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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, April 9, 2002, at 2 p.m.

Senate

FRIDAY, MARCH 22, 2002

The Senate met at 10 a.m. and was called to order by the Honorable ZELL MILLER, a Senator from the State of Georgia.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Lord God, Sovereign of this Nation, we praise You for the gift of authentic hope. More than wishful thinking, yearning, or shallow optimism, we turn to You for lasting hope. We have learned that true hope is based on the expectation of interventions by Your Spirit that are always on time and in time. You are the intervening Lord of the Passover, the opening of the Red Sea, and the giving of the Ten Commandments. You have vanquished the forces of evil, death, and fear through the Cross and the Resurrection. All through the history of our Nation, You have blessed us with Your providential care. It is with gratitude that we affirm, ''Blessed is the nation whose God is the Lord.''—Psalm 33:12.

May this sacred season, including Passover and Holy Week, be a time of the rebirth of hope in us. May Your Spirit of hope displace the discordant spirit of cynicism, discouragement, and disunity. Hope through us, O God of Hope. Flow through us patiently until we hope for one another what You have hoped for us. Then Lord, give us the vision and the courage to confront those problems that have made life seem hopeless for some people. Make us communicators of hope. We trust our lives, the work of this Senate, and the future of our Nation into Your all-powerful hands. In the name of the Hope of the world. Amen.

PLEDGE OF ALLEGIANCE

The Honorable ZELL MILLER led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 22, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ZELL MILLER, a Senator from the State of Georgia, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. MILLER thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Nevada.

SCHEDULE

Mr. REID. Mr. President, today the Senate will be in a period of morning business. There will be no rollcall votes today. The next rollcall vote will occur on Tuesday, April 9.

We hope that if people wish to give remarks today, they would get here as quickly as possible. Staff especially would appreciate that.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. STABENOW). Without objection, it is so ordered.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Massachusetts.

PRIVACY PROTECTIONS

Mr. KENNEDY. Madam President, I want to draw to the attention of our

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

colleagues in the Senate and also to the American people the unfortunate decision by this administration to recommend that we alter and change some enormously important privacy protections. These protections were recommended by the previous administration—by President Clinton—and were scheduled to go into effect about a year from now. These protections to ensure the privacy of medical records. I will speak on the substance of the issue in a moment.

What I find equally distressing is that we are seeing a series of actions taken by the administration—this is just the latest example—where the administration seems to be opting in favor of the companies and corporations at the expense of individuals. In this case, the administration is acting at the expense of the medical privacy of our fellow citizens.

We have recently seen the administration effectively undermine the very sensible and responsible ergonomics recommendations to try to protect people in the workplace. This affects 800,000 workers—primarily women—in our society. Those workers are risking their health without protections. In this case, we saw the administration siding with the companies and corporations at the expense of workers.

We have seen it most recently in the Enron situation. We have seen individuals who are the major players in the corporations walking away with millions and millions of dollars, and the workers seeing their life's savings eliminated. And just this week, we tried to put in protections for workers in the future. The administration opposed those particular recommendations.

In an entirely different area, we see where the administration has come down on the side of the major health corporations at the expense of individuals on the powerful issue of medical privacy and medical records. The most sensitive information that individuals have is in their medical records.

We have seen over the period of this last year and a half a considerable amount of dialog and discussion, and a number of hearings. We had recommendations in place, which were to go into effect about a year from now. These were announced by the previous administration in response to a requirement put into law in what we call the HIPAA legislation—the Kassebaum-Kennedy legislation that dealt with health insurance portability and accountability.

We put in that legislation a requirement on the administration to come forward with medical records protections.

But announced yesterday and today was the decision by the administration to recommend that we wipe away the most important protections that individuals have; that is, their ability to say, no, I will not share the information that is in my medical records.

In the existing proposed regulations, an individual could say, all right, the hospital or the doctor could share it with the insurance company, but that is all they could share it with.

It permitted individuals to say that some information is so sensitive that they do not want to share it with the insurance company. They could pay for a doctor's visit out of pocket rather than sending the information to their insurer—which could very well come back, as it so often does, to their employer.

We have not passed legislation that will prohibit discrimination against individuals in the workplace—even genetic discrimination.

This is the most sensitive information. We had the promulgation of rules and regulations under the administration that were to go into effect next year. It is surrounding information which is of the most sensitive nature.

The American people give a high priority to privacy. They do not want to have their own private lives infringed on by individuals or by any governmental agencies. They hold their medical information in the highest order of priority.

For the administration to side with the medical corporate world in being willing to share that kind of sensitive information which individuals do not want shared, I think, is an infringement on the rights to privacy for Americans that this country will not and should not tolerate.

