the Gloster Meteor, Hawker Hunter and British Electric Canberra. In January 1957 the family arrived in Rabat Morocco. The assignment here was Chief, Combat Operations in the 316th Air Division. Further broadening and true sophistication took place during this time. Not only was the Division partially manned with French Air Force personnel but also, the family lived in a French villa. In addition, flights with the family on military aircraft up to the European continent were allowed once a year. They took full advantage of this privilege and managed to visit Spain, Portugal, Italy, France, Germany and Switzerland during their Moroccan stay. The Division Fighter Squadrons were equipped with F-86D and F-100 aircraft so Fair-B was able to keep his hand in flying. There were many trips to Wheelus Air Force Base in Tripoli, Libya, where the squadrons went TDY for gunnery and rocketry training.

The three and a half years in North Africa went by quickly, and the return to the US happened in June 1960 with attendance at the Air War College. Following graduation from the Air War College he spent a long five years in the Pentagon, first on the Air Staff in War Plans and then as Executive Assistant in the Office of the Air Force Chief of Staff. One year with Curtis LeMay and one year with John McConnell provided rare and valuable staff experience.

After the fast pace of the Washington area, duty on the CINCPAC staff in Hawaii, starting in 1966, seemed slow indeed. Here Fair-B served on the staff of the Commander in Chief, Pacific, at Camp Smith. Not only did they take off for the weekends, but Wednesday afternoons as well. The duty was good, with many evaluation trips to the MAAG supported countries in the Far East. This, together with quarters on Hickam, and the benevolent Hawaiian weather made for a delightful tour.

Patricia stayed in Hawaii when Fair-B went to the Republic of Vietnam to join the 14th Special Operations Wing. As Vice Commander and then Commander he was kept busy monitoring the varied activities of the Wing, which were performed from nine separate bases. The little command O-2 aircraft spent a lot of time touring the country. In addition to the clandestine operations, the Wing had the AC-47 and AC-119 gunships, the psychological warfare business with O-2s and C-47s and the only armed helicopter squadron in the Air Force, flying UH-1Ns. He served the Wing from September 1969, to September 1970.

After Vietnam the next assignment as Deputy Chief of Staff at Headquarters Air Force Logistics Command at Wright-Patterson Air Force Base, Ohio with the job of DCS Distribution. The assignment was not awarded because of any logistics experience buy mainly because the boss man wanted some operational talent on the staff. The job was fascinating and of enormous scope. Fair-B jumped in with his typical enthusiasm and his performance helped in getting him promoted to Brigadier General on April 1, 1972. Separation from the Air Force came in 1974 with Fair-B being allowed to keep the wife and kids and the Air Force keeping the airplanes. His decorations and awards include the Legion of Merit (2), Distinguished Flying Cross (2) with oak leaf cluster, Air Medal (3) with two oak leaf clusters and the Meritorious Service Medal. He was a command pilot.

Fair-B and Patricia, hand-in hand then returned to Hawaii, their choice of all the places they had tried throughout the years. They moved into an apartment on Waikiki beach and then took the time to read what there wasn't time for before and work on the projects that had long ago been put aside. Other activities during this eight-year idyll included working with the House Republican Whip in the Hawaii State Legislature, activities with the Retiree Affairs Council at Hickam and work with the Oahu Chapter of the Air Force Association. 1982 found them in San Antonio, Texas, and in 1987 they made their next-to-the-last move into a cottage at Air Force Village II. Fair-B served three year as a Trustee on the Board of the Air Force Village Foundation, and over three years as a Director on the Air Force Village II Board of Directors.

Fair-B is survived by his wife of 57 years Patricia; daughters and sons-in-