In our committee, we will have hearings on this administration's proposal as soon as we return from the April recess. We will introduce legislation to ensure the protection of privacy for the American public.

I see my friend from Connecticut, Senator DODD, who has worked on this issue. Our colleague from Vermont, Senator LEAHY, has been a leader on this issue. It has not been a partisan issue. It has been bipartisan in nature. But it is an issue of high importance and consequence.

Privacy is an enormously important value for our fellow citizens. To try at the stroke of a pen to say that your medical records are not going to be protected is a violation of the most important and basic privacy rights of an individual. It is wrong. It is basically a surrender to major corporate interests. We have seen that too often in recent times.

We want an administration that is going to represent the best in terms of protecting our individual rights and our individual liberties, and not always be serving the large medical corporate interests. The administration's decision has been recommended, suggested, and supported by those interests.

It is wrong. We are going to do everything we possibly can to prevent it.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, I commend my colleague from Massachusetts. I had no idea he was coming over to the floor to address an issue which he has spent a great deal of time on over the years. I found myself outraged when I awoke this morning and saw the headline in our local newspaper, ''Medical Privacy Changes Proposed.''

I do not have any long prepared speech to give, but I associate myself with the remarks of my friend and colleague from Massachusetts. We have worked hard over the years to try to see to it that people's privacy is protected.

We know today, as a result of technology, the gathering of information, consumers want the right to know, but they also want the right to say no when it comes to having access to some of the most private and personal information.

We would not tolerate allowing someone to break into your home and rifle through your closets and to find out, without any justification, the most personal details of your life or your family's life. Yet what the administration is doing here, in a sense, is going to allow people to do just that when it comes to the most personal and private information about you and your family—your medical history—and the damage that can be done to people with that kind of access.

So I am terribly disappointed this morning to hear that the administration is going to be rolling back regulations that are designed to protect people. They are doing so, they claim, in the name of ensuring more rapid care. Well, I say shame on them. Shame on them for pitting care against your right to protect you and your family from people knowing your personal and private information.

That is not what this is all about, wanting to protect you and getting you better care. We know people want access to this information. We know why they want access to the information. That is why people are so concerned. This is not about liberals or conservatives, Democrats and Republicans. This is about the fact that we, as Americans, feel deeply and strongly about our right to have private information kept private.

There is a growing fear in our society of technology being used not only to improve our lives, as it is in so many ways, but to make it easier for people to rifle through our medicine cabinets, peer into our checkbooks, and be able to track us on Internet activities. It worries Americans that this is becoming far too prevalent.

What we need to have is our Government standing up for individual citizens who cannot hire lawyers, who do not have the resources to go out and pay for people to bring lawsuits when this kind of information is abused or misused. We need to stand with them and say: Look, if you want to have this information, you have to get the patient's and the family's permission. In many cases, of course, families are going to give that permission, but you have to ask for it, and you have to get their permission to do so. The idea that you could bypass them and just decide

you are going to have access to that information, without securing the patient's approval in order to have access to that information, I think is just downright wrong.

I am heartened to know that the chairman of the Health, Education, Labor, and Pensions Committee is going to take steps, certainly through a hearing process, but, as well, to put the administration on notice that this rule change they are about to establish is not going to occur without significant opposition.

I tried to call Senator SHELBY in his office today. I cochaired the caucus, if you will, on privacy along with my colleague from Alabama, Senator SHELBY. I think he may have already gone back to his home State of Alabama. He may have left last evening. He was not here this morning. But I wanted to invite him to join me in this Chamber, as he has on so many other occasions when it comes to these privacy issues, to stand up to say that we are going to insist that people have the right to say no.

I cannot speak for him here, but I am confident that when the Senator from Alabama is heard on this issue, his voice and his words will not be significantly different than what I have said here already and that, in a bipartisan way, we will be standing up, very strongly, in seeing to it that this proposed rule change is not going to just fly through here without significant opposition.

THE FAMILY AND MEDICAL LEAVE ACT

Mr. DODD. Madam President, I rise to raise concern about a 5-to-4 decision that was reached earlier this week by the Supreme Court on the Family and Medical Leave Act, a bill that, along with many others in this body, I helped write back in the 1990s. It took a long time—about 7 years—from the time that bill was first introduced to the time it became law in February of 1993. But it was a singular achievement which improved tremendously the quality of life for millions of people who had worried about their dearly beloved ones—their children, their parents—so when their loved one was sick or they had a newborn or adopted a child, they could take some time off—12 weeks maximum in a year of unpaid leave—to be with their family during a time of crisis, or a ''joyous crisis,'' a birth, if you will—that is hardly a crisis but, nonetheless, an important period in people's lives, or a legitimate crisis—a child's illness or a parent they were caring for—to be with them without losing their job.

That is all it was: To help people, who often had been caught in the quandary of having to choose between the family they loved and the job they needed, when they needed to be with their families, yet there was the risk of losing their job if, in fact, they made the choice to be with their family.

I pointed out, on dozens and dozens of occasions, during the debate over 7 years in this Chamber, that I knew countless Members of this body who took time away from the Senate—missed dozens of votes, never went to committee hearings, did not see constituents—because a child, a spouse, or a parent needed our colleagues to be home with them. And none of their constituents ever held it against them, when they came up for reelection, because they missed a lot of votes because they were at a children's hospital taking care of a child or they were with their wife or husband when they were desperately ill and they needed to be with them. Certainly, we understood. In fact, had they been here voting and disregarding the needs of their families, they might have been in greater jeopardy politically for having made that choice.

But it seemed to me if Senators and Congressmen would make the choice to be with their families—and rightfully so—that we ought not ask average citizens to make any different choice. We wanted to provide the opportunity for them to do so without losing their job. That was the underlying thought process and the genesis of the bill.

One of the requirements in the bill was for a general notification to employees of what the bill provided for: the 12 weeks of unpaid leave. There were some regulations that were adopted along those lines as a result of the passage of the bill.

I think Sandra Day O'Connor got it right. The Court overruled the regulation because the regulation required specific notice to employees. It went beyond, if you will, you could argue, the general notification of the bill. But as Justice O'Connor pointed out, there was nothing in the bill that said you could not have additional requirements. You had a general notification, but there was nothing in the legislation, nor in the legislative history, that would have banned a regulation saying, you probably ought to give more specific notice to individuals rather than just tacking it up on a bulletin board someplace and saying: You have a right to 12 weeks of leave. We hope you get word of this.

Her point was it would be unrealistic to assume that individual employees would be aware of what the law provided to them with just a general notification. Her suggestion was that the regulation to require specific notification would not be going too far. What happened here was the regulation also said that if you do not do that, then you are required to provide an additional 12 weeks of leave.

The case, frankly, before the Court may not have been the best fact situation. In this particular case, the employer had been extremely generous to the employee, in my view. The employer had already provided about 30 weeks of leave for that particular employee. So it was one of those cases where it was not the best set of facts to make the point.

I am in this Chamber to urge the agency, if you will, to take another look at these regulations. And I strongly urge that they come back and reissue the regulation, if you will, on the specific notification. I think that is the way to go. And then, in view of the Court's decision about any additional penalties, I would say, pare back on that some way. Again, leave it to legal scholars how to write this and how to fashion this.

But the point is, on such a close decision—5 to 4—I do not believe the Court was suggesting somehow we ought to eliminate the need for specific notification, even though the bill talked about general notification. That is the point I want to make.

This is a law that I am told has already provided benefits to more than 35 million people in this country in the last decade who have been able to take advantage of this.

A lot of people cannot take advantage of it. I know that because it is unpaid leave. A lot of people find themselves in economic circumstances where unpaid leave is something they just can't afford to do. Candidly, we would never have passed a bill that would have required paid leave. The opposition was overwhelming to that idea. We have since suggested some creative ways in which States may be able to provide for paid leave under limited circumstances, and we are considering that legislation.

Even with the unpaid provisions of this proposal, millions of people have been able to spend time with their families during very important periods in any family's life. As I said, in the situation of a newly arrived child, and I certainly know the joys of that, having had a daughter 6 months ago, knowing how important it is for my wife and myself to be able to spend time with Grace as she begins her new life. And certainly as a Member of the Senate, I can do that without any fear of losing my job because of it.

There were literally millions of people who could not take time to be with their newborn without that fear on the table. Obviously, adoption makes the case clearly how important it is for a newly adopted child to be able to be with her new parents or his new parents during that bonding period.

I don't think I have to make the case. If any of you have been to a children's hospital in a waiting room and seen the fear and anxiety in a mother's or father's face holding a child that is going into the hospital for some operation or into a pediatric intensive care unit, looking on the faces of parents with a newborn who is struggling to stay alive, wondering whether or not they should be there or on the job, as if somehow they could actually do a job while their child is sitting in an emergency room or an intensive care unit.

It seemed to us logical that we provide this opportunity for people not to be forced into that situation. I regret we couldn't do something about having paid leave for people. We are one of the few countries in the world that does